AGENDA

COLORADO SUPREME COURT
COMMITTEE ON THE
RULES OF CIVIL PROCEDURE

Friday, November 7, 2025, 1:30 p.m.
Ralph L. Carr Colorado Judicial Center
2 E.14th Ave., Denver, CO 80203
Fourth Floor, Supreme Court Conference Room

I. Call to order

II. Approval of September 26, 2025, minutes [Pages 3 to 5]

III. Announcements from the Chair

IV. Old Business

A. Rules 3.1, 4, and 303.1—Pathways to Access Committee amendment request (Jose Vasquez, Alana Percy, Magistrate Hamilton-Fieldman, Victor Sulzer, Ben Vinci) [Pages 6 to 10]

B. Gendered Pronouns in the Civil Rules—(Lucas Ritchie) [Pages 11 to 81]

V. New Business

A. Rule 121, Sections 1-1 and 1-15—Proposed amendments to clarify procedural requirements relating to sanctions requests in certain circumstances from local attorneys (Aaron Atkinson, Kaylee Sims) [Pages 82 to 90]

B. Speedy trial proposal from attorney Jim Yontz (Judge Jones) [Page 91]

C. Potential changes to Rule 47 concerning voir dire in civil cases—Proposal from the Colorado Trial Lawyers Association (Brad Levin, Kevin Cheney) [Pages 92 to 93]

D. Rule 53—"court-appointed neutral" proposal (Greg Whitehair) [Page 94]

E. Rule 69—Proposed amendments regarding personal service (Attorney Ross Ziev) [Pages 95 to 96]

F. Rule 121, Section 1-15(8) and Rule 16(b)(3), (d)—Consideration of email conferral (Ben Vinci) [Pages 97 to 100]

VI. Adjourn—Next meeting is January 23, 2026, at 1:30 pm.
2026 Meeting Dates: January 23, April 3, June 26, September 25, and November 6.

Jerry N. Jones, Chair
jerry.jones@judicial.state.co.us
720-625-5335

Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
September 26, 2025, Minutes

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

Name	Present	Not Present
Judge Jerry N. Jones, Chair	X	
Judge Michael Berger		X
Judge Jaclyn Brown	X	
Damon Davis	X	
David R. DeMuro	X	
Judge Stephanie Dunn	X	
Judge J. Eric Elliff	X	
Magistrate Lisa Hamilton-Fieldman	X	
Michael J. Hofmann	X	
John Lebsack	X	
Bradley A. Levin	X	
Professor Christopher B. Mueller		X
Brent Owen		X
John Palmeri	X	
Alana Percy	X	
Lucas Ritchie	X	
Judge (Ret.) Sabino Romano		X
Judge Stephanie Scoville	X	
Victor Sulzer	X	
Magistrate Marianne Tims	X	
Andi Truett	X	
Jose L. Vasquez	X	
Ben Vinci	X	
Judge Gregory R. Werner	X	
Judge (Ret.) John R. Webb	X	
J. Gregory Whitehair	X	
Judge Christopher Zenisek	X	
Justice Richard Gabriel, Liaison (non-voting)	X	
Su Cho (non-voting)	X	

I. Attachments & Handouts

- September 26, 2025, agenda packet.

II. Announcements from the Chair

The June 27, 2025, minutes were approved as submitted. Judge Jones introduced new member Victor Sulzer. Next, Judge Jones noted that the Colorado Supreme Court

approved changes to Rule 121 §1-26 and to the Magistrate Rules. Regarding the Magistrate Rules, a few members mentioned concerns over the effective date and how some language could be interpreted. Judge Jones suggested that the Subcommittee choose whether to bring these issues before the Court.

III. Old Business

A. Rules 3.1, 4, and 303.1—Pathways to Access Committee amendment request (Jose Vasquez, Alana Percy, Magistrate Hamilton-Fieldman)

At the June 2025 meeting, the Committee discussed a Pathways to Access Committee (PAC) proposal on Rule 303 pertaining to forcible entry and detainer (FED) cases. Since then, the Subcommittee reports that it has drafted proposed amendments that bring the rules in compliance with statutory requirements and that aim to capture the intent of the PAC, which was to change the practice of FED summonses and complaints not including a case number when a party is served with those papers. The Subcommittee believes that these changes would increase access to justice for self-represented litigants. The Subcommittee included a letter from CED Law, Colorado Legal Services, and the Colorado Poverty Law Project detailing public policy concerns supporting the proposed changes. Some members noted policy concerns are better directed to the legislature. Further, a member who represents landlords offered reasons that the proposed rule changes would be harmful--chief amongst them that the changes would greatly increase costs, and that those costs would be passed on to all tenants in the rental market. The Committee extensively discussed these issues, with proponents on both sides. Chair Judge Jones sent this back to the Subcommittee for reconsideration and added member Victor Sulzer for a more balanced perspective on the Subcommittee.

B. County Court Rule 411—Length of briefs for county court appeals to district court (Judge Jones)

Judge Jones reminded the Committee that this issue came up because the rules do not impose any page or word limits on appeals from county court to district court, and consequently, judges often receive quite long briefs. At a previous meeting, Judge Jones asked for guidance from the Committee, and today he presented the updated proposal for consideration. The proposal no longer creates a dichotomy between represented and non-represented parties. Judge Jones accepted some friendly amendments to align the rule with other rules and to spell out "Colorado Appellate Rules" for clarity. With the friendly amendments, the Committee voted unanimously to approve the proposal.

C. Rules 43 and 343—Proposed amendments in reaction to statutory changes regarding FED proceedings (Judge Zenisek)

The Subcommittee's proposal includes small amendments to Rules 43 and 343 governing absentee testimony. The changes became necessary following the promulgation of C.R.S. § 13-40-113.5, which allows remote appearances at FED proceedings. The Subcommittee proposal used a simple carve-out approach to leave most of Rules 43 and 343 unchanged. One member suggested adding the new language in a new section to avoid upending the entire body of the rule, which the Committee preferred. With the

included friendly amendments, the Committee voted unanimously to approve the proposal.

IV. New Business

A. Proposed Rule 121, Section 1-27—Proposed civility rule from the CBA and DBA—(David Johnson)
David Johnson presented this proposal on behalf of the CBA's Professionalism Coordinating Committee. Both the Executive Council of the CBA and the Executive Council of the DBA have approved this draft. The purpose of such a rule would be to provide judges in the courtroom with a tool to guide and improve professionalism, civility, and practice of those appearing in the courtroom in a nimbler way than the Rules of Professional Conduct currently provide. Judge Jones formed a subcommittee to more fully consider the proposed rule. Members should email Judge Jones to join.

B. Rule 121, Section 1-6, and County Court Rule 316.5(b)—Proposal from the Housing Subcommittee of the Pathways to Access Committee (Justice Gabriel)
Justice Gabriel presented this proposal on behalf of the Pathways to Access Committee. It would require plaintiffs to post notice of FED trials, along with Webex instructions if applicable, at the tenant's residence. The Remote Appearance FED Subcommittee will consider this proposal. Judge Jones noted that the threshold issue should be whether this is an appropriate rule for the Committee to recommend to the Court or whether this should be left to the legislature.

C. Rule 121, Sections 1-1 and 1-15—Proposed amendments to clarify procedural requirements relating to sanctions requests in certain circumstances from local attorneys (Aaron Atkinson, Kaylee Sims)
Held over.

D. Speedy trial proposal from attorney Jim Yontz (Judge Jones)
Held over.

E. Potential changes to Rule 47 concerning voir dire in civil cases—Proposal from the Colorado Trial Lawyers Association (Brad Levin, Kevin Cheney)
Held over.

F. Rule 53—"court-appointed neutral" proposal (Greg Whitehair)
Held over.

Future Meetings
November 7

The Committee adjourned at 3:33 p.m.

MEMORANDUM

To: Judge Jerry N. Jones, Colorado Court of Appeals and Justice Richard L. Gabriel, Colorado Supreme Court

From: Jose L. Vasquez

Date: October 30, 2025

Re: Meeting of FED Subcommittee re: PAC proposal for changes to Rule 303

At our September 26, 2025 meeting, it was suggested that the FED subcommittee which was tasked to work on drafting the PAC's proposed rule amendments be expanded to include parties who were providing opposing viewpoints to the proposed rule, namely, members of the landlord bar. The FED subcommittee originally only included Magistrate Lisa Hamilton-Fieldman, Alana Percy (Clerk of Court of the Colorado Judicial Branch) and myself. After the feedback from the Civil Rules Committee meeting, we added two members to the subcommittee: Vic Sulzer, with the firm of Tschetter Sulzer who engages primarily in representation of landlords, and Ben Vinci, whose practice is representing creditors in collection action. In addition, Lauren Rafter, managing attorney with the Colorado Poverty Law Project (CPLP), was also added to the subcommittee as her organization provides representation to tenants.

The PAC Housing Subcommittee

As a preliminary matter, one of the members of the subcommittee asked about the PAC and its composition. The Pathways to Access Standing Committee (PAC) was established at the direction of the Chief Justice in December 2021 to support, improve, advise on and initiate collaborative efforts to provide service and resources to court users, with a particular focus on self-represented litigants (SRLs) and limited English proficient (LEP) individuals. The PAC Housing Subcommittee is a subcommittee of the PAC, and is comprised of a diverse group of individuals, including judges and magistrates who deal with the issue of civil matters and its impact on litigants, including evictions. The group's focus is to support efficient service and address barriers to access to justice. The current composition of the PAC is the following:

Magistrate Andrea Paprzycki (El Paso County Court), Jack Regenbogen (Deputy Executive Director at Colorado Poverty Law Project), Judge Beth Faragher (Denver County Court), Kristi Bunge (attorney with Springman, Braden, Wilson & Pontius, P.C., a landlord attorney), Charlene Best (Self-Represented Litigant Coordinator – C.A.R.E. Court Assisted Recovery from Eviction, Cameron McDonald, Jackie Marro (Access to Justice Coordinator, Colorado Judicial Branch, State Court Administrator's Office), Daphne Robinson, Judge Isaam Shamsid-Deen (Denver County Court), Rebecca Cohn (Chief Legal Services Officer, Community Economic Defense Project), Miriam Jebe, Jose Vasquez (Supervising Attorney for Colorado Legal Services),

Katherine Tompkins (Self-Represented Litigant Coordinator for 16th Judicial District, Bent Crowley Otero), Jordan Sagle (Self-Represented Litigants Administrator, Denver County Court), Elisa Overall (Executive Director to Colorado Access to Justice Commission), Staci Pratt (Asst. Professor CU Law, CU Law Access to Justice Innovation Lab), Aubrey Wilde, Judge Melina Hernandez (Arapahoe County Court), Daphne Robinson, Andrew West (Policy Associate, Colorado Coalition for the Homeless).

Meetings of the FED subcommittee

The FED subcommittee met on October 17, 2025, via Microsoft Teams (with another follow-up meeting today, October 30, 2025). At the start of the meeting, the members were asked to state whether they had any opposition to the composition of the subcommittee, and no one stated they had any opposition.

The meeting then addressed the rationale for the PAC's rule change proposal, which were twofold:

1. Concerns that defendants in FED actions are unable to get information about their case after they have been served with a summons and complaint, resulting from the fact that FED actions are suppressed.

2. Concern that the current rules do not comply with C.R.S. 13-40-110(1)(a), which states that an FED is commenced upon filing with the court a complaint. Current Rule 303(a) says that a civil action can be commenced by either the filing of the complaint, or by the service of a summons and complaint.

Arguments in favor of the proposal

Members of the subcommittee who were in support of the proposal acknowledged that there was an issue with tenants wanting to get information about their case but not being able to do so. Once a defendant is served with the summons and complaint, the concern is that if they try to call the court to get information about their case they experience barriers because neither the summons or complaint include the case number. A member of the subcommittee speaking from the clerk's perspective stated that people call the court to get information about their case and may not be able to get that information without a case number. One member stated that tenants will go to the courthouse to check their case but they may not be able to get information about their case. It was pointed out that sometimes defendants will take time off of work to go to the courthouse, but they either can't get information about their case, or in some instances, they may be told that their case has not been filed. One of the members who represents tenants related an incident about a tenant in Denver County that went to the clerk and did not have case number, and clerk told the defendant that there was nothing she could do without a case number. Another

tenant organization, Community Economic Development Project (CEDP) who was at court that day, had to assist the tenant to look up the case number. It was disputed by some members that defendants would be able to get information simply by asking the clerk. It was also raised that there is a very short turn around time in FED cases (as short as 7 days from the date of service to the return date), which does not provide a defendant with much time before then to get information about their case. Furthermore, Colorado law allows tenants a right to file their answers electronically but not having the case number could hamper their ability to do so. A member who represented tenants stated that tenants who wish to e-file their answers but do not have their case number could have trouble finding their case if they have a common name, file their answer in the wrong case and get a default judgment in their case. Finally, it was raised that FED cases are required by law to be suppressed, which adds a significant barrier to defendants being able to get case numbers if they were to call the court without having the case number.

Arguments in opposition of the proposal

Members of the subcommittee who provided a landlord perspective denied the existence of problems claimed by proponents and stated that tenants already have sufficient information with the court papers with which they are served. They asserted that courts will accept a defendant's answer without requiring a case number when it is filed in person. One member stated that defendants who were served with summons and complaint can get information about their case via a QR code which their firm includes with the court papers they serve on defendants. The members in opposition also stated that there was no evidence that a defendant is not filing an answer because of the lack of a case number. A member who represents plaintiffs in county court cases also opposed the proposal and dismissed the notion that this was an even an issue. This member stated that defendants can get case numbers from the clerks' office. This member also suggested that he thought that this matter was something that the legislature should address and not the Rules Committee.

Concerns about impact of the proposal

One of the main issues discussed was the impact of the rule change is approved. A concern raised by members opposed to the proposal was that having to first get a case number before it could be served would cause delays in bringing eviction actions. However, it was not clear exactly how much of a delay would result from this change. Opponents of the proposal stated that plaintiffs would have to wait until the case was accepted by the clerk's office, which was recognized that it could be 24 to 48 hours (though it was pointed out that Denver Courts might be different in terms of delay, up to two days).

The subcommittee discussed the question of whether a case number was generated upon filing (before the filing is accepted) and the representative member form the clerk of court stated that a

case number was generated when the "submit" button was hit. Thus, the clerk's perspective was that there should not be a delay in getting a case number when the summons and complaint are filed. The representative member from the clerk's office indicated that in her experience, the vast majority of cases are accepted (stating approximately 90%).

A member in opposition stated that if a case is filed, and a case number received, the tenant would then be served with the summons and complaint. However, if the court subsequently rejects the case, resulting in the plaintiff needing to file a new case (thereby being assigned a second case number), then the tenant will be served a second time with a different case number. The member stated that if the goal is access to justice for tenants accessing the court system, this will cause substantial confusion.

Another impact raised from the landlord's perspective was that having to wait for the case to be accepted and obtain a case number might result in missing the deadline for serving a defendant Colorado law states that a summons issued upon a defendant must be served not less than 7 days nor more than 14 days from the return date. C.R.S. 13-40-111(1). A member who represents landlords points out that they have the ability to select from predetermined days, which are limited by the court. They cited that Arapahoe County is limited to Tuesday and Thursday, Boulder and Weld are limited to Friday only. The concern was raised that missing a deadline will result in a delay of a court date of at least 7 days. They pointed out in Denver County, for instance, if a case is filed on a Friday afternoon, service would not commence until the following Wednesday, which could cause the Plaintiff to miss the service of process deadline.

In response to this concern and as discussed above, it appears that a case number is assigned at the time the case is filed. Furthermore, the point was made that by and large, plaintiff still has control of being able to try to get the party served before the return date set by the court. Additionally, since in most FED cases the landlord is seeking to obtain possession of the premises and not damages, personal service upon a defendant is not required if diligent efforts are made but not successful. In such circumstances, landlords have the option of being able to serve a tenant by posting the summons and complaint on a conspicuous place on the premises. The ability to serve by posting would seem to address the concern about plaintiffs being unable to serve defendants timely.

Finally, a member in opposition of the proposal stated that if the rule were implemented, that plaintiffs would need a minimum of 90 days to be able to comply with the changes by the proposal.

Summary of members' opinions

In conclusion, four members of the subcommittee expressed approval of the proposal, and two members opposed the proposal.

Consensus on one issue

The only item which all the members were in agreement with was that the current version of Rule 303, or Rule 3, did not appear to be consistent with the FED statute. Colorado law states that the only way that an FED action is commenced is by filing the complaint. "An action pursuant to this article 40 is commenced by filing with the court a complaint in writing using the standard form of eviction complaint and affidavit for a residential tenancy that is available online through the judicial department's website to describe the property with reasonable certainty…." C.R.S. 13-40-110(1)(a).

