

Rule Change 2005 (13)
COLORADO RULES OF CIVIL PROCEDURE
CHAPTER 1

**SCOPE OF RULES, ONE FORM OF ACTION, COMMENCEMENT OF
ACTION, SERVICE OF PROCESS, PLEADINGS, MOTIONS AND
ORDERS**

Rule 5. Service and Filing of Pleadings and Other Papers

(a) [No Change.]

(b) **Making Service:** ~~(1) Service **How Made.** Whenever under C.R.C.P. 5(a) on a party represented by an attorney these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless the court orders personal service upon the party. is ordered by the court.~~ A resident attorney, on whom pleadings and other papers may be served, shall be associated as attorney of record with any out-of-state foreign attorney practicing in any courts of this state. ~~(2) Service under C.R.C.P. 5 (upon the attorney or upon a) is party shall be made by:~~

~~(A) Delivering-delivering~~ a copy to the person served by:

~~(i) handingattorney or by mailing it to the person;~~

~~(ii) leaving it him at the person's office with a clerk or other person in charge, or if no his address as given in the pleadings or by sending it via facsimile machine transmission to a facsimile number if one is in charge, leaving it in a conspicuous place in the office; or~~

~~(iii) if designated in the personpleadings, or if no pleading has been filed, or no office or the office is closed, leaving it address is given therein, then at the person's dwelling house or usual place of abode with someone 18 years of age or older residing there;~~

~~(B) Mailing a copy to the his last known address of the person served. Service by mail is complete on mailing;~~

~~(C) If the person served has no or, if no address is known address, by leaving a copy it with the clerk of the court; Delivery of a copy within this Rule means: Handing it to the attorney or to the party; or leaving it at his office with the attorney's clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some member of the family over the age of eighteen years then residing therein. Service by mail is complete upon mailing.~~

~~(D) Delivering a copy by any other means, including E-Service, other electronic means or a designated overnight courier, consented to in writing by the person served. Designation of a facsimile phone number in the pleadings effects consent in writing for such delivery. Parties who have subscribed to E-Filing, pursuant to C.R.C.P. 121 Section 1-26 §1.(d), have agreed to receive E-Service. Service by other electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. Service by other electronic means or overnight courier under C.R.C.P. 5(b)(2)(D) is not effective if the party making service learns that the attempted service did not reach the person to be served.~~

(c) [No Change.]

Formatted: Tab stops: 0.52", Left + 1.04", Left + 1.5", Left + 2", Left + 2.5", Left + 3", Left + 3.5", Left + 4", Left + 4.5", Left + 5", Left + 5.5", Left + 6", Right

(d) Filing ~~Certificate and Serving~~ Interrogatories, answers thereto, requests for admission, responses thereto, requests for production, responses thereto, and depositions shall not be filed until they are used in court proceedings. In all cases where these rules do not expressly require the filing and service of Service. All papers after the initial pleading required to be served upon a party, together with a certificate of service, must be filed with paper, subsequent to the court within a reasonable time after service, but disclosures under Rule C.R.C.P. 26(a)(1) or (2) original complaint, and the following discovery requests and responses shall not be filed until they are used in filing of a paper alone is provided for, a copy of such paper so filed shall be served upon the proceeding or the court orders otherwise: (i) depositions, (ii) interrogatories, (iii) requests for documents or to permit entry upon land, and (iv) requests for admission, adverse party contemporaneously with the filing of such paper, and where the service alone of any paper is required it shall be filed either before service or within a reasonable time thereafter. All papers after the complaint which are required to be served upon a party shall contain a certificate of service.

(e) Filing with Court Defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with the judge, in which event the judge shall note thereon the filing date and forthwith transmit them to the office of the clerk. A paper filed by E-Filing in compliance with C.R.C.P. 121 Section 1-26 constitutes a written paper for the purpose of this Rule. The clerk shall not refuse to accept any paper presented for filing solely because it is not presented in proper form as required by these rules or any local rules or practices.