The County Court Rule at Rule 303 does not make any distinction for FED cases but rather sets forth how a civil action is commenced:

"A simplified civil action is commenced: (1) by filing with the court a complaint consisting of a statement of claim setting forth briefly the facts and circumstances giving rise to the action in the manner and form provided in Rule 308; or (2) by service of a summons and complaint." C.R.C.P. 303(a)."

The Civil Rule of Procedure at Rule 3 also does not make any distinction for FED cases. It states:

"A civil action is commenced (1) by filing a complaint with the court, or (2) by service of a summons and complaint. If the action is commenced by the service of a summons and complaint, the complaint must be filed within 14 days after service. C.R.C.P. 3(a)."

Thus, there was unanimous agreement on the part of the subcommittee that the civil rules in their current form do not comport with Colorado statute and that a change should be made that FED actions are only commenced by the filing of the complaint.

MEMORANDUM

To: The Honorable Jerry Jones, Chair of the Civil Rules Committee
From: Judge Stephanie Scoville, Luke Ritchie, Bradley Levin, John Lebsack
Re: Removing Gendered Pronouns from Civil Rules
Date: August 26, 2025

Our subcommittee reviewed the Rules of Civil Procedure to locate gendered pronouns and propose changes. Attached is a copy of the Rules showing our proposed changes in redline. Also attached is a list of all rules that contain gendered pronouns and the type of fix we recommend, in three categories:

(1) In most cases, the fix is simply to replace or delete a word.
(2) Sometimes a more nuanced change is appropriate to fit the context and preserve the meaning.
(3) We found a few instances where a rule has problems that go beyond the presence of a gendered pronoun, problems that render the rule ambiguous or perhaps wrong. These are fairly minor problems that occur rarely, if ever, but they deserve fixing while we are revising those rules.

Examples of our approach are in the following redline of Rule 8:

> **(b) Defenses; Form of Denials.** A party shall state in short and plain terms ~~his~~the party's defenses to each claim asserted and shall admit or deny the averments of the adverse party. If ~~he~~the party is without knowledge or information sufficient to form a belief as to the truth of an averment, ~~he~~the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, ~~he~~the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, ~~he~~the pleader may ~~make his denials as specific denials of~~ specifically deny designated averments or paragraphs, or ~~he~~ may generally deny all the averments except such designated averments or paragraphs as ~~he~~ expressly ~~admits~~admitted; but, when ~~he~~the pleader does so intend to controvert all ~~its~~ averments, including averments of the grounds upon which the court's jurisdiction depends, ~~he~~the pleader may do so by general denial subject to the obligations set forth in Rule 11.

In most cases, the fix is simply to replace "he" with "the party" or "the pleader." In other cases, the fix involved simplifying the language, such as by changing "make his denials as specific denials" to "specifically deny."

The following are the six instances where we found rules that had problems beyond the existence of gendered pronouns:

Rule 47(l) deals with jury deliberations. We propose simplifying the language as follows:

> **(*l*) Deliberation of Jury.** …While the jury is deliberating the officer shall, to the utmost of ~~his~~the officer's ability, keep the jury together, separate from other persons. ~~He~~The officer shall not ~~suffer~~permit any communication to be made to any juror ~~or make~~; shall not communicate with any ~~himself~~juror unless by order of the court except to ask ~~it~~ if ~~it~~the jury has agreed upon a verdict; and ~~he~~ shall not, before the verdict is rendered, communicate with any person about the ~~state of its~~jury's deliberations or ~~the~~ verdict ~~agreed upon~~.

Rule 65(b) deals with Temporary Restraining Orders. We noticed that in one place, the rule does not account for the possibility that a party could be appearing pro se. That is in the section (in italics below) requiring the applicant to certify to the court the efforts made to provide notice to the other side. The rule now says that is to be done by "the applicant's attorney." We changed that to permit a pro see litigant to do that.

> **(b) Temporary Restraining Order; Notice; Hearing; Duration.** A temporary restraining order may be granted without written or oral notice to the adverse party or ~~his~~the adverse party's attorney only if: (1) It clearly appears from specific facts shown by affidavit or by the verified complaint or by testimony that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or ~~his~~the adverse party's attorney can be heard in opposition, and (2) *the applicant or the applicant's attorney certifies to the court* in writing or on the record the efforts, if any, which have been made to give the notice and the reasons supporting ~~his~~the claim that notice should not be required. [Italics added.]

Rule 102 deals with attachments. It requires a plaintiff seeking attachment to post a bond to protect against possible damage to the defendant from wrongful attachment. The rule has complicated language that we recommend simplifying as follows:

> **(d) Plaintiff to Give Bond.** Before the issuance of a writ of attachment the plaintiff shall furnish a bond that complies with the requirements of C.R.C.P. 121, § 1-23, in an amount set by the court in its discretion, not exceeding double the amount claimed, to the effect that if the defendant recover judgment, or if the court shall finally decide that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages defendant may sustain by reason of the wrongful suing out of the attachment. The defendant may require ~~the sureties~~a surety to satisfy the court that ~~each, for himself, is worth the amount for which he~~the surety has ~~become surety~~ sufficient assets, over and above ~~his just~~ debts and liabilities, in property located in this state and not by law exempt from execution, to pay the bond.

Later in Rule 102, it permits a defendant to recover the attached property, before trial, by posting a bond:

> **(v) Conditions of Bond; Liability of Sheriff.** Before releasing the attached property to the defendant, the sheriff shall require and approve an undertaking executed by the defendant to the plaintiff either of a corporate surety company or with at least two sureties in such sum as may be fixed by the sheriff in not less than the value of the property, to the effect that in case the plaintiff recover judgment in the action, and the attachment is not dissolved, defendant will, on demand, redeliver such attached property so released to the proper officer, to be applied to the payment of the judgment, and that in default thereof the defendant and sureties will pay to the plaintiff the full value of the property so released. *If a sheriff shall release any property held by ~~him~~the sheriff under any writ of attachment without taking a sufficient bond, ~~he and his sureties~~the sheriff shall be liable to the plaintiff for the damages sustained thereby*. [Italics added.}

The problem is the last sentence, shown in italics, which addresses the situation where a sheriff releases the property to the defendant before trial, then the defendant loses at trial, but for some reason the plaintiff can no longer find the previously-attached property. The rule confusingly talks about two different sureties—that provided by the defendant to get the property release before trial, and that covering the sheriff. The rule tries to make the sheriff "and his sureties" liable to the plaintiff for damages from improperly releasing the property back to the defendant. We doubt whether a court rule can affect the terms of a bond issued by a surety in favor

of the sheriff, by making the surety liable for unspecified damages. So we simplify the rule by making the sheriff liable, without mentioning the sheriff's surety (if any).

Rule 110, entitled "miscellaneous," has a section dealing with Use of Terms. We recommend simplifying that section as follows:

> **(b) Use of Terms.** Words used in the present tense shall include the future; singular shall include the plural~~; masculine shall include the feminine~~; person or party shall include all manner of organizations which may sue or be sued. The use of the word clerk, sheriff, marshal, or other officer means such officer or ~~his~~the deputy or other person authorized to perform ~~his~~such officer's duties. The word "oath" includes the word "affirmation~~"; and the~~." The phrase "to swear" includes "to affirm~~"; signature~~." Signature or subscription shall include mark~~,~~ when the person is unable to write, ~~his~~the person's name ~~being~~is written near ~~it~~the mark, and the marking is witnessed by a person who writes ~~his~~such person's own name as a witness. A superintendent, overseer, foreman, sales director, or person occupying a similar position, may be considered a managing agent for the purposes of these rules.

Rule	Simple word substitution or deletion	Language revised and clarified	More problems than just gendered pronouns
3(a)	x		
8(b)	x	x	
8(e)(2)	x		
9(a)(1)	x		
9(a)(2)	x	x	
9(a)(3)	x		
10(d)(4)	x	x	
11(a)	x		
12	x		
13(a)(2)	x		
13(e)	x		
13(f)	x		
13(j)	x		
14(a)	x	x	
14(b)	x		
15(a)	x		
15(b)	x		
15(c)	x	x	
15(d)	x		
17(a)	x		
17(c)	x		
18(a)	x		
18(b)	x		
19(a)	x		
19(b)	x		
20(b)	x		
22(1)	x		
23(c)(2)	x		
23.1	x	x	
24(a)	x		
25(b)	x		
25(d)(1)	x		
25(d)(2)	x		
27(a)(1)	x	x	
27(a)(2)	x	x	
27(a)(4)	x		
27(b)	x		
30(g)(1)	x	x	
30(g)(2)	x		

31(b)	x		
32(a)(4)	x		
32(c)	x		
35(a)	x		
35(b)(1)	x		
35(b)(2)	x		
36(b)	x		
37(b)(2)(E)	x		
41(a)(2)	x		
41(b)(1)	x		
44.1	x		
45(c)(3)	x		
45(e)	x		
46	x		
47(j)	x		
47(l)	x	x	x
47(q)	x	x	
49	x		
54(c)	x		
54(f)	x		
55(a)	x		
55(e)	x		
60(b)	x		
63	x		
65(b)	x	x	x
65(f)	x		
66(a)(1)	x		
66(b)	x		
67(b)	x		
71	x	x	
77(c)	x		
78	x		
86	x		
89	x		
97	x	x	
98(a)(2)	x	x	
98(e)(2)	x		
98(g)	x		
98(i)	x		
98(k)	x		
102(b)	x		
102(c)(3)	x		
102(c)(4)	x		
102(c)(5)	x		

102(c)(6)	x		
102(c)(7)	x		
102(c)(8)	x		
102(c)(9)	x		
102(d)	x	x	x
102(e)	x		
102(f)	x		
102(h)(2)	x		
102(i)	x		
102(k)(1)	x	x	
102(k)(2)	x		
102(l)	x		
102(m)	x		
102(n)(2)	x		
102(p)	x	x	
102(s)	x		
102(u)	x		
102(v)	x	x	x
104(a)	x		
104(b)	x		
104(b)(3)	x		
104(c)	x		
104(d)(4)	x		
104(h)	x		
104(i)	x		
104(j)	x		
104(k)	x		
104(l)	x		
104(m)	x		
104(n)	x		
105(b)	x		
105(c)	x		
105(e)	x		
106(a)(1)	x		
106(a)(2)	x		
106(a)(5)	x		
106.5(i)(2)	x		
110(b)	x	x	x
110(c)	x		
121(1-6)(3)			
121(1-14)(3)	x		
121(1-14)(4)	x		

Rules: 3, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 22, 23, 23.1, 24, 25, 27, 30, 31, 32, 35, 36, 37, 41, 44.1, 45, 46, 47, 49, 54, 55, 60, 63, 65, 66, 67, 71, 77, 78, 86, 89, 97, 98, 102, 104, 105, 106, 106.5, 110, 121 Section 1-6, and 121 Section 1-14.

Rule 3. Commencement of Action

(a) How Commenced. A civil action is commenced (1) by filing a complaint with the court, or (2) by service of a summons and complaint. If the action is commenced by the service of a summons and complaint, the complaint must be filed within 14 days after service. If the complaint is not filed within 14 days, the service of summons shall be deemed to be ineffective and void without notice. In such case the court may, in its discretion, tax a reasonable sum in favor of the defendant to compensate the defendant for expense and inconvenience, including attorney's fees, to be paid by the plaintiff or ~~his~~the plaintiff's attorney. The 14 day filing requirement may be expressly waived by a defendant and shall be deemed waived upon the filing of a responsive pleading or motion to the complaint without reserving the issue.

(b) Time of Jurisdiction. The court shall have jurisdiction from (1) the filing of the complaint, or (2) the service of the summons and complaint; provided, however, if more than 14 days elapses after service upon any defendant before the filing of the complaint, jurisdiction as to that defendant shall not attach by virtue of the service.

Rule 8. General Rules of Pleading

(a) [NO CHANGE]

(b) Defenses; Form of Denials. A party shall state in short and plain terms ~~his~~the party's defenses to each claim asserted and shall admit or deny the averments of the adverse party. If ~~he~~the party is without knowledge or information sufficient to form a belief as to the truth of an averment, ~~he~~the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, ~~he~~the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, ~~he~~the pleader may ~~make his denials as specific denials of~~ specifically deny designated averments or paragraphs, or ~~he~~ may generally deny all the averments except such designated averments or paragraphs as ~~he~~ expressly ~~admits~~admitted; but, when ~~he~~the pleader does so intend to controvert all ~~its~~ averments, including averments of the grounds upon which the court's jurisdiction depends, ~~he~~the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) to (d) [NO CHANGE]

(e) Pleading to be Concise and Direct; Consistency.
(1) [NO CHANGE]
(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as

many separate claims or defenses as ~~he~~the party has regardless of consistency and whether based on legal or on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) [NO CHANGE]

Rule 9. Pleading Special Matters

(a)(1) *Capacity.* It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a ~~party~~pleader desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, ~~he~~the pleader shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge, and on such issue the party relying on such capacity, authority, or legal existence, shall establish same on the trial.
(2) *Identification of Unknown Party.* When a party is designated in the caption as one "whose true name is unknown" the pleader shall allege such matters as are within ~~his~~the pleader's knowledge to identify such unknown party and ~~his~~such unknown party's connection with the claim set forth.
(3) *Interest of Unknown Parties.* When parties are designated in the caption as "all unknown persons who claim any interest in the subject matter of this action" the pleader shall describe the interests of such persons, and how derived, so far as ~~his~~the pleader's knowledge extends.
(4) *Description of Interest.* Where unknown parties claim some interest through some one or more of the named defendants, it shall be a sufficient description of their interests and of how derived to state that the interests of the unknown parties are derived through some one or more of the named defendants.

(b) to (i) [NO CHANGE]

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

(a) to (c) [NO CHANGE]

(d) General Rule Regarding Paper Size, Format, and Spacing. All documents filed after the effective date of this rule, including those filed through the E-Filing System under C.R.C.P. 121(1-26), shall meet the following criteria:
(1) to (3) [NO CHANGE]
(4) *Signature Block.* All documents which require a signature shall be signed at the end of the document. The attorney or pro se party need not repeat ~~his~~the attorney or ~~her~~pro se party's address, telephone number, fax number, or e-mail address at the end of the document.

(e) to (i) [NO CHANGE]

COMMENTS [NO CHANGE]

Rule 11. Signing of Pleadings

(a) Obligations of Parties and Attorneys. Every pleading of a party represented by an attorney shall be signed by at least one attorney of record in ~~his~~the attorney's individual name. The initial pleading shall state the current number of ~~his~~the attorney's registration issued ~~to him~~ by the Supreme Court. The attorney's address and that of the party shall also be stated. A party who is not represented by an attorney shall sign ~~his~~the party's pleadings and state ~~his~~the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney constitutes a ~~certificate by him~~certification that ~~he~~the attorney has read the pleading; that to the best of ~~his~~the attorney's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading is not signed it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader. If the current registration number of the attorney is not included with ~~his~~the attorney's signature, the clerk of the court shall request from the attorney the registration number. If the attorney is unable to furnish the court with a registration number, that fact shall be reported to the clerk of the Supreme Court, but the clerk shall nevertheless accept the filing. If a pleading is signed in violation of this Rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee, provided, however, that failing to be registered shall be governed by Rule 227.

Reasonable expenses, including a reasonable attorney's fee, shall not be assessed if, after filing, a voluntary dismissal or withdrawal is filed as to any claim, action or defense, within a reasonable time after the attorney or party filing the pleading knew, or reasonably should have known, that ~~he~~the party would not prevail on said claim, action, or defense.

(b) [NO CHANGE]

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

(a) When Presented.

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

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

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

(2) to (6) [NO CHANGE]

(b) to (h) [NO CHANGE]

COMMENTS [NO CHANGE]

Rule 13. Counterclaim and Cross Claim

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of filing the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if:
(1) At the time the action was commenced the claim was the subject of another pending action, or
(2) The opposing party brought suit upon ~~his~~the opposing party's claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

(b) to (d) [NO CHANGE]

(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving ~~his~~the pleader's pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, ~~he~~the pleader may by leave of court set up the counterclaim by amendment.

(g) to (i) [NO CHANGE]

(j) Claims Against Assignee. Except as otherwise provided by law as to negotiable instruments, any claim, counterclaim, or cross claim which could have been asserted against an assignor at the time of or before notice of an assignment, may be asserted against ~~his~~an assignee, to the extent that such claim, counterclaim, or cross claim does not exceed recovery upon the claim of the assignee.

(k) to (l) [NO CHANGE]

Rule 14. Third-Party Practice

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to ~~him~~ the defending party for all or part of the plaintiff's claim against ~~him.~~the defending party. The third-party plaintiff need not obtain leave to make the service if ~~he~~the third-party plaintiff files the third-party complaint not later than 14 days after ~~he serves his~~service of the third-party plaintiff's original answer. Otherwise ~~he~~the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make ~~his~~the third-party defendant's defenses to the third-party plaintiff's claim as provided in Rule 12 and ~~his~~the third-party defendant's counterclaim against the third-party plaintiff and cross claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party

plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert ~~his~~the third-party defendant's defenses as provided in Rule 12 and ~~his~~the third-party defendant's counterclaim and cross claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this Rule against any person not a party to the action who is or may be liable to ~~him~~the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, ~~he~~the plaintiff may cause a third party to be brought in under circumstances which under this Rule would entitle a defendant to do so.

Rule 15. Amended and Supplemental Pleadings

(a) Amendments. A party may amend ~~his~~a pleading once as a matter of course at any time before a responsive pleading is filed or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, ~~he~~the party may so amend it any time within 21 days after it is filed. Otherwise, a party may amend ~~his~~a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 14 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice ~~him~~the objecting party in maintaining ~~his~~the objecting party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment: (1) Has received such notice of the institution of the action that ~~he~~the party to be brought in by amendment will not be prejudiced in maintaining ~~his~~ a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against ~~him~~the party to be brought in by amendment.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit ~~him~~the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

Rule 17. Parties Plaintiff and Defendant; Capacity

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, conservator, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in ~~his~~their own name without joining ~~with him~~ the party for whose benefit the action is brought; and when

a statute so provides, an action for the use or benefit of another shall be brought in the name of the people of the state of Colorado.

(b) Capacity to Sue or Be Sued. A partnership or other unincorporated association may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right. A father and mother or the sole surviving parent may maintain an action for the injury or death of a child; where both maintain the action, each shall have an equal interest in the judgment; where one has deserted or refuses to sue, the other may maintain the action. A guardian may maintain an action for the injury or death of ~~his~~a ward.

(c) Infants or Incompetent Persons. Whenever an infant or incompetent person has a representative, such as a general guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative, or such representative fails to act, ~~he~~the infant or incompetent person may sue by ~~his~~a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person, provided, that in an action in rem it shall not be necessary to appoint a guardian ad litem for any unknown person who might be an infant or incompetent person.

Rule 18. Joinder of Claims and Remedies

(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as ~~he~~the party has against an opposing party.

(b) Joinder of Remedies; Fraudulent Conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to ~~him~~the plaintiff, without first having obtained a judgment establishing the claim for money.

Rule 19. Joinder of Persons Needed for Just Adjudication

(a) Persons to be Joined if Feasible. A person who is properly subject to service of process in the action shall be joined as a party in the action if: (1) In ~~his~~the person's absence complete relief cannot be accorded among those already parties, or (2) ~~he~~the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in ~~his~~the person's absence may: (A) As a practical matter impair or impede ~~his~~the person's ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of ~~his~~the person's claimed interest. If ~~he~~the person has not been so joined, the court shall order that ~~he~~the person be made a party. If ~~he~~the person should join as a plaintiff but refuses to do so, ~~he~~the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and ~~his~~the person's joinder would render the venue of the action improper, ~~he~~the person shall be dismissed from the action.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subsections (a)(1) and (a)(2) of this Rule cannot be made a party, the court shall determine whether in the interest of justice the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: First, to what extent a judgment rendered in the person's absence might be prejudicial to ~~him~~the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) to (d) [NO CHANGE]

Rule 20. Permissive Joinder of Parties

(a) [NO CHANGE]

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom ~~he~~the party asserts no claim and who asserts no claim against ~~him~~the party, and may order separate trials or make other orders to prevent delay or prejudice.

(c) [NO CHANGE]

Rule 22. Interpleader

(1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that ~~he~~ the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross claim or counterclaim. The provisions of this Rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(2) [NO CHANGE]

Rule 23. Class Actions

(a) to (b) [NO CHANGE]

(c) Determination by Order Whether Class Action to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.
(1) As soon as practicable after the commencement of an action brought as a class action, the court shall

determine by order whether it is to be so maintained. An order under this section (c) may be conditional, and may be altered or amended before the decision on the merits.
(2) In any class action maintained under subsection (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that: (A) The court will exclude ~~him~~a member from the class if ~~he~~the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if ~~he~~the member desires, enter an appearance through ~~his~~the member's counsel.
(3) to (4) [NO CHANGE]

(d) to (g) [NO CHANGE]

Rule 23.1. Derivative Actions by Shareholders

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which ~~he~~the shareholder or member complains or that ~~his~~the shareholder or member's share or membership thereafter devolved on ~~him~~the shareholder or member by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the desired action ~~he desires~~ from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for ~~his~~the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

Rule 24. Intervention

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) When a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and ~~he~~the applicant is so situated that the disposition of the action may as a practical matter impair or impede ~~his~~the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) to (c) [NO CHANGE]

Rule 25. Substitution of Parties

(a) [NO CHANGE]

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in section (a) of this Rule may allow the action to be continued by or against ~~his~~the party's representative.

(c) [NO CHANGE]

(d) Public Officers; Death or Separation from Office.
(1) When a public officer is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and ~~his~~the public officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial right of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.
(2) When a public officer sues or is sued in ~~his~~an official capacity, ~~he~~the public officer may be described as a party by ~~his~~ official title rather than by name; but the court may require ~~his~~the public officer's name to be added.

Rule 27. Depositions Before Action or Pending Appeal

(a) Before Action.
(1) *Petition; Order; Notice.* A person who desires to perpetuate ~~his~~the person's own testimony or that of other persons may file in a district court a petition verified by ~~his~~the petitioner's 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~~the petitioner 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(e) 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~~the deputy county clerk and recorder, 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(e), upon any expected adverse party named in the petition, the court may make such order as is just for service upon ~~him~~the expected adverse party 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(e), 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 14 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 directs, 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~~the witness's testimony and the person so designated shall take ~~his~~the testimony in manner aforesaid and certify and return same to the court with ~~his~~a certificate ~~attached thereto~~ showing that ~~he~~the person so designated has complied with the requirements of said order.

(3) [NO CHANGE]

(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~~the witness or ~~their~~witnesses' 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 35 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~~the party 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.

Rule 30. Depositions Upon Oral Examination

(a) to (f) [NO CHANGE]

(g) Failure to Attend or to Serve Subpoena; Expenses.

(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the noticing party ~~giving the notice~~ to pay to such other party the amount of the reasonable expenses incurred ~~by him and his attorney in so~~in attending, including reasonable attorney's fees.

(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon ~~him~~the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because ~~he~~ such other party expects the deposition of that witness to be taken, the court may order the noticing party ~~giving the notice~~ to pay to such other party the amount of the reasonable expenses incurred ~~by him and his attorney in so~~in attending, including reasonable attorney's fees.

COMMENTS [NO CHANGE]

Rule 31. Depositions Upon Written Questions

(a) [NO CHANGE]

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions ~~received by him~~.

(c) [NO CHANGE]

COMMENTS [NO CHANGE]

Rule 32. Use of Depositions in Court Proceedings

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:
(1) to (3) [NO CHANGE]
(4) If only part of a deposition is offered in evidence by a party, an adverse party may require ~~him~~the party to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.
Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.
(5) [NO CHANGE]

(b) [NO CHANGE]

(c) Effect of Taking or Using Depositions. A party does not make a person ~~his~~the party's own witness for any purpose by taking ~~his~~the person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the

deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subsection (a)(2) of this Rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by ~~him~~the party or by any other party.

(d) [NO CHANGE]

COMMITTEE COMMENT [NO CHANGE]

Rule 35. Physical and Mental Examination of Persons

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in ~~his or her~~the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examiner.
(1) If requested by the party against whom an order is made under section (a) of this Rule or the person examined, the party causing the examination to be made shall deliver to said other party a copy of a detailed written report of the examiner setting out ~~his or her~~the examiner's findings, including results of all tests made, diagnoses, and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that ~~he or she~~the party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the court may exclude the examiner's testimony if offered at the trial.
(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the person examined waives any privilege ~~he or she~~the person may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the person in respect of the same mental or physical condition.
(3) [NO CHANGE]

Rule 36. Requests for Admission

(a) [NO CHANGE]

(b) Effect of Admission. Any matter admitted under this Rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice ~~him~~the party who obtained the

admission in maintaining ~~his~~the action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission by ~~him~~the party for any other purpose nor may it be used against ~~him~~the party in any other proceeding.

COMMITTEE COMMENT [NO CHANGE]

Rule 37. Failure to Make Disclosure or Cooperate in Discovery: Sanctions

(a) [NO CHANGE]

(b) Failure to Comply with Order.
(1) [NO CHANGE]
(2) *Party Deponents-Sanctions by Court.* If a party or an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under section (a) of this Rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) to (D) [NO CHANGE]

(E) Where a party has failed to comply with an order under Rule 35(a) requiring the party to produce another for examination, such orders as are listed in subparagraphs (A), (B), and (C) of this subsection (2), unless the party failing to comply shows that ~~he~~the party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order, or the attorney advising the party, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) to (d) [NO CHANGE]

COMMENTS [NO CHANGE]

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal: Effect Thereof.
(1) [NO CHANGE]
(2) *By Order of Court.* Except as provided in subsection (a)(1) of this subdivision of this Rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon ~~him~~the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this subsection (2) is without prejudice.

(b) Involuntary Dismissal: Effect Thereof.
(1) *By Defendant.* For failure of a plaintiff to prosecute or to comply with these Rules or any order of court, a defendant may move for dismissal of an action or of any claim against ~~him.~~the defendant. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of ~~his~~the plaintiff's evidence, the defendant, without waiving ~~his~~the defendant's right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52. Unless the court in its order for dismissal otherwise specifies, a dismissal under this section (b) and any dismissal not provided for in this Rule, other than a dismissal for failure to prosecute, for lack of jurisdiction, for failure to file a complaint under Rule 3, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.
(2) - (3) [NO CHANGE]

(c) to (d) [NO CHANGE]

Rule 44.1. Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign country shall give notice in ~~his~~the party's pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 43. The court's determination shall be treated as a ruling on a question of law.

Rule 45. Subpoena

(a) to (b) [NO CHANGE]

(c) Protecting a Person Subject to a Subpoena.
(1) to (2) [NO CHANGE]
(3) *Quashing or Modifying a Subpoena.*
(A) When Required. On motion made promptly and in any event at or before the time specified in the subpoena for compliance, the issuing court must quash or modify a subpoena that:
(i) fails to allow a reasonable time to comply;
(ii) requires a person who is neither a party nor a party's officer to attend a deposition in any county other than where the person resides or is employed or transacts ~~his~~ business in person, or at such other convenient place as is fixed by an order of court;
(iii) to (iv) [NO CHANGE]
(B) to (C) [NO CHANGE]

(d) [NO CHANGE]

(e) Subpoena for Deposition.
(1) *Residents of This State.* A resident of this state may be required by subpoena to attend an examination upon deposition only in the county wherein the witness resides or is employed or transacts ~~his~~ business in person, or at such other convenient place as is fixed by an order of court.
(2) to (3) [NO CHANGE]

(f) [NO CHANGE]

COMMITTEE COMMENTS [NO CHANGE]

Rule 46. Exceptions Unnecessary

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which ~~he~~the party desires the court to take or ~~his~~the party's objection to the action of the court and ~~his~~the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice ~~him~~the party.

Rule 47. Jurors

(a) to (i) [NO CHANGE]

(j) When Juror Discharged. If, before verdict, a juror becomes unable or disqualified to perform ~~his~~the juror's duty and there is no alternate juror, the parties may agree to proceed with the other jurors, or that a new juror be sworn and the trial begun anew. If the parties do not so agree the court shall discharge the jury and the case shall be tried anew.

(k) [NO CHANGE]

(l) Deliberation of Jury. After hearing the charge the jury may either decide in court or retire for deliberation. If it retires, except as hereinafter provided in this section (*l*), it shall be kept together in a separate room or other convenient place under the charge of one or more officers until it agrees upon a verdict or is discharged. While the jury is deliberating the officer shall, to the utmost of ~~his~~the officer's ability, keep the jury together, separate from other persons. ~~He~~The officer shall not ~~suffer~~permit any communication to be made to any juror ~~or make~~; shall not communicate with any ~~himself~~juror unless by order of the court except to ask ~~it~~ if ~~it~~the jury has agreed upon a verdict; and ~~he~~ shall not, before the verdict is rendered, communicate with any person about the ~~state of its~~jury's deliberations or ~~the~~ verdict ~~agreed upon~~. The court in its discretion in any individual case may modify the procedure under this Rule by permitting a jury which is deliberating to separate during the luncheon or dinner hour or separate for the night under appropriate cautionary instructions, with directions that they meet again at a time certain to resume deliberations again under the charge of the appropriate officer.

(m) to (p) [NO CHANGE]

(q) Declaration of Verdict. When the jury has agreed upon its verdict it shall be conducted into court by the officer in charge. The names of the jurors shall be called, and the jurors shall be asked by the court or clerk if they have agreed upon a verdict, and if the answer is in the affirmative, they shall hand the same to the clerk. The clerk shall enter in ~~his~~the court's records the names of the jurors. Upon a request of any

party the jury may be polled.

(r) to (u) [NO CHANGE]

COMMENT [NO CHANGE]

Rule 49. Special Verdicts and Interrogatories

(a) Special Verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made upon the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives ~~his~~the party's right to a trial by jury of the issue so omitted unless before the jury retires ~~he~~the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) [NO CHANGE]

Rule 54. Judgments; Costs

(a) to (b) [NO CHANGE]

(c) Demand for Judgment. A judgment by default shall not be different in kind from that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in ~~his~~the party's pleadings.

(d) to (e) [NO CHANGE]

(f) After Death, How Payable. If a party dies after a verdict or decision upon any issue of fact, and before judgment, the court may, nevertheless, render judgment thereon. Such judgment shall not be a lien on the real property of the deceased party, but shall be paid as a claim against ~~his~~the deceased party's estate.

(g) to (h) [NO CHANGE]

COMMENTS [NO CHANGE]

Rule 55. Default

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter ~~his~~the clerk's default.

(b) to (d) [NO CHANGE]

(e) Judgment Against an Officer or Agency of the State of Colorado. No judgment by default shall be entered against an officer or agency of the State of Colorado unless the claimant establishes ~~his~~a claim or right to relief by evidence satisfactory to the court.

(f) [NO CHANGE]

Rule 60. Relief from Judgment or Order

(a) [NO CHANGE]

(b) Mistakes; Inadvertence; Surprise; Excusable Neglect; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or ~~his~~the party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (3) the judgment is void; (4) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1) and (2) not more than 182 days after the judgment, order, or proceeding was entered or taken. A motion under this section (b) does not affect the finality of a judgment or suspend its operation. This Rule does not limit the power of a court: (1) To entertain an independent action to relieve a party from a judgment, order, or proceeding, or (2) to set aside a judgment for fraud upon the court; or (3) when, for any cause, the summons in an action has not been personally served within or without the state on the defendant, to allow, on such terms as may be just, such defendant, or ~~his~~such defendant's legal representatives, at any time within 182 days after the rendition of any judgment in such action, to answer to the merits of the original action. Writs of coram nobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 63. Disability of a Judge

If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that ~~he~~such other judge cannot perform those duties because ~~he~~such other judge did not preside at the trial or for any other reason, ~~he~~such other judge may in ~~his~~such other judge's discretion grant a new trial.

Rule 65. Injunction

(a) [NO CHANGE]

(b) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or ~~his~~the adverse party's attorney only if: (1) It clearly appears from specific facts shown by affidavit or by the verified complaint or by testimony that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or ~~his~~the adverse party's attorney can be heard in opposition, and (2) the applicant or the applicant's attorney certifies to the court in writing or on the record the efforts, if any, which have been made to give the notice and the reasons supporting ~~his~~the claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry not to exceed 14 days, as the court fixes, unless within the time so fixed, the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and take precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if ~~he~~such party does not do so, the court shall dissolve the temporary restraining order. On two (2) business days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) to (e) [NO CHANGE]

(f) Mandatory. If merely restraining the doing of an act or acts will not effectuate the relief to which the moving party is entitled, an injunction may be made mandatory. Such relief may include an injunction restoring to any person any property from which ~~he~~such person may have been ousted or deprived of possession by fraud, force, or violence, or from which ~~he~~such person may have been kept out of possession by threats or words or actions which have a natural tendency to excite fear or apprehension of danger.