(f) [No Change.]

Rule 6. Time

(a) Computation. In computing any period of time prescribed or allowed by these rules, ~~by the local rules of any court, by order of court, or by any applicable statute,~~ the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. ~~Unless otherwise specifically ordered, when~~ When the period of time prescribed or allowed is less than ~~eleven~~ seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. ~~A half holiday shall be considered as other days and not as a holiday.~~ As used in this Rule, "Legal holiday" includes the first day of January, observed as New Year's Day; the third Monday in January, observed as Martin Luther King Day; the third Monday in February, observed as Washington-Lincoln Day; the last Monday in May, observed as Memorial Day; the fourth day of July, observed as Independence Day; the first Monday in September, observed as Labor Day; the second Monday in October, observed as Columbus Day; the 11th day of November, observed as Veteran's Day; the fourth Thursday in November, observed as Thanksgiving Day; the twenty-fifth day of December, observed as Christmas Day, and any other day except Saturday or Sunday when the court is closed.

(b) through (d) [No change.]

(e) Additional Time After Service Under C.R.C.P. 5(b)(2)(B),(C), by Mail. Whenever a party has the right, or (D). ~~Unless otherwise specifically ordered, whenever a party must file~~

Formatted: Tab stops: 0", Left + 0.5", Left + 1", Left + 1.5", Left + 2", Left + 2.5", Left + 3", Left + 3.5", Left + 4", Left + 4.5", Left + 5", Left + 5.5", Left + 6", Right

Formatted: Font: Bold

Formatted: Font: Bold

~~required to do some act or may act take some proceedings within a prescribed period after the service is made under C.R.C.P. 5(b)(2)(B),(C), of a notice or (D) other papers upon him, other than process under Rule 4, and the notice or paper is served upon him by mail, three days shall be added after to the prescribed period would expire under Section (a) of this Rule. For the purposes of this rule service by facsimile transmission is not service by mail.~~

CHAPTER 4 DISCLOSURE AND DISCOVERY

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

(a) through (3) [No Change.]

(4) **Form of Disclosures; Filing.** All disclosures pursuant to subparagraphs (a)(1) and (a)(2) of this Rule shall be made in writing, in a form pursuant to C.R.C.P. 10, signed pursuant to C.R.C.P. 26(g)(1), and served upon all other parties. Disclosures shall not be and promptly filed with the court unless requested by the, but such court filings shall not include copies of any disclosed documents or necessary for consideration of a particular issue. other evidentiary material, or any expert reports or summaries.

(a)(5) through (g) [No Change.]

CHAPTER 5

TRIALS

Rule 43. Evidence

(a) through (h) [No Change.]

(i) (1) **Request for absentee testimony ~~by telephone.~~** A party may request that testimony be presented ~~by telephone or videophone~~ at a trial or hearing by a person absent from the courtroom by means of telephone or some other suitable and equivalent medium of communication. A request for ~~absentee presentation of testimony by telephone~~ shall be made by written motion or stipulation filed as soon as practicable after the need for absentee at least 21 days prior to the trial or hearing at which testimony becomes known is proposed to be taken by telephone. The motion shall include:

(A) The reason(s) for allowing such testimony, ~~should be taken by telephone.~~

(B) A detailed description of all testimony which is proposed to be taken by telephone or other medium of communication.

(C) [No Change.]

(2) **~~Response, Objections.~~** If any party objects to ~~absentee the taking of the testimony by telephone,~~ said party shall file a written ~~response objection~~ within 37 days following service of the motion unless the opening of the proceeding occurs first, in which cases shall state the objection shall be made orally in open court at the commencement basis of the proceeding or as

~~soon as practicable thereafter, objection.~~ If no response is filed ~~or~~ objection is made, the motion may be deemed confessed.