(g) to (i) [NO CHANGE]

Rule 66. Receivers

(a) When Appointed. A receiver may be appointed by the court in which the action is pending at any time:
(1) Before judgment, provisionally, on application of either party, when ~~he~~either party establishes a prima facie right to the property, or to an interest therein, which is the subject of the action and is in possession of an adverse party and such property, or its rents, issues, and profits are in danger of being lost, removed beyond the jurisdiction of the court, or materially injured or impaired; or
(2) to (3) [NO CHANGE]

(b) Oath and Bond; Suit on Bond. Before entering upon ~~his~~the receiver's duties, the receiver shall be sworn to perform them faithfully, and shall execute, with one or more sureties, an undertaking with the people of the state of Colorado, in such sum as the court shall direct, to the effect that ~~he~~the receiver will faithfully discharge ~~his~~the receiver's duties and will pay over and account for all money and property which may come into ~~his~~the receiver's hands as the court may direct, and will obey the orders of the court therein. The undertaking, with the sureties, must be approved by the court, or by the clerk thereof when so ordered by the court, and may be sued upon in the name of the people of the state of Colorado, at the instance and for the use of any party injured.

(c) to (d) [NO CHANGE]

Rule 67. Deposit in Court

(a) [NO CHANGE]

(b) By Trustee. When it is admitted by the pleadings or examination of a party that ~~he~~the party has in ~~his~~the party's possession or under ~~his~~the party's control any money or other things capable of delivery which, being the subject of litigation, is held by ~~him~~the party as trustee for another party, or which belongs or is due to another party, upon motion, the court may order the same to be deposited in court or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

Rule 71. Process in Behalf of and Against Persons Not Parties

When an order is made in favor of a person who is not a party to the action, ~~he~~such person may enforce obedience to the order by the same process as if ~~he~~the person were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, ~~he~~such person is liable to the same process for enforcing obedience to the order as if ~~he~~the person were a party.

Rule 77. Courts and Clerks

(a) to (b) [NO CHANGE]

(c) Clerk's Office and Orders by Clerk. The clerk's office with the clerk or a deputy in attendance shall be open at such hours and on such days as may be provided by law, and by local rule not in conflict with law. All motions and applications in the clerk's office for issuing process, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but ~~his~~the clerk's action may be suspended or altered or rescinded by the court upon cause shown.

(d) [NO CHANGE]

Rule 78. Motion Day

Each court may establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as ~~he~~the judge considers reasonable may make orders for the advancement, conduct, and hearing of actions. To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing, upon brief written statements of reasons in support and opposition. Trial courts may also provide by local rule for notices to set motions for hearing or for calling upon motions for hearing without prior setting.

Rule 86. Pending Water Adjudications Under 1943 Act

In any water adjudication under the provisions of article 9 of chapter 148, C.R.S. 1963, as amended, pending on August 12, 1971, in which any applicant files any statement of claim asking that ~~his~~the applicant's date of priority antedate any earlier decrees or adjudications, in order not to be forever barred the owners of affected rights must object and protest within the times and in the manner provided by the Water Right Determination and Administration Act of 1969; and the judge shall direct the clerk to publish once in a newspaper or newspapers of general circulation in the water division as set forth in said Act of 1969, within which the water district is incorporated, to provide, and which shall be, notice to all water users within the division. The language of such notice shall be substantially as follows:

"There has been filed in this proceeding a claim or claims which may affect in priority any water right claimed or heretofore adjudicated within this division and owners of affected rights must appear to object and protest as provided in the Water Right Determination and Administration Act of 1969, or be forever barred."

Rule 89. Notice When Priority Antedating an Adjudication is Sought

Whenever a claimant makes application for the determination of a water right or a conditional water right and claims that ~~his~~the claimant's date of priority will antedate any earlier adjudication or claims a priority date earlier than the effective date of one or more priorities awarded by a previous decree or decrees within the water division in which the application is filed (except when provision for such antedation or earlier priority is made by statute), in order not to be forever barred, the owners of affected rights must object and protest within the times and in the manner provided by statute, and the water clerk shall include in the resume required by statute a specific notification in boldface type substantially as follows:

"The water right claimed by this application may affect in priority any water right claimed or heretofore adjudicated within this division and owners of affected rights must appear to object and protest within the time provided by statute, or be forever barred."

COMMENT [NO CHANGE]

Rule 97. Change of Judge

A judge shall be disqualified in an action in which ~~he~~the judge is interested or prejudiced, or has been of counsel for any party, or is or has been a material witness, or is so related or connected with any party or ~~his~~any party's attorney as to render it improper for ~~him~~the judge to sit on the trial, appeal, or other proceeding therein. A judge may ~~disqualify himself~~be disqualified on ~~his~~ the judge's own motion for any of said reasons, or any party may move for such disqualification and a motion by a party for disqualification shall be supported by affidavit. Upon the filing by a party of such a motion all other proceedings in the case shall be suspended until a ruling is made thereon. Upon ~~disqualifying himself,~~disqualification, a judge shall notify forthwith the chief judge of the district who shall assign another judge in the district to hear the action. If no other judge in the district is available or qualified, the chief judge shall notify forthwith the court administrator who shall obtain from the Chief Justice the assignment of a replacement judge.

Rule 98. Place of Trial

(a) [NO CHANGE]

(b) Venue for Recovery of Penalty, etc. Actions upon the following claims shall be tried in the county where the claim, or some part thereof, arose:
(1) [NO CHANGE]
(2) Against a public officer or person specially appointed to execute ~~his~~such officer's duties, for an act done by ~~him in~~ virtue of ~~his~~the public officer's office, or against a person who by ~~his~~such officer's command, or in ~~his~~ such officer's aid, does anything touching the duties of such officer, or for a failure to perform any act or duty which ~~he~~such officer is by law required to perform.

(c) to (d) [NO CHANGE]

(e) Motion to Change Venue; When Presented; Waiver; Effect of Filing.
(1) [NO CHANGE]
(2) If a motion to change venue is filed within the time permitted by section (a) of Rule 12 for the filing of a motion under the defenses numbered (1) to (4) of section (b) of Rule 12, the filing of such motion by a party under the provisions of subsection (1) of this section (e) alters ~~his~~the party's time to file ~~his~~a responsive pleading as follows: If the motion is overruled the responsive pleading shall be filed within 14 days thereafter unless a different time is fixed by the court, and if it is allowed the responsive pleading shall be filed within 14 days after the action has been docketed in the court to which the action is removed unless that court fixes a different time.
(3) Except as otherwise provided in an order allowing a motion to change venue, earlier ex parte and other orders affecting an action, or the parties thereto, shall remain in effect, subject to change or modification by order of the court to which the action is removed.

(f) Causes of Change. The court may, on good cause shown, change the place of trial in the following cases: (1) When the county designated in the complaint is not the proper county; (2) When the convenience of witnesses and the ends of justice would be promoted by the change.

(g) Change from County. If either party fears that ~~he~~the party will not receive a fair trial in the county in

which the action is pending, because the adverse party has an undue influence over the minds of the inhabitants thereof, or that they are prejudiced against ~~him~~the party so that ~~he~~the party cannot expect a fair trial, ~~he~~the party may file a motion supported by an affidavit for a change of venue. The opposite party may file a counter motion and affidavit. If the motion is sustained the venue shall be changed.

(h) Transfers Where Concurrent Jurisdiction. All actions or proceedings in which district and county courts have concurrent jurisdiction, may, by stipulation of the parties and order of the court, be transferred by either court to such other court of the same county. Upon transfer, the court to which such cause is removed shall have and exercise the same jurisdiction as if originally commenced therein.

(i) Place Changed if All Parties Agree. When all parties assent, or when all parties who have entered their appearance assent and the remaining nonappearing parties are in default, the place of trial of an action in a district court may be changed to any other county in the district. The judgment entered therein, if any, shall be transmitted to the clerk of the district court of the original county for filing and recording ~~in his office~~.

(j) [NO CHANGE]

(k) Only One Change; No Waiver. In case the place of trial is changed the party securing the same shall not be permitted to apply for another change upon the same ground. A party does not waive ~~his~~the right to change of judge or place of trial if ~~his~~ an objection thereto is made in apt time.

Rule 102. Attachments

(a) [NO CHANGE]

(b) Affidavit. No writ of attachment shall issue unless the party asserting the claim (hereinafter plaintiff), ~~his~~the plaintiff's agent or attorney, or some credible person for ~~him~~the plaintiff shall file in the court in which the action is brought an affidavit setting forth that the defendant is indebted to the plaintiff, or that the defendant is liable in damages to the plaintiff for a tort committed against the person or property of a resident of this state, stating the nature and amount of such indebtedness or claim for damages and setting forth facts showing one or more of the causes of attachment of section (c) of this Rule.

(c) Causes. No writ of attachment shall issue unless it be shown by affidavit or testimony in specific factual detail, within the personal knowledge of an affiant or witness, that there is a reasonable probability that any of the following causes exist:
(1) The defendant is a foreign corporation without a certificate of authority to do business in this state.
(2) The defendant has for more than four months been absent from the state, or the whereabouts of the defendant are unknown, or the defendant is a nonresident of this state, and all reasonable efforts to obtain in personam jurisdiction over the defendant have failed. Plaintiff must show what efforts have been made to obtain jurisdiction over the defendant.
(3) The defendant conceals ~~himself~~the defendant or stands in defiance of an officer, so that process of law cannot be served upon ~~him~~the defendant.
(4) The defendant is presently about to remove ~~his~~the defendant's property or effects, or a material part thereof, from this state with intent to defraud, delay, or hinder one or more of ~~his~~the defendant's creditors, or to render process of execution unavailing if judgment is obtained.
(5) The defendant has fraudulently conveyed, transferred, or assigned ~~his~~the defendant's property or

effects, or a material part thereof, so as to hinder or delay one or more of ~~his~~the defendant's creditors, or to render process or execution unavailing if judgment is obtained.
(6) The defendant has fraudulently concealed, removed, or disposed of ~~his~~the defendant's property or effects, or a material part thereof, so as to hinder or delay one or more of ~~his~~the defendant's creditors, or to render process of execution unavailing if judgment is obtained.
(7) The defendant is presently about to fraudulently convey, transfer, or assign ~~his~~the defendant's property or effects, or a material part thereof, so as to hinder or delay one or more of ~~his~~the defendant's creditors, or to render process of execution unavailing if judgment is obtained.
(8) The defendant is presently about to fraudulently conceal, remove, or dispose of ~~his~~the defendant's property or effects, or a material part thereof, so as to hinder or delay one or more of ~~his~~the defendant's creditors, or to render process of execution unavailing if judgment is obtained.
(9) The defendant has departed or is presently about to depart from this state, with the intention of having ~~his~~the defendant's property or effects, or a material part thereof, removed from the state.

(d) Plaintiff to Give Bond. Before the issuance of a writ of attachment the plaintiff shall furnish a bond that complies with the requirements of C.R.C.P. 121, § 1-23, in an amount set by the court in its discretion, not exceeding double the amount claimed, to the effect that if the defendant recover judgment, or if the court shall finally decide that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages defendant may sustain by reason of the wrongful suing out of the attachment. The defendant may require ~~the sureties~~a surety to satisfy the court that ~~each, for himself, is worth the amount for which he~~the surety has ~~become surety~~ sufficient assets, over and above ~~his just~~ debts and liabilities, in property located in this state and not by law exempt from execution, to pay the bond.

(e) Court Issues Writ of Attachment. After the affidavit and bond are filed as aforesaid and testimony had as the court may require, the court may issue a writ of attachment, directed to the sheriff of a specified county, commanding ~~him~~such sheriff to attach the lands, tenements, goods, chattels, rights, credits, moneys, and effects of said defendant, of every kind, or so much thereof as will be sufficient to satisfy the claim sworn to, regardless of whose hands or possession in which the same may be found.

(f) Contents of Writ and Notice. The writ shall direct the sheriff to serve a copy of the writ on the defendant if found in the county, and to attach and keep safely all the property of the defendant within the county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's claim, the amount of which shall be stated in conformity with the affidavit. The writ shall also inform the defendant of ~~his~~the right to traverse and to have a hearing to contest the attachment. If the defendant's property is or may be located in more than one county, additional or alias writs may be issued contemporaneously. If the defendant deposit the amount of money claimed by the plaintiff or give and furnish security by an undertaking, approved by the sheriff, of a corporate surety company or of at least two sureties in an amount sufficient to satisfy such claim, the sheriff shall take such money or undertaking in lieu of the property. Alias writs may issue at any time to the sheriffs of different counties.

(g) [NO CHANGE]

(h) Execution of Writ. The sheriff to whom the writ is directed and delivered shall execute the same without delay as follows:
(1) Real property standing upon the records of the county in the name of the defendant shall be attached by filing a copy of the writ, together with a description of the property attached, with the recorder of the county.
(2) Real property, or any interest therein belonging to the defendant, and held by any person, or standing

upon the records of the county in the name of any other person but belonging to the defendant, shall be attached by leaving with such person or ~~his~~such person's agent, if either be found in the county, a copy of the writ and a notice that such real property (giving a description thereof), and any interest therein belonging to the defendant, are attached pursuant to such writ, and filing a copy of such writ and notice with the recorder of the county.
(3) Personal property shall be attached by taking it into custody.

(i) Return of Writ. The sheriff shall return the writ of attachment within 21 days after its receipt, with a certificate of ~~his~~the proceedings endorsed thereon, or attached thereto, making a full inventory of the property attached as a part of ~~his~~the sheriff's return upon the writ.

(j) [NO CHANGE]

(k) No Final Judgment Until 35 Days After Levy.
(1) *Creditors.* No final judgment shall be rendered in a cause wherein an attachment writ has been issued and a levy made thereunder, until the expiration of 35 days after such levy has been made; and any creditor of the defendant making and filing within said 35-day period an affidavit and undertaking, as hereinbefore required of the plaintiff, together with ~~his~~ a complaint setting forth ~~his~~the creditor's claim against the defendant, shall be made a party plaintiff and have like remedies against the defendant to secure ~~his~~such creditor's claim, as the law gives to the original plaintiff.
(2) *Judgment Creditors.* Any other creditor whose claim has been reduced to judgment in this state may upon motion filed within said 35 days be made a party and have like remedies against the attached property. Such judgment creditor shall not be required to make or file an affidavit, undertaking or complaint, or have summons issue, provided, that any such judgment creditor may be required to prove to the satisfaction of the court that ~~his~~such judgment creditor's judgment is bona fide and not in fraud of the rights of other creditors.

(l) Dismissal by One Creditor Does Not Affect Others. After any additional creditor has been made a party to the action, as hereinbefore provided, a dismissal by the first or any subsequent attaching creditor of ~~his~~such creditor's cause of action, or proceedings in attachment, shall not operate as a dismissal of the attachment proceedings as to any other attaching creditor; but the remaining creditors may proceed to final judgment therein the same as though no such dismissal had been made.

(m) Final Judgment Prorated; When Creditors Preferred. The final judgment in said action shall be a several judgment, wherein each creditor named as plaintiff shall have and recover of the defendant the amount of ~~his~~ such creditor's claim or demand, as found by the court to be due, together with ~~his~~ such creditor's costs; and the money realized from the attachment proceedings, after paying all costs taxed in the attachment action, shall be paid to the participating creditors in proportion to the amounts of their several judgments; and any surplus moneys, if any, shall be paid to the defendant by order of the court, upon proof thereof. Provided, when the property is attached while the defendant is removing the same or after the same has been removed from the county, and the same is overtaken and returned, or while same is secreted by the defendant, or put out of ~~his~~the defendant's hands, for the purpose of defrauding ~~his~~the defendant's creditors, the court may allow the creditor or creditors through whose diligence the same shall have been secured a priority over other attachments or judgment creditors.

(n) Traverse of Affidavit.
(1) [NO CHANGE]
(2) A plaintiff who fails to prevail at the hearing provided by this section is liable to the defendant for any damages sustained as a result of the issuance of process, costs, and reasonable attorney's fees. A claim for

damages under this subsection may be brought as part of the existing action, and the defendant shall be permitted to amend ~~his~~the defendant's answer and any counterclaim for this purpose.

(o) [NO CHANGE]

(p) Intervention; Damages. Any third person claiming any of the property attached, or any lien thereon or interest therein, may intervene under the provisions of Rule 24, and in case of a judgment in ~~his~~such third person's favor may also recover ~~such~~ damages ~~as he may have~~ suffered by reason of the attachment of the property.

(q) to (r) [NO CHANGE]

(s) Balance Due; Surplus. Whenever the judgment shall have been paid, the sheriff, upon demand, shall deliver over to the defendant the attached property remaining in ~~his~~the sheriff's hands, and any proceeds of the property attached unapplied on the judgment.

(t) [NO CHANGE]

(u) Defendant May Release Property; Bond. The defendant may at any time before judgment have released to ~~him~~the defendant any money in the hands of the clerk or any property in the hands of the sheriff, by virtue of any writ of attachment, by executing the undertaking provided in section (v) of this Rule. All the proceeds of sales, all money collected by the sheriff, and all the property attached remaining in the sheriff's hands shall thereupon be released from the attachment and delivered to the defendant upon the delivery and approval of the undertaking.

(v) Conditions of Bond; Liability of Sheriff. Before releasing the attached property to the defendant, the sheriff shall require and approve an undertaking executed by the defendant to the plaintiff either of a corporate surety company or with at least two sureties in such sum as may be fixed by the sheriff in not less than the value of the property, to the effect that in case the plaintiff recover judgment in the action, and the attachment is not dissolved, defendant will, on demand, redeliver such attached property so released to the proper officer, to be applied to the payment of the judgment, and that in default thereof the defendant and sureties will pay to the plaintiff the full value of the property so released. If a sheriff shall release any property held by ~~him~~the sheriff under any writ of attachment without taking a sufficient bond, ~~he and his sureties~~the sheriff shall be liable to the plaintiff for the damages sustained thereby.

(w) to (y) [NO CHANGE]

Rule 104. Replevin

(a) Personal Property. The plaintiff in an action to recover the possession of personal property may, at the time of the commencement of the action, or at any time before trial, claim the delivery of such property to ~~him~~such plaintiff as provided in this Rule.

(b) Causes, Affidavit. Where a delivery is claimed, the plaintiff, ~~his~~the plaintiff's agent or attorney, or some credible person for ~~him~~the plaintiff, shall, by verified complaint or by complaint and affidavit under penalty of perjury show to the court as follows:
(1) to (2) [NO CHANGE]

(3) A particular description of the property, a statement of its actual value, and a statement to ~~his~~the plaintiff's best knowledge, information and belief concerning the location of the property and of the residence and business address, if any, of the defendant;
(4) That the property has not been taken for a tax assessment or fine pursuant to a statute; or seized under an execution against the property of the plaintiff; or if so seized, that it is by statute exempt from seizure.

(c) Show Cause Order; Hearing within 14 Days. The court shall without delay, examine the complaint and affidavit, and if it is satisfied that they meet the requirements of section (b), it shall issue an order directed to the defendant to show cause why the property should not be taken from the defendant and delivered to the plaintiff. Such order shall fix the date and time for the hearing thereof. The hearing date shall be not more than 14 days from the date of the issuance of the order and the order must have been served at least 7 days prior to the hearing date. The plaintiff may request a hearing date beyond 14 days, which request shall constitute a waiver of the right to a hearing not more than 14 days from the date of issuance of the order. Such order shall inform the defendant that ~~he~~the defendant may file affidavits on ~~his~~the defendant's behalf with the court and may appear and present testimony in ~~his~~the defendant's behalf at the time of such hearing, or that ~~he~~the defendant may, at or prior to such hearing, file with the court a written undertaking to stay the delivery of the property, in accordance with the provisions of section (j) of this rule, and that, if ~~he~~the defendant fails to appear at the hearing on the order to show cause or to file an undertaking, plaintiff may apply to the court for an order requiring the sheriff to take immediate possession of the property described in the complaint and deliver same to the plaintiff. The summons and complaint, if not previously served, and the order shall be served on the defendant and the order shall fix the manner in which service shall be made, which shall be by service in accordance with the provisions of Rule 4, C.R.C.P., or in such manner as the court may determine to be reasonably calculated to afford notice thereof to the defendant under the circumstances appearing from the complaint and affidavit.

(d) Order for Possession Prior to Hearing. Subject to the provisions of section 5-5-104, C.R.S.1973, and upon examination of the complaint and affidavit and such other evidence or testimony as the court may thereupon require, an order of possession may be issued prior to hearing, if probable cause appears that any of the following exist:
(1) to (3) [NO CHANGE]
(4) That the defendant has by contract voluntarily and intelligently and knowingly waived ~~his~~the right to a hearing prior to losing possession of the property by means of a court order.
Where an order of possession has been issued prior to hearing under the provisions of this section, the defendant or other persons from whom possession of said property has been taken, may apply to the court for an order shortening time for hearing on the order to show cause, and the court may, upon such application, shorten the time for hearing, and direct that the matter shall be heard on not less than forty-eight hours' notice to the plaintiff.

(e) to (g) [NO CHANGE]

(h) Contents of Possession Order. The order of possession shall describe the specific property to be seized, and shall specify the location or locations where there is probable cause to believe the property or some part thereof will be found. It shall direct the sheriff to seize the same as it is found, and to retain it in ~~his~~the sheriff's custody. There shall be attached to such order a copy of the written undertaking filed by the plaintiff, and such order shall inform the defendant ~~that he has~~of the right to except to the sureties or to the amount of the bond upon the undertaking or to file a written undertaking for the redelivery of such property as provided in section (j).

Upon probable cause shown by further affidavit or declaration by the plaintiff or someone in ~~his~~the

plaintiff's behalf, filed with the court, an order of possession may be endorsed by the court, without further notice, to direct the sheriff to search for the property at another specified location or locations and to seize the same if found.

The sheriff shall forthwith take the property if it be in the possession of the defendant or ~~his~~the defendant's agent, and retain it in ~~his~~the sheriff's custody; except that when the personal property is then occupied as a dwelling [such as but not limited to a mobile home], the sheriff shall take constructive possession of the property and shall remove its occupants and take the property into ~~his~~the sheriff's actual custody at the expiration of 10 days after the issuance of the order of possession, or at such earlier time as the property shall have been vacated.

(i) Sheriff May Break Building; When. If the property or any part thereof is in a building or enclosure, the sheriff shall demand its delivery, announcing ~~his~~the sheriff's identity, purpose, and the authority under which ~~he~~the sheriff acts. If it is not voluntarily delivered, ~~he~~the sheriff shall cause the building or enclosure to be broken open in such manner as ~~he~~the sheriff reasonably believes will cause the least damage to the building or enclosure, and take the property into ~~his~~the sheriff's possession. ~~He~~The sheriff may call upon the power of the county to aid and protect ~~him~~the sheriff, but if ~~he~~the sheriff reasonably believes that entry and seizure of the property will involve a substantial risk of death or serious bodily harm to any person, ~~he~~the sheriff shall refrain from seizing the property, and shall forthwith make a return before the court from which the order issued, setting forth the reasons for ~~his~~the sheriff's belief that such risk exists. The court may make such orders and decrees as may be appropriate.

The sheriff shall, without delay, serve upon the defendant a copy of the order of possession and written undertaking by delivering the same to ~~him~~the defendant personally, if ~~he~~the defendant can be found or to ~~his~~the defendant's agent from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either with some person of suitable age and discretion; or if neither has any known place of abode, by mailing them to the last known address of either.

(j) When Returned to Defendant; Bond. At any time prior to the hearing on the order to show cause, or before the delivery of the property to the plaintiff, the defendant may require the return thereof upon filing with the court a written undertaking, in an amount set by the court in its discretion not to exceed double the value of the property and executed by the defendant and such surety as the court may direct for the delivery of the property to the plaintiff, if such delivery be ordered, and for the payment to the plaintiff of such sum as may for any cause be recovered against the defendant. At the time of filing such undertaking, the defendant shall serve upon the plaintiff or ~~his~~the plaintiff's attorney, in the manner provided by Rule 5, C.R.C.P., a notice of filing of such undertaking, to which a copy of such undertaking shall be attached, and shall cause proof of service thereof to be filed with the court. If such undertaking be filed prior to hearing on the order to show cause, proceedings thereunder shall terminate, unless exception is taken to the amount of the bond or the sufficiency of the surety. If, at the time of filing of such undertaking, the property shall be in the custody of the sheriff, such property shall be redelivered to the defendant 7 days after service of notice of filing such undertaking upon the plaintiff or ~~his~~the plaintiff's attorney.

(k) Exception to Sureties. Either party may, within two business days after service of an undertaking or notice of filing and undertaking under the provisions of this Rule, give written notice to the court and the other party that ~~he~~such party excepts to the sufficiency of the surety or the amount of the bond. If ~~he~~such party fails to do so, ~~he~~the party is deemed to have waived all objections to them. When a party excepts the court shall hold a hearing to determine the sufficiency of the bond or surety. If the property be in the custody of the sheriff, ~~he~~the sheriff shall retain custody thereof until the hearing is completed or waived. If the excepting party prevails at the hearing, the sheriff shall proceed as if no such undertaking had been

filed. If the excepting party does not prevail at the hearing, or the exception is waived, ~~he~~the sheriff shall deliver the property to the party filing such undertaking.

(l) Duty of Sheriff in Holding Goods. When the sheriff has taken property as provided in this Rule, ~~he~~the sheriff shall keep it in a secure place and deliver it to the party entitled thereto, upon receiving ~~his~~the sheriff's fees for taking and ~~his~~the sheriff's necessary expenses for keeping the same, after expiration of the time for filing of an undertaking for redelivery and for exception to the sufficiency of the bond, unless the court shall by order stay such delivery.

(m) Claim by Third Person. If the property taken is claimed by any other person than the defendant or plaintiff, such person may intervene under the provisions of Rule 24, C.R.C.P., and in the event of a judgment in ~~his~~such person's favor, ~~he~~the person may also recover such damages as ~~he~~the person may have suffered by reason of any wrongful detention of the property.

(n) Return; Papers by Sheriff. The sheriff shall return the order of possession and undertakings and affidavits with ~~his~~the sheriff's proceedings thereon, to the court in which the action is pending, within 21 days after taking the property mentioned therein.

(o) to (p) [NO CHANGE]

Rule 105. Actions Concerning Real Estate

(a) [NO CHANGE]

(b) Record Interest; Actual Possession Requires Occupant Be Party. No person claiming any interest under or through a person named as a defendant need be made a party unless ~~his~~the person's interest is shown of record in the office of the recorder of the county where the real property is situated, and the decree shall be as conclusive against ~~him~~the person as if ~~he~~the person had been made a party; provided, however, if such action be for the recovery of actual possession of the property, the party in actual possession shall be made a party.

(c) Disclaimer Saves Costs. If any defendant in such action disclaims in ~~his~~the answer any interest in the property or allows judgment to be taken against ~~him~~the defendant without answer, the plaintiff shall not recover costs against ~~him~~the defendant, unless the court shall otherwise direct, provided that this section shall not apply to a defendant primarily liable on any indebtedness sought to be foreclosed or established as a lien.

(d) [NO CHANGE]

(e) Set-off for Improvements. Where a party or those under whom ~~he~~the party claims, holding under color of title adversely to the claims of another party, shall in good faith have made permanent improvements upon real property (other than mining property) the value of such improvements shall be allowed as a set-off or as a counterclaim in favor of such party, in the event that judgment is entered against such party for possession or for damages for withholding of possession.

(f) to (g) [NO CHANGE]

COMMITTEE COMMENT [NO CHANGE]

Rule 106. Forms of Writs Abolished

(a) Habeas Corpus, Mandamus, Quo Warranto, Certiorari, Prohibition, Scire Facias and Other Remedial Writs in the District Court. Special forms of pleadings and writs in habeas corpus, mandamus, quo warranto, certiorari, prohibition, scire facias, and proceedings for the issuance of other remedial writs, as heretofore known, are hereby abolished in the district court. Any relief provided hereunder shall not be available in county courts. In the following cases relief may be obtained in the district court by appropriate action under the practice prescribed in the Colorado Rules of Civil Procedure:
(1) Where any person not being committed or detained for any criminal or supposed criminal matter is illegally confined or restrained of ~~his~~ liberty;
(2) Where the relief sought is to compel a lower judicial body, governmental body, corporation, board, officer or person to perform an act which the law specially enjoins as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which ~~he~~the party is entitled, and from which ~~he~~the party is unlawfully precluded by such lower judicial body, governmental body, corporation, board, officer, or person. The judgment shall include any damages sustained;
(3) to (4) [NO CHANGE]
(5) When judgment is recovered against one or more of several persons jointly indebted upon an obligation, and it is desired to proceed against the persons not originally served with the summons who did not appear in the action. Such persons may be cited to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons, and in ~~his~~an answer any such person may set up any defense either to the original obligation or which may have arisen subsequent to judgment, except a discharge from the original liability by the statute of limitations.

(b) [NO CHANGE]

COMMENT [NO CHANGE]

Rule 106.5. Correctional Facility Quasi-Judicial Hearing Review

(a) to (h) [NO CHANGE]

(i) Briefs.
(1) [NO CHANGE]
(2) If the defense counsel files an answer and the Warden files the certified record, the inmate shall have 42 days following notice of filing of the record in which to file a brief. In this event, the brief shall set forth the reasons why the inmate believes that the District Court should rule that the Warden has exceeded ~~his or her~~the Warden's jurisdiction or abused ~~his or her~~the Warden's discretion. The inmate must set forth in the brief specific references to the record that support the inmate's position. Defense counsel shall have 35 days after service of the brief to file a response and the inmate shall have 14 days after service of the response to file a reply.

(j) to (k) [NO CHANGE]

Rule 110. Miscellaneous

(a) [NO CHANGE]

(b) Use of Terms. Words used in the present tense shall include the future; singular shall include the plural~~; masculine shall include the feminine~~; person or party shall include all manner of organizations which may sue or be sued. The use of the word clerk, sheriff, marshal, or other officer means such officer or ~~his~~the deputy or other person authorized to perform ~~his~~such officer's duties. The word "oath" includes the word "affirmation~~"; and the~~." The phrase "to swear" includes "to affirm~~"; signature~~." Signature or subscription shall include mark~~,~~ when the person is unable to write, ~~his~~the person's name ~~being~~is written near ~~it~~the mark, and the marking is witnessed by a person who writes ~~his~~such person's own name as a witness. A superintendent, overseer, foreman, sales director, or person occupying a similar position, may be considered a managing agent for the purposes of these rules.

(c) Certificates. Certificates shall be made in the name of the officer either by the officer or by ~~his~~the officer's deputy.

(d) [NO CHANGE]

Rule 121. Local Rules--Statewide Practice Standards

[NO CHANGE]

Section 1-1. to Section 1-5. [NO CHANGE]

Section 1-6. SETTINGS FOR TRIALS OR HEARINGS/SETTINGS BY TELEPHONE

1. to **2. [NO CHANGE]**

3. Any attorney receiving the notice to set who does not personally appear at the setting shall have personnel at ~~his or her~~the attorney's office, supplied with a current appointment calendar and authorized to make settings for that attorney, at the date and time in the notice.

4. [NO CHANGE]

COMMITTEE COMMENT [NO CHANGE]

Section 1-7. to Section 1-13. [NO CHANGE]

Section 1-14. DEFAULT JUDGMENTS

1. to 2. [NO CHANGE]

3. If the party against whom default judgment is sought is in the military service, or ~~his~~the party's 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 members Civil Relief Act (SCRA), 50 U.S.C. § 3931, 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. In proceedings which come within the provisions of Rules 55 or 120, C.R.C.P., attendance by the moving party or ~~his~~the moving party's attorney shall not be necessary in any instance in which all necessary elements for entry of default under those rules are self-evident from verified motion in the court file. When such matter comes up on the docket with no party or attorney appearing and the court is of the opinion that necessary elements are not so established, the court shall continue or vacate the hearing and advise the moving party or attorney accordingly.

COMMENT [NO CHANGE]

Section 1-15. to Section 1-26. [NO CHANGE]

Rules: 3, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 22, 23, 23.1, 24, 25, 27, 30, 31, 32, 35, 36, 37, 41, 44.1, 45, 46, 47, 49, 54, 55, 60, 63, 65, 66, 67, 71, 77, 78, 86, 89, 97, 98, 102, 104, 105, 106, 106.5, 110, 121 Section 1-6, and 121 Section 1-14.

Rule 3. Commencement of Action

(a) How Commenced. A civil action is commenced (1) by filing a complaint with the court, or (2) by service of a summons and complaint. If the action is commenced by the service of a summons and complaint, the complaint must be filed within 14 days after service. If the complaint is not filed within 14 days, the service of summons shall be deemed to be ineffective and void without notice. In such case the court may, in its discretion, tax a reasonable sum in favor of the defendant to compensate the defendant for expense and inconvenience, including attorney's fees, to be paid by the plaintiff or the plaintiff's attorney. The 14 day filing requirement may be expressly waived by a defendant and shall be deemed waived upon the filing of a responsive pleading or motion to the complaint without reserving the issue.

(b) Time of Jurisdiction. The court shall have jurisdiction from (1) the filing of the complaint, or (2) the service of the summons and complaint; provided, however, if more than 14 days elapses after service upon any defendant before the filing of the complaint, jurisdiction as to that defendant shall not attach by virtue of the service.