(3) Determination. The court shall determine whether in the interest of justice absentee ~~the~~ testimony may be allowed ~~taken by telephone~~. The factors to be considered by the court in determining whether to permit absentee testimony ~~by telephone~~ shall include but not be limited to the following:

(A) Whether there is a statutory right to absentee testimony ~~by telephone~~.

(B) The cost savings to the parties of having absentee ~~the~~ testimony presented by ~~telephone~~ versus the cost of the witness appearing in person.

(C) The availability of appropriate equipment at the court to permit the presentation of absentee testimony ~~by telephone~~.

(D) through (G) [No Change.]

(H) Whether the presentation of absentee testimony ~~by telephone~~ would inhibit the ability to cross examine the witness.

(I) The efforts of the requesting parties to obtain the presence of the witness.

If the court orders absentee testimony to be taken ~~by telephone~~, the court may issue such orders as it deems appropriate to protect the integrity of the proceedings.

CHAPTER 17A

PRACTICE STANDARDS AND LOCAL RULES

Section 1-1 [Repealed and Readopted]

ENTRY OF APPEARANCE AND WITHDRAWAL

1. Entry of Appearance.

No attorney shall appear in any matter before the court unless that attorney has entered an appearance by filing an Entry of Appearance or signing a pleading. An entry of appearance shall state (a) the identity of the party for whom the appearance is made; (b) the attorney's office address; (c) the attorney's telephone number; (d) the attorney's E-Mail address; and (e) the attorney's registration number.

2. Withdrawal From an Active Case.

(a) An attorney may withdraw from a case, without leave of court where the withdrawing attorney has complied with all outstanding orders of the court and either files a notice of withdrawal where there is active co-counsel for the party represented by the withdrawing attorney, or files a substitution of counsel, signed by both the withdrawing and replacement attorney, containing the information required for an Entry of Appearance under subsection 1 of this Practice Standard as to the replacement attorney.

(b) Otherwise an attorney may withdraw from a case only upon approval of the court. Such approval shall rest in the discretion of the court, but shall not be granted until a motion to withdraw has been filed and served on the client and the other parties of record or their attorneys and either both the client and all counsel for the other parties consent in writing at or after the

time of the service of said motion, or at least 15 days have expired after service of said motion. Every motion to withdraw shall contain the following advisements:

- (I) the client has the burden of keeping the court and the other parties informed where notices, pleadings or other papers may be served;
 - (II) if the client fails or refuses to comply with all court rules and orders, the client may suffer possible dismissal, default or other sanctions;
 - (III) the dates of any proceedings, including trial, which dates will not be delayed, nor the proceedings affected by the withdrawal of counsel;
 - (IV) the client's and the other parties' right to object to the motion to withdraw within 15 days after service of the motion; and
 - (V) the client's last known address and telephone number.
- (c) The client and the opposing parties shall have 15 days after service of a motion to withdraw within which to file objections to the withdrawal.
- (d) If the motion to withdraw is granted, the withdrawing attorney shall promptly notify the client and the other parties of the effective date of the withdrawal.

3. Withdrawal From Completed Cases.

In any civil case which is concluded and in which all related orders have been submitted and entered by the court and complied with by the withdrawing attorney, an attorney may withdraw from the case without leave of court by filing a notice in the form and content of Appendix to Chapters 1 to 17A, Form 36, C.R.C.P. [JDF Form 83], which shall be served upon the client and all other parties of record or their attorneys, pursuant to C.R.C.P. 5. The withdrawal shall automatically become effective 15 days after service upon the client and all other parties of record or their attorneys unless there is an objection filed, in which event the matter shall be assigned to an appropriate judicial officer for determination.

4. Entries of Appearance and Withdrawals by Members or Employees of Law Firms, Professional Corporations or Clinics.

The entry of an appearance or withdrawal by an attorney who is a member or an employee of a law firm, professional corporation or clinic shall relieve other members or employees of the same law firm, professional corporation or clinic from the necessity of filing additional entries of appearance or withdrawal in the same litigation unless otherwise indicated.