Rule 8. General Rules of Pleading

(a) [NO CHANGE]

(b) Defenses; Form of Denials. A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments of the adverse party. If the party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, the pleader may specifically deny designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as expressly admitted; but, when the pleader does so intend to controvert all averments, including averments of the grounds upon which the court's jurisdiction depends, the pleader may do so by general denial subject to the obligations set forth in Rule 11.

(c) to (d) [NO CHANGE]

(e) Pleading to be Concise and Direct; Consistency.
(1) [NO CHANGE]
(2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or

on equitable grounds or on both. All statements shall be made subject to the obligations set forth in Rule 11.

(f) [NO CHANGE]

Rule 9. Pleading Special Matters

(a)(1) *Capacity.* It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a pleader desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, the pleader shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge, and on such issue the party relying on such capacity, authority, or legal existence, shall establish same on the trial.
(2) *Identification of Unknown Party.* When a party is designated in the caption as one "whose true name is unknown" the pleader shall allege such matters as are within the pleader's knowledge to identify such unknown party and such unknown party's connection with the claim set forth.
(3) *Interest of Unknown Parties.* When parties are designated in the caption as "all unknown persons who claim any interest in the subject matter of this action" the pleader shall describe the interests of such persons, and how derived, so far as the pleader's knowledge extends.
(4) *Description of Interest.* Where unknown parties claim some interest through some one or more of the named defendants, it shall be a sufficient description of their interests and of how derived to state that the interests of the unknown parties are derived through some one or more of the named defendants.

(b) to (i) [NO CHANGE]

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

(a) to (c) [NO CHANGE]

(d) General Rule Regarding Paper Size, Format, and Spacing. All documents filed after the effective date of this rule, including those filed through the E-Filing System under C.R.C.P. 121(1-26), shall meet the following criteria:
(1) to (3) [NO CHANGE]
(4) *Signature Block.* All documents which require a signature shall be signed at the end of the document. The attorney or pro se party need not repeat the attorney or pro se party's address, telephone number, fax number, or e-mail address at the end of the document.

(e) to (i) [NO CHANGE]

COMMENTS [NO CHANGE]

Rule 11. Signing of Pleadings

(a) Obligations of Parties and Attorneys. Every pleading of a party represented by an attorney shall be

signed by at least one attorney of record in the attorney's individual name. The initial pleading shall state the current number of the attorney's registration issued by the Supreme Court. The attorney's address and that of the party shall also be stated. A party who is not represented by an attorney shall sign the party's pleadings and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The signature of an attorney constitutes a certification that the attorney has read the pleading; that to the best of the attorney's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading is not signed it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader. If the current registration number of the attorney is not included with the attorney's signature, the clerk of the court shall request from the attorney the registration number. If the attorney is unable to furnish the court with a registration number, that fact shall be reported to the clerk of the Supreme Court, but the clerk shall nevertheless accept the filing. If a pleading is signed in violation of this Rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, including a reasonable attorney's fee, provided, however, that failing to be registered shall be governed by Rule 227.

Reasonable expenses, including a reasonable attorney's fee, shall not be assessed if, after filing, a voluntary dismissal or withdrawal is filed as to any claim, action or defense, within a reasonable time after the attorney or party filing the pleading knew, or reasonably should have known, that the party would not prevail on said claim, action, or defense.

(b) [NO CHANGE]

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

(a) When Presented.

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

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

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

(2) to (6) [NO CHANGE]

(b) to (h) [NO CHANGE]

COMMENTS [NO CHANGE]

Rule 13. Counterclaim and Cross Claim

(a) Compulsory Counterclaims. A pleading shall state as a counterclaim any claim which at the time of filing the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if:
(1) At the time the action was commenced the claim was the subject of another pending action, or
(2) The opposing party brought suit upon the opposing party's claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

(b) to (d) [NO CHANGE]

(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving the pleader's pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleading.

(f) Omitted Counterclaim. When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, the pleader may by leave of court set up the counterclaim by amendment.

(g) to (i) [NO CHANGE]

(j) Claims Against Assignee. Except as otherwise provided by law as to negotiable instruments, any claim, counterclaim, or cross claim which could have been asserted against an assignor at the time of or before notice of an assignment, may be asserted against an assignee, to the extent that such claim, counterclaim, or cross claim does not exceed recovery upon the claim of the assignee.

(k) to (l) [NO CHANGE]

Rule 14. Third-Party Practice

(a) When Defendant May Bring in Third Party. At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to the defending party for all or part of the plaintiff's claim against the defending party. The third-party plaintiff need not obtain leave to make the service if the third-party plaintiff files the third-party complaint not later than 14 days after service of the third-party plaintiff's original answer. Otherwise the third-party plaintiff must obtain leave on motion upon notice to all parties to the action. The person served with the summons and third-party complaint, hereinafter called the third-party defendant, shall make the third-party defendant's defenses to the third-party plaintiff's claim as provided in Rule 12 and the third-party defendant's counterclaim against the third-party plaintiff and cross claims against other third-party defendants as provided in Rule 13. The third-party defendant may assert against the plaintiff any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant may also assert any claim against the plaintiff arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff. The plaintiff may assert any claim against the third-party defendant arising out of the transaction or occurrence that is the subject matter of the plaintiff's claim against the third-party plaintiff, and the third-party defendant thereupon shall assert the third-party defendant's defenses as provided in Rule 12 and the third-party

defendant's counterclaim and cross claims as provided in Rule 13. Any party may move to strike the third-party claim, or for its severance or separate trial. A third-party defendant may proceed under this Rule against any person not a party to the action who is or may be liable to the third-party defendant for all or part of the claim made in the action against the third-party defendant.

(b) When Plaintiff May Bring in Third Party. When a counterclaim is asserted against a plaintiff, the plaintiff may cause a third party to be brought in under circumstances which under this Rule would entitle a defendant to do so.

Rule 15. Amended and Supplemental Pleadings

(a) Amendments. A party may amend a pleading once as a matter of course at any time before a responsive pleading is filed or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it any time within 21 days after it is filed. Otherwise, a party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 14 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

(b) Amendments to Conform to the Evidence. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice the objecting party in maintaining the objecting party's action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision is satisfied and, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment: (1) Has received such notice of the institution of the action that the party to be brought in by amendment will not be prejudiced in maintaining a defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party to be brought in by amendment.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit the party to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor.

Rule 17. Parties Plaintiff and Defendant; Capacity

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, conservator, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in their own name without joining the party for whose benefit the action is brought; and when a statute so

provides, an action for the use or benefit of another shall be brought in the name of the people of the state of Colorado.

(b) Capacity to Sue or Be Sued. A partnership or other unincorporated association may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right. A father and mother or the sole surviving parent may maintain an action for the injury or death of a child; where both maintain the action, each shall have an equal interest in the judgment; where one has deserted or refuses to sue, the other may maintain the action. A guardian may maintain an action for the injury or death of a ward.

(c) Infants or Incompetent Persons. Whenever an infant or incompetent person has a representative, such as a general guardian, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative, or such representative fails to act, the infant or incompetent person may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person, provided, that in an action in rem it shall not be necessary to appoint a guardian ad litem for any unknown person who might be an infant or incompetent person.

Rule 18. Joinder of Claims and Remedies

(a) Joinder of Claims. A party asserting a claim to relief as an original claim, counterclaim, cross claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as the party has against an opposing party.

(b) Joinder of Remedies; Fraudulent Conveyances. Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to the plaintiff, without first having obtained a judgment establishing the claim for money.

Rule 19. Joinder of Persons Needed for Just Adjudication

(a) Persons to be Joined if Feasible. A person who is properly subject to service of process in the action shall be joined as a party in the action if: (1) In the person's absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may: (A) As a practical matter impair or impede the person's ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person's claimed interest. If the person has not been so joined, the court shall order that the person be made a party. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and the person's joinder would render the venue of the action improper, the person shall be dismissed from the action.

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subsections (a)(1) and (a)(2) of this Rule cannot be made a party, the court shall determine whether in the interest of justice the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: First, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) to (d) [NO CHANGE]

Rule 20. Permissive Joinder of Parties

(a) [NO CHANGE]

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice.

(c) [NO CHANGE]

Rule 22. Interpleader

(1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that the plaintiff is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross claim or counterclaim. The provisions of this Rule supplement and do not in any way limit the joinder of parties permitted in Rule 20.

(2) [NO CHANGE]

Rule 23. Class Actions

(a) to (b) [NO CHANGE]

(c) Determination by Order Whether Class Action to be Maintained; Notice; Judgment; Actions Conducted Partially as Class Actions.
(1) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this section (c) may be conditional,

and may be altered or amended before the decision on the merits.
(2) In any class action maintained under subsection (b)(3), the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice shall advise each member that: (A) The court will exclude a member from the class if the member so requests by a specified date; (B) the judgment, whether favorable or not, will include all members who do not request exclusion; and (C) any member who does not request exclusion may, if the member desires, enter an appearance through the member's counsel.
(3) to (4) [NO CHANGE]

(d) to (g) [NO CHANGE]

Rule 23.1. Derivative Actions by Shareholders

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association, the corporation or association having failed to enforce a right which may properly be asserted by it, the complaint shall be verified and shall allege that the plaintiff was a shareholder or member at the time of the transaction of which the shareholder or member complains or that the shareholder or member's share or membership thereafter devolved on the shareholder or member by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the desired action from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for the plaintiff's failure to obtain the action or for not making the effort. The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. The action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to shareholders or members in such manner as the court directs.

Rule 24. Intervention

(a) Intervention of Right. Upon timely application anyone shall be permitted to intervene in an action: (1) When a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) to (c) [NO CHANGE]

Rule 25. Substitution of Parties

(a) [NO CHANGE]

(b) Incompetency. If a party becomes incompetent, the court upon motion served as provided in section (a) of this Rule may allow the action to be continued by or against the party's representative.

(c) [NO CHANGE]

(d) Public Officers; Death or Separation from Office.
(1) When a public officer is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the public officer's successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial right of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.
(2) When a public officer sues or is sued in an official capacity, the public officer may be described as a party by official title rather than by name; but the court may require the public officer's name to be added.

Rule 27. Depositions Before Action or Pending Appeal

(a) Before Action.
(1) *Petition; Order; Notice.* A person who desires to perpetuate the person's own testimony or that of other persons may file in a district court a petition verified by the petitioner's 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 the petitioner 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(e) 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 the deputy county clerk and recorder, 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(e), upon any expected adverse party named in the petition, the court may make such order as is just for service upon the expected adverse party 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(e), 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 14 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 directs, 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 the witness's testimony and the person so designated shall take the testimony in manner aforesaid and certify and return same to the court with a certificate showing that the person so designated has complied with the requirements of said order.
(3) [NO CHANGE]
(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 the witness or witnesses' 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 35 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 the party 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.

Rule 30. Depositions Upon Oral Examination

(a) to (f) [NO CHANGE]

(g) Failure to Attend or to Serve Subpoena; Expenses.
(1) If the party giving the notice of the taking of a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the court may order the noticing party to pay to such other party the amount of the reasonable expenses incurred in attending, including reasonable attorney's fees.
(2) If the party giving the notice of the taking of a deposition of a witness fails to serve a subpoena upon the witness and the witness because of such failure does not attend, and if another party attends in person or by attorney because such other party expects the deposition of that witness to be taken, the court may order the noticing party to pay to such other party the amount of the reasonable expenses incurred in attending, including reasonable attorney's fees.

COMMENTS [NO CHANGE]

Rule 31. Depositions Upon Written Questions

(a) [NO CHANGE]

(b) Officer to Take Responses and Prepare Record. A copy of the notice and copies of all questions served shall be delivered by the party taking the deposition to the officer designated in the notice, who shall proceed promptly, in the manner provided by Rule 30(c), (e), and (f), to take the testimony of the witness in response to the questions and to prepare, certify, and file or mail the deposition, attaching thereto the copy of the notice and the questions.

(c) [NO CHANGE]

COMMENTS [NO CHANGE]

Rule 32. Use of Depositions in Court Proceedings

(a) Use of Depositions. At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:
(1) to (3) [NO CHANGE]
(4) If only part of a deposition is offered in evidence by a party, an adverse party may require the party to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.
Substitution of parties pursuant to Rule 25 does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.
(5) [NO CHANGE]

(b) [NO CHANGE]

(c) Effect of Taking or Using Depositions. A party does not make a person the party's own witness for any purpose by taking the person's deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by an adverse party of a deposition under subsection (a)(2) of this Rule. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by the party or by any other party.

(d) [NO CHANGE]

COMMITTEE COMMENT [NO CHANGE]

Rule 35. Physical and Mental Examination of Persons

(a) Order for Examination. When the mental or physical condition (including the blood group) of a party, or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

(b) Report of Examiner.
(1) If requested by the party against whom an order is made under section (a) of this Rule or the person examined, the party causing the examination to be made shall deliver to said other party a copy of a detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnoses, and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that the party is unable to obtain it. The court on motion may make an order against a party requiring delivery of a report on such terms as are just, and if an examiner fails or refuses to make a report the court may exclude the examiner's testimony if offered at the trial.
(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the person examined waives any privilege the person may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the person in respect of the same mental or physical condition.
(3) [NO CHANGE]

Rule 36. Requests for Admission

(a) [NO CHANGE]

(b) Effect of Admission. Any matter admitted under this Rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Subject to the provisions of Rule 16 governing amendment of a pretrial order, the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby and the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party who obtained the admission in maintaining the action or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission by the party for any other purpose nor may it be used against the party in any other proceeding.

COMMITTEE COMMENT [NO CHANGE]

Rule 37. Failure to Make Disclosure or Cooperate in Discovery: Sanctions

(a) [NO CHANGE]

(b) Failure to Comply with Order.
(1) [NO CHANGE]
(2) *Party Deponents-Sanctions by Court.* If a party or an officer, director, or managing agent of a party, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under section (a) of this Rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

(A) to (D) [NO CHANGE]

(E) Where a party has failed to comply with an order under Rule 35(a) requiring the party to produce another for examination, such orders as are listed in subparagraphs (A), (B), and (C) of this subsection (2), unless the party failing to comply shows that the party is unable to produce such person for examination.

In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order, or the attorney advising the party, or both, to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

(c) to (d) [NO CHANGE]

COMMENTS [NO CHANGE]

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal: Effect Thereof.
(1) [NO CHANGE]
(2) *By Order of Court.* Except as provided in subsection (a)(1) of this subdivision of this Rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon the defendant of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this subsection (2) is without prejudice.

(b) Involuntary Dismissal: Effect Thereof.
(1) *By Defendant.* For failure of a plaintiff to prosecute or to comply with these Rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant. After the

plaintiff, in an action tried by the court without a jury, has completed the presentation of the plaintiff's evidence, the defendant, without waiving the defendant's right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render judgment until the close of all the evidence. If the court renders judgment on the merits against the plaintiff, the court shall make findings as provided in Rule 52. Unless the court in its order for dismissal otherwise specifies, a dismissal under this section (b) and any dismissal not provided for in this Rule, other than a dismissal for failure to prosecute, for lack of jurisdiction, for failure to file a complaint under Rule 3, or for failure to join a party under Rule 19, operates as an adjudication upon the merits.
(2) - (3) [NO CHANGE]

(c) to (d) [NO CHANGE]

Rule 44.1. Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign country shall give notice in the party's pleadings or other reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under Rule 43. The court's determination shall be treated as a ruling on a question of law.

Rule 45. Subpoena

(a) to (b) [NO CHANGE]

(c) Protecting a Person Subject to a Subpoena.
(1) to (2) [NO CHANGE]
(3) *Quashing or Modifying a Subpoena.*
(A) When Required. On motion made promptly and in any event at or before the time specified in the subpoena for compliance, the issuing court must quash or modify a subpoena that:
(i) fails to allow a reasonable time to comply;
(ii) requires a person who is neither a party nor a party's officer to attend a deposition in any county other than where the person resides or is employed or transacts business in person, or at such other convenient place as is fixed by an order of court;
(iii) to (iv) [NO CHANGE]
(B) to (C) [NO CHANGE]

(d) [NO CHANGE]

(e) Subpoena for Deposition.
(1) *Residents of This State.* A resident of this state may be required by subpoena to attend an examination upon deposition only in the county wherein the witness resides or is employed or transacts business in person, or at such other convenient place as is fixed by an order of court.
(2) to (3) [NO CHANGE]

(f) [NO CHANGE]

COMMITTEE COMMENTS [NO CHANGE]

Rule 46. Exceptions Unnecessary

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or the party's objection to the action of the court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice the party.

Rule 47. Jurors

(a) to (i) [NO CHANGE]

(j) When Juror Discharged. If, before verdict, a juror becomes unable or disqualified to perform the juror's duty and there is no alternate juror, the parties may agree to proceed with the other jurors, or that a new juror be sworn and the trial begun anew. If the parties do not so agree the court shall discharge the jury and the case shall be tried anew.