COMMITTEE COMMENT

An "active case" is any case other than a "completed case" as described in subsection 3 of the Practice Standard.

Section 1-2

SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEYS

Special admission of an out-of-state attorney shall be in accordance with C.R.C.P. Chapter 18, Rules Governing Admission to the Bar 220 and 221.—Any attorney who desires to be specially admitted pursuant to C.R.C.P. 221 or any other applicable rule or statute shall make application for such special admission to the judge appointed to the case in which the attorney seeks to participate.

COMMITTEE COMMENT

~~_____The Practice Standard as deemed necessary because content of local rules of many counties indicated that there was a lack of awareness of a Rule of Civil Procedure pertaining to special admission of out of state attorneys. The Practice Standard draws attention to existence of that rule and incorporates its provisions.~~

Section 1-3 through 1-12 [No Change.]

Section 1-13 DEPOSITION BY AUDIO TAPE RECORDING

When a deposition is taken by audio tape recording under C.R.C.P. Rule 30(b)(4), the following procedures shall be followed:

- (a) An oath or affirmation shall be administered to the witness by a notary public or other officer authorized to administer oaths.
- (b) [No Change.]
- (c) ~~Each speaker~~ shall identify ~~themselves~~himself before each statement except during extended colloquy between examiner and deponent.
- (d) through (h) [No Change.]

COMMITTEE COMMENT [No Change.]

Section 1-14

DEFAULT JUDGMENTS

1. To enter a default judgment under C.R.C.P. Rule 55(b) of the Colorado Rules of Civil Procedure, the following documents in addition to the motion for default judgment are necessary:

- (a) [No Change.]
- (b) An affidavit stating facts showing that venue of the action is proper. The affidavit may be executed by the attorney for the moving party.
- (c) An affidavit or affidavits establishing that the particular defendant is not a minor, an ~~incapacitated infant, an incompetent~~ person, an officer or agency of the State of Colorado, or in the military service. The affidavit must be executed by the attorney for the moving party on the basis of reasonable inquiry.
- (d) An affidavit or affidavits or exhibits establishing the amount of damages and interest, if any, for which judgment is being sought. The affidavit may not be executed by the attorney for the moving party. The affidavit must be executed by a person with knowledge of the damages and the basis therefor.

(e) If attorney fees are requested, an affidavit that the defendant agreed to pay attorney fees or that they are provided by statute; that they have been paid or incurred; and that they are reasonable. The attorney for the moving party may execute the affidavit setting forth those matters listed in or required by Colorado Rule of Professional Conduct 1.5.

(f) through (g) [No change.]

(1)- The name of the party or parties to whom the judgment is to be granted;

(2)- The name of the party or the parties against whom judgment is being taken;

(3)- Venue has been considered and is proper;

(4)- When there are multiple parties against whom judgment is taken, whether the relief is intended to be a joint and several obligation;

(5)- Where multiple parties are involved, language to comply with ~~Rule~~ C.R.C.P. 54(b), ~~C.R.C.P.~~ if final judgment is sought against less than all the defendants;

(6)- The principal amount, interest and attorney's fees, if applicable, and costs which shall be separately stated.

2. [No Change.]

3. If the party against whom default judgment is sought is in the military service, or his status cannot be shown, the court shall require such additional evidence or proceeding as will protect the interests of such party in accordance with the Service Member Civil Relief Act (SCRA), 50 USC § 520, including the appointment of an attorney when necessary. The appointment of an attorney shall be made upon application of the moving party, and expense of such appointment shall be borne by the moving party, but taxable as costs awarded to the moving party as part of the judgment except as prohibited by law.

4. [No Change.]

COMMITTEE COMMENT

This Practice Standard was needed because neither ~~Rule~~ C.R.C.P. 55, ~~C.R.C.P.~~ nor any local rule specified the elements necessary to obtain a default judgment and each court was left to determine what was necessary. One faced with the task of attempting to obtain a default judgment usually found ~~himself-themselves~~ making several trips to the courthouse, numerous phone calls and redoing needed documents several times. The Practice Standard is designed to minimize both court and attorney time. The Practice Standard sets forth a standardized check list which designates particular items needed for obtaining ~~of~~ a default judgment. For guidance on affidavits, see C.R.C.P. 108. See also Section 13-63-101, C.R.S., concerning affidavits and requirements by the court.

Section 1-15

DETERMINATION OF MOTIONS

1. Briefs; When Required; Time for Serving and Filing -- Length. Except motions during trial or where the court deems an oral motion to be appropriate, any motions involving a contested issue of law shall be supported by a recitation of legal authority incorporated into the motion except for a motion pursuant to C.R.C.P. 56. Except for electronic filings made pursuant to Section 1-26 of this Rule, the ~~The~~ original and one copy of all motions and briefs shall be filed

Formatted: Font: Bold

with the court; ~~a copy shall be supplied to the courtroom clerk (to be brought to the attention of the court) and a copy shall be served as required by law on all other parties.~~ The responding party shall have 15 days or such lesser or greater time as the court may allow in which to file a ~~and supply the courtroom clerk with a responsive brief response.~~ The moving party shall have 10 days or such greater or lesser time as the court may allow to file ~~and supply the courtroom clerk with a reply brief.~~ Motions or briefs in excess of 10 pages in length, exclusive of tables and appendices, are discouraged.

2. through 7. [No Change.]

8. **Duty to Confer.** ~~When Appropriate to do so, m~~Moving counsel ~~should~~shall confer with opposing counsel before filing a motion. The motion shall, at the beginning, contain a certification that the movant in good faith has conferred with opposing counsel about the motion. ~~If no conference has occurred, the reason why shall be stated.~~ If the relief sought by the motion has been agreed to by the parties or will not be opposed, the court shall be so advised in the motion. If no conference has occurred, the reason why shall be stated.

9. **Unopposed Motions.** All unopposed motions shall be so designated in the title of the motion.

COMMITTEE COMMENT [No Change.]

Section 1-16 (Repealed and Readopted)

PREPARATION OF ORDERS AND OBJECTIONS AS TO FORM

1. When directed by the court, the attorney for the prevailing party or such attorney as the court directs shall file and serve a proposed order within 10 days of such direction or such other time as the court directs. Prior to filing the proposed order, the attorney shall submit it to all other parties for approval as to form. The proposed order shall be timely filed even if all parties have not approved it as to form. A party objecting to the form of the proposed order as filed with court shall have 5 days after service of the proposed order to file and serve objections and suggested modifications to the form of the proposed order.

2. Alternatively, when directed by the court, the attorney for the prevailing party or such attorney as the court directs shall file and serve a stipulated order within 10 days after the ruling, or such other time as the court directs. Any matter upon which the parties cannot agree as to form shall be designated in the proposed order as “disputed.” The proposed order shall set forth each party’s specific alternative proposal for each disputed matter.

3. Objecting, proposing modification or agreeing to the form of a proposed order or stipulated order, shall not affect a party’s rights to appeal the substance of the order.

Section 1-17 through 1-19 [No change.]

Section 1-20

~~PAPER SIZE, QUALITY AND FORMAT~~ OF DOCUMENTS

All court documents shall be prepared ~~in on white~~ 8-1/2" x 11" ~~format~~ paper with black type or print and conform to the ~~quality~~, format, and spacing requirements specified in C.R.C.P. 10(d). ~~Except documents filed by E-Filing or facsimile copy. As provided in C.R.S. § 13-1-133,~~ all court documents shall be on recycled ~~white~~ paper. Any form required by these rules may be reproduced by word processor or other means, provided that the reproduction substantially follows the format of the form and indicates the effective date of the form which it reproduces

COMMITTEE COMMENT

This standard draws attention to the requirements of ~~new rule~~ C.R.C.P. 10(d) pertaining to paper size, paper quality, format and spacing of court documents. Color of paper and print requirements ~~for documents not filed by E-Filing or facsimile copy~~ were made necessary because colors other than black and white create photocopying and microfilming difficulties. Provision is also made to clarify that forms reproduced by word processor are acceptable if they follow the format of the form and state the effective date of the form which it reproduces.