(k) [NO CHANGE]

(l) Deliberation of Jury. After hearing the charge the jury may either decide in court or retire for deliberation. If it retires, except as hereinafter provided in this section (*l*), it shall be kept together in a separate room or other convenient place under the charge of one or more officers until it agrees upon a verdict or is discharged. While the jury is deliberating the officer shall, to the utmost of the officer's ability, keep the jury together, separate from other persons. The officer shall not permit any communication to be made to any juror; shall not communicate with any juror unless by order of the court except to ask if the jury has agreed upon a verdict; and shall not, before the verdict is rendered, communicate with any person about the jury's deliberations or verdict. The court in its discretion in any individual case may modify the procedure under this Rule by permitting a jury which is deliberating to separate during the luncheon or dinner hour or separate for the night under appropriate cautionary instructions, with directions that they meet again at a time certain to resume deliberations again under the charge of the appropriate officer.

(m) to (p) [NO CHANGE]

(q) Declaration of Verdict. When the jury has agreed upon its verdict it shall be conducted into court by the officer in charge. The names of the jurors shall be called, and the jurors shall be asked by the court or clerk if they have agreed upon a verdict, and if the answer is in the affirmative, they shall hand the same to the clerk. The clerk shall enter in the court's records the names of the jurors. Upon a request of any party the jury may be polled.

(r) to (u) [NO CHANGE]

COMMENT [NO CHANGE]

Rule 49. Special Verdicts and Interrogatories

(a) Special Verdicts. The court may require a jury to return only a special verdict in the form of a special written finding upon each issue of fact. In that event the court may submit to the jury written questions susceptible of categorical or other brief answer or may submit written forms of the several special findings which might properly be made upon the pleadings and evidence; or it may use such other method of submitting the issues and requiring the written findings thereon as it deems most appropriate. The court shall give to the jury such explanation and instruction concerning the matter thus submitted as may be necessary to enable the jury to make its findings upon each issue. If in so doing the court omits any issue of fact raised by the pleadings or by the evidence, each party waives the party's right to a trial by jury of the issue so omitted unless before the jury retires the party demands its submission to the jury. As to an issue omitted without such demand the court may make a finding; or, if it fails to do so, it shall be deemed to have made a finding in accord with the judgment on the special verdict.

(b) [NO CHANGE]

Rule 54. Judgments; Costs

(a) to (b) [NO CHANGE]

(c) Demand for Judgment. A judgment by default shall not be different in kind from that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings.

(d) to (e) [NO CHANGE]

(f) After Death, How Payable. If a party dies after a verdict or decision upon any issue of fact, and before judgment, the court may, nevertheless, render judgment thereon. Such judgment shall not be a lien on the real property of the deceased party, but shall be paid as a claim against the deceased party's estate.

(g) to (h) [NO CHANGE]

COMMENTS [NO CHANGE]

Rule 55. Default

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the clerk's default.

(b) to (d) [NO CHANGE]

(e) Judgment Against an Officer or Agency of the State of Colorado. No judgment by default shall be entered against an officer or agency of the State of Colorado unless the claimant establishes a claim or right to relief by evidence satisfactory to the court.

(f) [NO CHANGE]

Rule 60. Relief from Judgment or Order

(a) [NO CHANGE]

(b) Mistakes; Inadvertence; Surprise; Excusable Neglect; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (3) the judgment is void; (4) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1) and (2) not more than 182 days after the judgment, order, or proceeding was entered or taken. A motion under this section (b) does not affect the finality of a judgment or suspend its operation. This Rule does not limit the power of a court: (1) To entertain an independent action to relieve a party from a judgment, order, or proceeding, or (2) to set aside a judgment for fraud upon the court; or (3) when, for any cause, the summons in an action has not been personally served within or without the state on the defendant, to allow, on such terms as may be just, such defendant, or such defendant's legal representatives, at any time within 182 days after the rendition of any judgment in such action, to answer to the merits of the original action. Writs of coram nobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Rule 63. Disability of a Judge

If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or findings of fact and conclusions of law are filed, then any other judge sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that such other judge cannot perform those duties because such other judge did not preside at the trial or for any other reason, such other judge may in such other judge's discretion grant a new trial.

Rule 65. Injunction

(a) [NO CHANGE]

(b) Temporary Restraining Order; Notice; Hearing; Duration. A temporary restraining order may be granted without written or oral notice to the adverse party or the adverse party's attorney only if: (1) It clearly appears from specific facts shown by affidavit or by the verified complaint or by testimony that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the adverse party's attorney can be heard in opposition, and (2) the applicant or the applicant's attorney certifies to the court in writing or on the record the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; shall be filed forthwith in the clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry not to exceed 14 days, as the court fixes, unless within the time so fixed, the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and take precedence of all matters except older matters of the same character; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if such party does not do so, the court shall dissolve the temporary restraining order. On two (2) business days' notice to the party who obtained the temporary restraining order without notice or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

(c) to (e) [NO CHANGE]

(f) Mandatory. If merely restraining the doing of an act or acts will not effectuate the relief to which the moving party is entitled, an injunction may be made mandatory. Such relief may include an injunction restoring to any person any property from which such person may have been ousted or deprived of possession by fraud, force, or violence, or from which such person may have been kept out of possession by threats or words or actions which have a natural tendency to excite fear or apprehension of danger.

(g) to (i) [NO CHANGE]

Rule 66. Receivers

(a) When Appointed. A receiver may be appointed by the court in which the action is pending at any time:
(1) Before judgment, provisionally, on application of either party, when either party establishes a prima facie right to the property, or to an interest therein, which is the subject of the action and is in possession of an adverse party and such property, or its rents, issues, and profits are in danger of being lost, removed beyond the jurisdiction of the court, or materially injured or impaired; or
(2) to (3) [NO CHANGE]

(b) Oath and Bond; Suit on Bond. Before entering upon the receiver's duties, the receiver shall be sworn to perform them faithfully, and shall execute, with one or more sureties, an undertaking with the people of the state of Colorado, in such sum as the court shall direct, to the effect that the receiver will faithfully

discharge the receiver's duties and will pay over and account for all money and property which may come into the receiver's hands as the court may direct, and will obey the orders of the court therein. The undertaking, with the sureties, must be approved by the court, or by the clerk thereof when so ordered by the court, and may be sued upon in the name of the people of the state of Colorado, at the instance and for the use of any party injured.

(c) to (d) [NO CHANGE]

Rule 67. Deposit in Court

(a) [NO CHANGE]

(b) By Trustee. When it is admitted by the pleadings or examination of a party that the party has in the party's possession or under the party's control any money or other things capable of delivery which, being the subject of litigation, is held by the party as trustee for another party, or which belongs or is due to another party, upon motion, the court may order the same to be deposited in court or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

Rule 71. Process in Behalf of and Against Persons Not Parties

When an order is made in favor of a person who is not a party to the action, such person may enforce obedience to the order by the same process as if the person were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, such person is liable to the same process for enforcing obedience to the order as if the person were a party.

Rule 77. Courts and Clerks

(a) to (b) [NO CHANGE]

(c) Clerk's Office and Orders by Clerk. The clerk's office with the clerk or a deputy in attendance shall be open at such hours and on such days as may be provided by law, and by local rule not in conflict with law. All motions and applications in the clerk's office for issuing process, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the court are grantable of course by the clerk; but the clerk's action may be suspended or altered or rescinded by the court upon cause shown.

(d) [NO CHANGE]

Rule 78. Motion Day

Each court may establish regular times and places, at intervals sufficiently frequent for the prompt dispatch

of business, at which motions requiring notice and hearing may be heard and disposed of; but the judge at any time or place and on such notice, if any, as the judge considers reasonable may make orders for the advancement, conduct, and hearing of actions. To expedite its business, the court may make provision by rule or order for the submission and determination of motions without oral hearing, upon brief written statements of reasons in support and opposition. Trial courts may also provide by local rule for notices to set motions for hearing or for calling upon motions for hearing without prior setting.

Rule 86. Pending Water Adjudications Under 1943 Act

In any water adjudication under the provisions of article 9 of chapter 148, C.R.S. 1963, as amended, pending on August 12, 1971, in which any applicant files any statement of claim asking that the applicant's date of priority antedate any earlier decrees or adjudications, in order not to be forever barred the owners of affected rights must object and protest within the times and in the manner provided by the Water Right Determination and Administration Act of 1969; and the judge shall direct the clerk to publish once in a newspaper or newspapers of general circulation in the water division as set forth in said Act of 1969, within which the water district is incorporated, to provide, and which shall be, notice to all water users within the division. The language of such notice shall be substantially as follows:

"There has been filed in this proceeding a claim or claims which may affect in priority any water right claimed or heretofore adjudicated within this division and owners of affected rights must appear to object and protest as provided in the Water Right Determination and Administration Act of 1969, or be forever barred."

Rule 89. Notice When Priority Antedating an Adjudication is Sought

Whenever a claimant makes application for the determination of a water right or a conditional water right and claims that the claimant's date of priority will antedate any earlier adjudication or claims a priority date earlier than the effective date of one or more priorities awarded by a previous decree or decrees within the water division in which the application is filed (except when provision for such antedation or earlier priority is made by statute), in order not to be forever barred, the owners of affected rights must object and protest within the times and in the manner provided by statute, and the water clerk shall include in the resume required by statute a specific notification in boldface type substantially as follows:

"The water right claimed by this application may affect in priority any water right claimed or heretofore adjudicated within this division and owners of affected rights must appear to object and protest within the time provided by statute, or be forever barred."

COMMENT [NO CHANGE]

Rule 97. Change of Judge

A judge shall be disqualified in an action in which the judge is interested or prejudiced, or has been of

counsel for any party, or is or has been a material witness, or is so related or connected with any party or any party's attorney as to render it improper for the judge to sit on the trial, appeal, or other proceeding therein. A judge may be disqualified on the judge's own motion for any of said reasons, or any party may move for such disqualification and a motion by a party for disqualification shall be supported by affidavit. Upon the filing by a party of such a motion all other proceedings in the case shall be suspended until a ruling is made thereon. Upon disqualification, a judge shall notify forthwith the chief judge of the district who shall assign another judge in the district to hear the action. If no other judge in the district is available or qualified, the chief judge shall notify forthwith the court administrator who shall obtain from the Chief Justice the assignment of a replacement judge.

Rule 98. Place of Trial

(a) [NO CHANGE]

(b) Venue for Recovery of Penalty, etc. Actions upon the following claims shall be tried in the county where the claim, or some part thereof, arose:
(1) [NO CHANGE]
(2) Against a public officer or person specially appointed to execute such officer's duties, for an act done by virtue of the public officer's office, or against a person who by such officer's command, or in such officer's aid, does anything touching the duties of such officer, or for a failure to perform any act or duty which such officer is by law required to perform.

(c) to (d) [NO CHANGE]

(e) Motion to Change Venue; When Presented; Waiver; Effect of Filing.
(1) [NO CHANGE]
(2) If a motion to change venue is filed within the time permitted by section (a) of Rule 12 for the filing of a motion under the defenses numbered (1) to (4) of section (b) of Rule 12, the filing of such motion by a party under the provisions of subsection (1) of this section (e) alters the party's time to file a responsive pleading as follows: If the motion is overruled the responsive pleading shall be filed within 14 days thereafter unless a different time is fixed by the court, and if it is allowed the responsive pleading shall be filed within 14 days after the action has been docketed in the court to which the action is removed unless that court fixes a different time.
(3) Except as otherwise provided in an order allowing a motion to change venue, earlier ex parte and other orders affecting an action, or the parties thereto, shall remain in effect, subject to change or modification by order of the court to which the action is removed.

(f) Causes of Change. The court may, on good cause shown, change the place of trial in the following cases: (1) When the county designated in the complaint is not the proper county; (2) When the convenience of witnesses and the ends of justice would be promoted by the change.

(g) Change from County. If either party fears that the party will not receive a fair trial in the county in which the action is pending, because the adverse party has an undue influence over the minds of the inhabitants thereof, or that they are prejudiced against the party so that the party cannot expect a fair trial, the party may file a motion supported by an affidavit for a change of venue. The opposite party may file a counter motion and affidavit. If the motion is sustained the venue shall be changed.

(h) Transfers Where Concurrent Jurisdiction. All actions or proceedings in which district and county courts have concurrent jurisdiction, may, by stipulation of the parties and order of the court, be transferred by either court to such other court of the same county. Upon transfer, the court to which such cause is removed shall have and exercise the same jurisdiction as if originally commenced therein.

(i) Place Changed if All Parties Agree. When all parties assent, or when all parties who have entered their appearance assent and the remaining nonappearing parties are in default, the place of trial of an action in a district court may be changed to any other county in the district. The judgment entered therein, if any, shall be transmitted to the clerk of the district court of the original county for filing and recording .

(j) [NO CHANGE]

(k) Only One Change; No Waiver. In case the place of trial is changed the party securing the same shall not be permitted to apply for another change upon the same ground. A party does not waive the right to change of judge or place of trial if an objection thereto is made in apt time.

Rule 102. Attachments

(a) [NO CHANGE]

(b) Affidavit. No writ of attachment shall issue unless the party asserting the claim (hereinafter plaintiff), the plaintiff's agent or attorney, or some credible person for the plaintiff shall file in the court in which the action is brought an affidavit setting forth that the defendant is indebted to the plaintiff, or that the defendant is liable in damages to the plaintiff for a tort committed against the person or property of a resident of this state, stating the nature and amount of such indebtedness or claim for damages and setting forth facts showing one or more of the causes of attachment of section (c) of this Rule.

(c) Causes. No writ of attachment shall issue unless it be shown by affidavit or testimony in specific factual detail, within the personal knowledge of an affiant or witness, that there is a reasonable probability that any of the following causes exist:
(1) The defendant is a foreign corporation without a certificate of authority to do business in this state.
(2) The defendant has for more than four months been absent from the state, or the whereabouts of the defendant are unknown, or the defendant is a nonresident of this state, and all reasonable efforts to obtain in personam jurisdiction over the defendant have failed. Plaintiff must show what efforts have been made to obtain jurisdiction over the defendant.
(3) The defendant conceals the defendant or stands in defiance of an officer, so that process of law cannot be served upon the defendant.
(4) The defendant is presently about to remove the defendant's property or effects, or a material part thereof, from this state with intent to defraud, delay, or hinder one or more of the defendant's creditors, or to render process of execution unavailing if judgment is obtained.
(5) The defendant has fraudulently conveyed, transferred, or assigned the defendant's property or effects, or a material part thereof, so as to hinder or delay one or more of the defendant's creditors, or to render process or execution unavailing if judgment is obtained.
(6) The defendant has fraudulently concealed, removed, or disposed of the defendant's property or effects, or a material part thereof, so as to hinder or delay one or more of the defendant's creditors, or to render process of execution unavailing if judgment is obtained.

(7) The defendant is presently about to fraudulently convey, transfer, or assign the defendant's property or effects, or a material part thereof, so as to hinder or delay one or more of the defendant's creditors, or to render process of execution unavailing if judgment is obtained.
(8) The defendant is presently about to fraudulently conceal, remove, or dispose of the defendant's property or effects, or a material part thereof, so as to hinder or delay one or more of the defendant's creditors, or to render process of execution unavailing if judgment is obtained.
(9) The defendant has departed or is presently about to depart from this state, with the intention of having the defendant's property or effects, or a material part thereof, removed from the state.

(d) Plaintiff to Give Bond. Before the issuance of a writ of attachment the plaintiff shall furnish a bond that complies with the requirements of C.R.C.P. 121, § 1-23, in an amount set by the court in its discretion, not exceeding double the amount claimed, to the effect that if the defendant recover judgment, or if the court shall finally decide that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages defendant may sustain by reason of the wrongful suing out of the attachment. The defendant may require a surety to satisfy the court that the surety has sufficient assets, over and above debts and liabilities, in property located in this state and not by law exempt from execution, to pay the bond.

(e) Court Issues Writ of Attachment. After the affidavit and bond are filed as aforesaid and testimony had as the court may require, the court may issue a writ of attachment, directed to the sheriff of a specified county, commanding such sheriff to attach the lands, tenements, goods, chattels, rights, credits, moneys, and effects of said defendant, of every kind, or so much thereof as will be sufficient to satisfy the claim sworn to, regardless of whose hands or possession in which the same may be found.

(f) Contents of Writ and Notice. The writ shall direct the sheriff to serve a copy of the writ on the defendant if found in the county, and to attach and keep safely all the property of the defendant within the county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's claim, the amount of which shall be stated in conformity with the affidavit. The writ shall also inform the defendant of the right to traverse and to have a hearing to contest the attachment. If the defendant's property is or may be located in more than one county, additional or alias writs may be issued contemporaneously. If the defendant deposit the amount of money claimed by the plaintiff or give and furnish security by an undertaking, approved by the sheriff, of a corporate surety company or of at least two sureties in an amount sufficient to satisfy such claim, the sheriff shall take such money or undertaking in lieu of the property. Alias writs may issue at any time to the sheriffs of different counties.