Section 1-21

COURT ~~REPORTER~~ TRANSCRIPTS

1. A party requesting a ~~court reporter's~~ transcript shall arrange for preparation of the transcript directly with the reporter, or if the session or proceeding was recorded by mechanical or electronic means, the courtroom clerk. Where a transcript is to be made a part of the record on appeal, a party shall request preparation of the transcript by reference in the Designation of Record and by direct arrangement with the court reporter or courtroom clerk as provided herein.

2. [No Change.]

3. The ~~court reporter's~~ transcript shall be signed and certified by the person preparing the transcript. ~~reporter~~. A transcript lodged with the court shall not be removed from the court without court order except when transmitted to the appellate court.

COMMITTEE COMMENT [No Change.]

Section 1-22 [No Change.]

Section 1-23 [Repealed and Readopted]

BONDS IN CIVIL ACTIONS

1. Bonds Which Are Automatically Effective Upon Filing With The Court.

The following bonds are automatically effective upon filing with the clerk of the court:

(a) Cash bonds in the amount set by court order, subsection 3 of this rule, or any applicable statute.

(b) Certificates of deposit issued by a bank chartered by either the United States government or the State of Colorado, in the amount set by court order, subsection 3 of this rule, or any applicable statute. The certificate of deposit shall be issued in the name of the clerk of the court and payable to the clerk of the court, and the original of the certificate of deposit must be deposited with the clerk of the court.

(c) Corporate surety bonds issued by corporate sureties presently authorized to do business in the State of Colorado in the amount set by court order, subsection 3 of this rule, or any applicable statute. A power of attorney showing the present or current authority of the agent for the surety signing the bond shall be filed with the bond.

2. Bonds Which Are Effective Only Upon Entry of an Order Approving the Bond.

(a) Letters of credit issued by a bank chartered by either the United States government or the State of Colorado, in the amount set by court order, subsection 3 of this rule, or any applicable statute. The beneficiary of the letter of credit shall be the clerk of the district court. The original of the letter of credit shall be deposited with the clerk of the court.

(b) Any Other Proposed Bond.

3. Amounts of Bond.

(a) Supersedeas Bonds. Unless the court otherwise orders, or any applicable statute directs a higher amount, the amount of a supersedeas bond to stay execution of a money judgment shall be 125% of the total amount of the judgment entered by the court (including any prejudgment interest, costs and attorneys fees awarded by the court). The amount of a supersedeas bond to stay execution of a non-money judgment shall be determined by the court. Nothing in this rule is intended to limit the court's discretion to deny a stay with respect to non-money judgments. Any interested party may move the trial court (which shall have jurisdiction notwithstanding the pendency of an appeal) for an increase in the amount of the bond to reflect the anticipated time for completion of appellate proceedings or any increase in the amount of judgment.

(b) Other Bonds. The amounts of all other bonds shall be determined by the court or by any applicable statute.

4. Service of Bonds Upon All Parties of Record. A copy of all bonds or proposed bonds filed with the court shall be served on all parties of record in accordance with C.R.C.P. 5(b).

5. No Unsecured Bonds. Except as expressly provided by statute, and except with respect to appearance bonds, no unsecured bond shall be accepted by the court.

6. Objections to Bonds. Any party in interest may file an objection to any bond which is automatically effective under subsection 1 of this rule or to any proposed bond subject to subsection 2 of this rule. A bond, which is automatically effective under subsection 1 remains in effect unless the court orders otherwise. Any objections shall be filed not later than 15 days after service of the bond or proposed bond except that objections based upon the entry of any amended or additional judgment shall be made not later than 15 days after entry of any such amended or additional judgment.

COMMITTEE COMMENT

The Committee is aware that issues have arisen regarding the effective date of a bond, and thus the effectiveness of injunction orders and other orders which are conditioned upon the filing of an acceptable bond. Certain types of bonds are almost always acceptable and thus,

under this rule, are automatically effective upon filing with the Court subject to the consideration of timely filed objections. Other types of bonds may or may not be acceptable and should not be effective until the Court determines the sufficiency of the bond. The court may permit property bonds upon such conditions as are appropriate to protect the judgment creditor (or other party sought to be protected). Such conditions may include an appraisal by a qualified appraiser, information regarding liens and encumbrances against the property, and title insurance.

This rule also sets the presumptive amount of a supersedeas bond for a money judgment. The amount of a supersedeas bond for a non-money judgment must be determined in the particular case by the court and this rule is not intended to affect the court's discretion to deny a supersedeas bond in the case of a non-money judgment.

Section 1-24 through 1-25 [No change.]

Section 1-26 [Repealed and Readopted]

ELECTRONIC FILING AND SERVICE SYSTEM

1. Definitions:

- (a) **Document:** A pleading, motion, writing or other paper filed or served under the E-System.
- (b) **E-Filing/Service System:** The E-Filing/Service System ("**E-System**") approved by the Colorado Supreme Court for filing and service of documents via the Internet through the Court-authorized E-System provider.
- (c) **Electronic Filing:** Electronic filing ("**E-Filing**") is the transmission of documents to the clerk of the court, and from the court, via the E-System.
- (d) **Electronic Service:** Electronic service ("**E-Service**") is the transmission of documents to any party in a case via the E-System. Parties who have subscribed to the E-System have agreed to receive service, other than service of a summons, via the E-System.
- (e) **E-System Provider:** The E-Service/E-Filing System Provider authorized by the Colorado Supreme Court.
- (f) **S/ Name:** A symbol representing the signature of the person whose name follows the "S/" on the electronically or otherwise signed form of the E-Filed or E-Served document.

2. Types of Cases Applicable: E-Filing and E-Service may be used for certain cases filed in the courts of Colorado as the service becomes available. The availability of the E-System will be determined by the Colorado Supreme Court and announced through its web site <http://www.courts.state.co.us/supct/supct.htm> and through published directives to the clerks of the affected court systems. E-Filing and E-Service may be mandated pursuant to Subsection 13 of this Practice Standard 1-26.

3. To Whom Applicable:

- (a) Attorneys licensed to practice law in Colorado may register to use the E-System. Any attorney so registered may enter an appearance pursuant to Rule 121, Section 1-1, through E-Filing. In districts where E-Filing is mandated pursuant to Subsection 13 of this Practice Standard 1-26, attorneys must register and use the E-System.

(b) Where the system and necessary equipment are in place to permit it, pro se parties and government entities and agencies may register to use the E-System.

4. Commencement of Action–Service of Summons: Cases may be commenced under C.R.C.P. 3 by E-Filing the initial pleading. Service of a summons shall be made in accordance with C.R.C.P. 4.

5. E-Filing–Date and Time of Filing: Documents filed in cases on the E-System may be filed under C.R.C.P. 5 through an E-Filing. A document transmitted to the E-System Provider by 11:59 p.m. Colorado time shall be deemed to have been filed with the clerk of the court on that date.

6. E-Service–When Required - Date and Time of Service: Documents submitted to the court through E-Filing shall be served under C.R.C.P. 5 by E-Service. A document transmitted to the E-System Provider for service by 11:59 p.m. Colorado time shall be deemed to have been served on that date. E-Service shall entitle the party being served an additional 3 days as provided by C.R.C.P. 6(e).

7. Filing Party to Maintain the Signed Copy–Paper Document Not to Be Filed–Duration of Maintaining of Document: A printed or printable copy of an E-Filed or E-Served document with original or scanned signatures shall be maintained by the filing party and made available for inspection by other parties or the court upon request, but shall not be filed with the court. When these rules require a party to maintain a document, the filer is required to maintain the document for a period of two years after the final resolution of the action, including the final resolution of all appeals.

8. Documents Requiring E-Filed Signatures: For domestic relations decrees, separation agreements and parenting plans, original signature pages bearing the attorneys', parties', and notaries' signatures must be scanned and E-Filed. For all other E-Filed and E-Served documents, signatures of attorneys, parties, witnesses, notaries and notary stamps may be in S/ Name typed form to satisfy signature requirements, once the necessary signatures have been obtained on a paper form of the document. For probate of a will, the original must be lodged with the court.

9. C.R.C.P. 11 Compliance: Use of the E-System by an attorney constitutes compliance with the signature requirement of C.R.C.P. 11. An attorney using the E-System shall be subject to all other requirements of Rule 11.

10. Documents under Seal: A motion for leave to file documents under seal may be E-Filed. Documents to be filed under seal pursuant to an order of the court may be E-Filed at the direction of the court; however, the filing party may object to this procedure.

11. Transmitting of Orders, Notices and Other Court Entries: Beginning January 1, 2006, courts shall distribute orders, notices, and other court entries using the E-System in cases where E-Filings were received from any party.

12. Form of E-Filed Documents: C.R.C.P. 10 shall apply to E-Filed documents. A document shall not be transmitted to the clerk of the court by any other means unless the court at any later time requests a printed copy.

13. E-Filing May be Mandated: With the permission of the Chief Justice, a chief judge may mandate E-Filing within a county or judicial district for specific case classes or types of cases. A judicial officer may mandate E-Filing and E-Service in that judicial officer's division for specific cases, for submitting documents to the court and serving documents on case parties. Where E-Filing is mandatory, the court may thereafter accept a document in paper form and the court shall scan the document and upload it to the E-Service Provider. After notice to an

attorney that all future documents are to be E-Filed, the court may charge a fee of \$50 per document for the service of scanning and uploading a document filed in paper form. Where E-Filing and E-Service are mandatory, the Chief Judge or appropriate judicial officer may exclude pro se parties from mandatory E-Filing requirements.

14. Relief in the Event of Technical Difficulties:

(a) Upon satisfactory proof that E-Filing or E-Service of a document was not completed because of: (1) an error in the transmission of the document to the E-System Provider which was unknown to the sending party; (2) a failure of the E-System Provider to process the E-Filing when received, or (3) other technical problems experienced by the filer or E-System Provider, the court may enter an order permitting the document to be filed nunc pro tunc to the date it was first attempted to be sent electronically.

(b) Upon satisfactory proof that an E-Served document was not received by or unavailable to a party served, the court may enter an order extending the time for responding to that document.

15. Form of Electronic Documents

(a) **Electronic document format, size and density:** Electronic document format, size, and density shall be as specified by Chief Justice Directive # 05-02, as amended.

(b) **Multiple Documents:** Multiple documents (including proposed orders) may be filed in a single electronic filing transaction. Each document (including proposed orders) in that filing must bear a separate document title.

(c) **Proposed Orders:** Proposed orders shall be E-Filed in editable format. Proposed orders that are E-Filed in a non-editable format shall be rejected by the Court Clerk's office and must be resubmitted.

COMMITTEE COMMENT

The Court authorized service provider for the program is Lexis Nexis File & Serve (www.lexisnexis.com/fileandserve).

"Editable Format" is one which is subject to modification by the court using standard means such as Word or WordPerfect format.

C.R.C.P. 77 provides that courts are always open for business. This Practice Standard is intended to comport with that rule.

Amended and adopted by the Court, En Banc October 20, 2005 effective January 1, 2006

BY THE COURT:

Nancy E. Rice
Justice of the Colorado Supreme Court