(g) [NO CHANGE]

(h) Execution of Writ. The sheriff to whom the writ is directed and delivered shall execute the same without delay as follows:
(1) Real property standing upon the records of the county in the name of the defendant shall be attached by filing a copy of the writ, together with a description of the property attached, with the recorder of the county.
(2) Real property, or any interest therein belonging to the defendant, and held by any person, or standing upon the records of the county in the name of any other person but belonging to the defendant, shall be attached by leaving with such person or such person's agent, if either be found in the county, a copy of the writ and a notice that such real property (giving a description thereof), and any interest therein belonging to the defendant, are attached pursuant to such writ, and filing a copy of such writ and notice with the recorder of the county.
(3) Personal property shall be attached by taking it into custody.

(i) Return of Writ. The sheriff shall return the writ of attachment within 21 days after its receipt, with a certificate of the proceedings endorsed thereon, or attached thereto, making a full inventory of the property attached as a part of the sheriff's return upon the writ.

(j) [NO CHANGE]

(k) No Final Judgment Until 35 Days After Levy.
(1) *Creditors.* No final judgment shall be rendered in a cause wherein an attachment writ has been issued and a levy made thereunder, until the expiration of 35 days after such levy has been made; and any creditor of the defendant making and filing within said 35-day period an affidavit and undertaking, as hereinbefore required of the plaintiff, together with a complaint setting forth the creditor's claim against the defendant, shall be made a party plaintiff and have like remedies against the defendant to secure such creditor's claim, as the law gives to the original plaintiff.
(2) *Judgment Creditors.* Any other creditor whose claim has been reduced to judgment in this state may upon motion filed within said 35 days be made a party and have like remedies against the attached property. Such judgment creditor shall not be required to make or file an affidavit, undertaking or complaint, or have summons issue, provided, that any such judgment creditor may be required to prove to the satisfaction of the court that such judgment creditor's judgment is bona fide and not in fraud of the rights of other creditors.

(l) Dismissal by One Creditor Does Not Affect Others. After any additional creditor has been made a party to the action, as hereinbefore provided, a dismissal by the first or any subsequent attaching creditor of such creditor's cause of action, or proceedings in attachment, shall not operate as a dismissal of the attachment proceedings as to any other attaching creditor; but the remaining creditors may proceed to final judgment therein the same as though no such dismissal had been made.

(m) Final Judgment Prorated; When Creditors Preferred. The final judgment in said action shall be a several judgment, wherein each creditor named as plaintiff shall have and recover of the defendant the amount of such creditor's claim or demand, as found by the court to be due, together with such creditor's costs; and the money realized from the attachment proceedings, after paying all costs taxed in the attachment action, shall be paid to the participating creditors in proportion to the amounts of their several judgments; and any surplus moneys, if any, shall be paid to the defendant by order of the court, upon proof thereof. Provided, when the property is attached while the defendant is removing the same or after the same has been removed from the county, and the same is overtaken and returned, or while same is secreted by the defendant, or put out of the defendant's hands, for the purpose of defrauding the defendant's creditors, the court may allow the creditor or creditors through whose diligence the same shall have been secured a priority over other attachments or judgment creditors.

(n) Traverse of Affidavit.
(1) [NO CHANGE]
(2) A plaintiff who fails to prevail at the hearing provided by this section is liable to the defendant for any damages sustained as a result of the issuance of process, costs, and reasonable attorney's fees. A claim for damages under this subsection may be brought as part of the existing action, and the defendant shall be permitted to amend the defendant's answer and any counterclaim for this purpose.

(o) [NO CHANGE]

(p) Intervention; Damages. Any third person claiming any of the property attached, or any lien thereon

or interest therein, may intervene under the provisions of Rule 24, and in case of a judgment in such third person's favor may also recover damages suffered by reason of the attachment of the property.

(q) to (r) [NO CHANGE]

(s) Balance Due; Surplus. Whenever the judgment shall have been paid, the sheriff, upon demand, shall deliver over to the defendant the attached property remaining in the sheriff's hands, and any proceeds of the property attached unapplied on the judgment.

(t) [NO CHANGE]

(u) Defendant May Release Property; Bond. The defendant may at any time before judgment have released to the defendant any money in the hands of the clerk or any property in the hands of the sheriff, by virtue of any writ of attachment, by executing the undertaking provided in section (v) of this Rule. All the proceeds of sales, all money collected by the sheriff, and all the property attached remaining in the sheriff's hands shall thereupon be released from the attachment and delivered to the defendant upon the delivery and approval of the undertaking.

(v) Conditions of Bond; Liability of Sheriff. Before releasing the attached property to the defendant, the sheriff shall require and approve an undertaking executed by the defendant to the plaintiff either of a corporate surety company or with at least two sureties in such sum as may be fixed by the sheriff in not less than the value of the property, to the effect that in case the plaintiff recover judgment in the action, and the attachment is not dissolved, defendant will, on demand, redeliver such attached property so released to the proper officer, to be applied to the payment of the judgment, and that in default thereof the defendant and sureties will pay to the plaintiff the full value of the property so released. If a sheriff shall release any property held by the sheriff under any writ of attachment without taking a sufficient bond, the sheriff shall be liable to the plaintiff for the damages sustained thereby.

(w) to (y) [NO CHANGE]

Rule 104. Replevin

(a) Personal Property. The plaintiff in an action to recover the possession of personal property may, at the time of the commencement of the action, or at any time before trial, claim the delivery of such property to such plaintiff as provided in this Rule.

(b) Causes, Affidavit. Where a delivery is claimed, the plaintiff, the plaintiff's agent or attorney, or some credible person for the plaintiff, shall, by verified complaint or by complaint and affidavit under penalty of perjury show to the court as follows:
(1) to (2) [NO CHANGE]
(3) A particular description of the property, a statement of its actual value, and a statement to the plaintiff's best knowledge, information and belief concerning the location of the property and of the residence and business address, if any, of the defendant;
(4) That the property has not been taken for a tax assessment or fine pursuant to a statute; or seized under an execution against the property of the plaintiff; or if so seized, that it is by statute exempt from seizure.

(c) Show Cause Order; Hearing within 14 Days. The court shall without delay, examine the complaint

and affidavit, and if it is satisfied that they meet the requirements of section (b), it shall issue an order directed to the defendant to show cause why the property should not be taken from the defendant and delivered to the plaintiff. Such order shall fix the date and time for the hearing thereof. The hearing date shall be not more than 14 days from the date of the issuance of the order and the order must have been served at least 7 days prior to the hearing date. The plaintiff may request a hearing date beyond 14 days, which request shall constitute a waiver of the right to a hearing not more than 14 days from the date of issuance of the order. Such order shall inform the defendant that the defendant may file affidavits on the defendant's behalf with the court and may appear and present testimony in the defendant's behalf at the time of such hearing, or that the defendant may, at or prior to such hearing, file with the court a written undertaking to stay the delivery of the property, in accordance with the provisions of section (j) of this rule, and that, if the defendant fails to appear at the hearing on the order to show cause or to file an undertaking, plaintiff may apply to the court for an order requiring the sheriff to take immediate possession of the property described in the complaint and deliver same to the plaintiff. The summons and complaint, if not previously served, and the order shall be served on the defendant and the order shall fix the manner in which service shall be made, which shall be by service in accordance with the provisions of Rule 4, C.R.C.P., or in such manner as the court may determine to be reasonably calculated to afford notice thereof to the defendant under the circumstances appearing from the complaint and affidavit.

(d) Order for Possession Prior to Hearing. Subject to the provisions of section 5-5-104, C.R.S.1973, and upon examination of the complaint and affidavit and such other evidence or testimony as the court may thereupon require, an order of possession may be issued prior to hearing, if probable cause appears that any of the following exist:
(1) to (3) [NO CHANGE]
(4) That the defendant has by contract voluntarily and intelligently and knowingly waived the right to a hearing prior to losing possession of the property by means of a court order.
Where an order of possession has been issued prior to hearing under the provisions of this section, the defendant or other persons from whom possession of said property has been taken, may apply to the court for an order shortening time for hearing on the order to show cause, and the court may, upon such application, shorten the time for hearing, and direct that the matter shall be heard on not less than forty-eight hours' notice to the plaintiff.

(e) to (g) [NO CHANGE]

(h) Contents of Possession Order. The order of possession shall describe the specific property to be seized, and shall specify the location or locations where there is probable cause to believe the property or some part thereof will be found. It shall direct the sheriff to seize the same as it is found, and to retain it in the sheriff's custody. There shall be attached to such order a copy of the written undertaking filed by the plaintiff, and such order shall inform the defendant of the right to except to the sureties or to the amount of the bond upon the undertaking or to file a written undertaking for the redelivery of such property as provided in section (j).

Upon probable cause shown by further affidavit or declaration by the plaintiff or someone in the plaintiff's behalf, filed with the court, an order of possession may be endorsed by the court, without further notice, to direct the sheriff to search for the property at another specified location or locations and to seize the same if found.

The sheriff shall forthwith take the property if it be in the possession of the defendant or the defendant's agent, and retain it in the sheriff's custody; except that when the personal property is then occupied as a dwelling [such as but not limited to a mobile home], the sheriff shall take constructive possession of the

property and shall remove its occupants and take the property into the sheriff's actual custody at the expiration of 10 days after the issuance of the order of possession, or at such earlier time as the property shall have been vacated.

(i) Sheriff May Break Building; When. If the property or any part thereof is in a building or enclosure, the sheriff shall demand its delivery, announcing the sheriff's identity, purpose, and the authority under which the sheriff acts. If it is not voluntarily delivered, the sheriff shall cause the building or enclosure to be broken open in such manner as the sheriff reasonably believes will cause the least damage to the building or enclosure, and take the property into the sheriff's possession. The sheriff may call upon the power of the county to aid and protect the sheriff, but if the sheriff reasonably believes that entry and seizure of the property will involve a substantial risk of death or serious bodily harm to any person, the sheriff shall refrain from seizing the property, and shall forthwith make a return before the court from which the order issued, setting forth the reasons for the sheriff's belief that such risk exists. The court may make such orders and decrees as may be appropriate.

The sheriff shall, without delay, serve upon the defendant a copy of the order of possession and written undertaking by delivering the same to the defendant personally, if the defendant can be found or to the defendant's agent from whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either with some person of suitable age and discretion; or if neither has any known place of abode, by mailing them to the last known address of either.

(j) When Returned to Defendant; Bond. At any time prior to the hearing on the order to show cause, or before the delivery of the property to the plaintiff, the defendant may require the return thereof upon filing with the court a written undertaking, in an amount set by the court in its discretion not to exceed double the value of the property and executed by the defendant and such surety as the court may direct for the delivery of the property to the plaintiff, if such delivery be ordered, and for the payment to the plaintiff of such sum as may for any cause be recovered against the defendant. At the time of filing such undertaking, the defendant shall serve upon the plaintiff or the plaintiff's attorney, in the manner provided by Rule 5, C.R.C.P., a notice of filing of such undertaking, to which a copy of such undertaking shall be attached, and shall cause proof of service thereof to be filed with the court. If such undertaking be filed prior to hearing on the order to show cause, proceedings thereunder shall terminate, unless exception is taken to the amount of the bond or the sufficiency of the surety. If, at the time of filing of such undertaking, the property shall be in the custody of the sheriff, such property shall be redelivered to the defendant 7 days after service of notice of filing such undertaking upon the plaintiff or the plaintiff's attorney.

(k) Exception to Sureties. Either party may, within two business days after service of an undertaking or notice of filing and undertaking under the provisions of this Rule, give written notice to the court and the other party that such party excepts to the sufficiency of the surety or the amount of the bond. If such party fails to do so, the party is deemed to have waived all objections to them. When a party excepts the court shall hold a hearing to determine the sufficiency of the bond or surety. If the property be in the custody of the sheriff, the sheriff shall retain custody thereof until the hearing is completed or waived. If the excepting party prevails at the hearing, the sheriff shall proceed as if no such undertaking had been filed. If the excepting party does not prevail at the hearing, or the exception is waived, the sheriff shall deliver the property to the party filing such undertaking.

(l) Duty of Sheriff in Holding Goods. When the sheriff has taken property as provided in this Rule, the sheriff shall keep it in a secure place and deliver it to the party entitled thereto, upon receiving the sheriff's fees for taking and the sheriff's necessary expenses for keeping the same, after expiration of the time for filing of an undertaking for redelivery and for exception to the sufficiency of the bond, unless the court

shall by order stay such delivery.

(m) Claim by Third Person. If the property taken is claimed by any other person than the defendant or plaintiff, such person may intervene under the provisions of Rule 24, C.R.C.P., and in the event of a judgment in such person's favor, the person may also recover such damages as the person may have suffered by reason of any wrongful detention of the property.

(n) Return; Papers by Sheriff. The sheriff shall return the order of possession and undertakings and affidavits with the sheriff's proceedings thereon, to the court in which the action is pending, within 21 days after taking the property mentioned therein.

(o) to (p) [NO CHANGE]

Rule 105. Actions Concerning Real Estate

(a) [NO CHANGE]

(b) Record Interest; Actual Possession Requires Occupant Be Party. No person claiming any interest under or through a person named as a defendant need be made a party unless the person's interest is shown of record in the office of the recorder of the county where the real property is situated, and the decree shall be as conclusive against the person as if the person had been made a party; provided, however, if such action be for the recovery of actual possession of the property, the party in actual possession shall be made a party.

(c) Disclaimer Saves Costs. If any defendant in such action disclaims in the answer any interest in the property or allows judgment to be taken against the defendant without answer, the plaintiff shall not recover costs against the defendant, unless the court shall otherwise direct, provided that this section shall not apply to a defendant primarily liable on any indebtedness sought to be foreclosed or established as a lien.

(d) [NO CHANGE]

(e) Set-off for Improvements. Where a party or those under whom the party claims, holding under color of title adversely to the claims of another party, shall in good faith have made permanent improvements upon real property (other than mining property) the value of such improvements shall be allowed as a set-off or as a counterclaim in favor of such party, in the event that judgment is entered against such party for possession or for damages for withholding of possession.

(f) to (g) [NO CHANGE]

COMMITTEE COMMENT [NO CHANGE]

Rule 106. Forms of Writs Abolished

(a) Habeas Corpus, Mandamus, Quo Warranto, Certiorari, Prohibition, Scire Facias and Other

Remedial Writs in the District Court. Special forms of pleadings and writs in habeas corpus, mandamus, quo warranto, certiorari, prohibition, scire facias, and proceedings for the issuance of other remedial writs, as heretofore known, are hereby abolished in the district court. Any relief provided hereunder shall not be available in county courts. In the following cases relief may be obtained in the district court by appropriate action under the practice prescribed in the Colorado Rules of Civil Procedure:
(1) Where any person not being committed or detained for any criminal or supposed criminal matter is illegally confined or restrained of liberty;
(2) Where the relief sought is to compel a lower judicial body, governmental body, corporation, board, officer or person to perform an act which the law specially enjoins as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such lower judicial body, governmental body, corporation, board, officer, or person. The judgment shall include any damages sustained;
(3) to (4) [NO CHANGE]
(5) When judgment is recovered against one or more of several persons jointly indebted upon an obligation, and it is desired to proceed against the persons not originally served with the summons who did not appear in the action. Such persons may be cited to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons, and in an answer any such person may set up any defense either to the original obligation or which may have arisen subsequent to judgment, except a discharge from the original liability by the statute of limitations.

(b) [NO CHANGE]

COMMENT [NO CHANGE]

Rule 106.5. Correctional Facility Quasi-Judicial Hearing Review

(a) to (h) [NO CHANGE]

(i) Briefs.
(1) [NO CHANGE]
(2) If the defense counsel files an answer and the Warden files the certified record, the inmate shall have 42 days following notice of filing of the record in which to file a brief. In this event, the brief shall set forth the reasons why the inmate believes that the District Court should rule that the Warden has exceeded the Warden's jurisdiction or abused the Warden's discretion. The inmate must set forth in the brief specific references to the record that support the inmate's position. Defense counsel shall have 35 days after service of the brief to file a response and the inmate shall have 14 days after service of the response to file a reply.

(j) to (k) [NO CHANGE]

Rule 110. Miscellaneous

(a) [NO CHANGE]

(b) Use of Terms. Words used in the present tense shall include the future; singular shall include the plural; person or party shall include all manner of organizations which may sue or be sued. The use of the word clerk, sheriff, marshal, or other officer means such officer or the deputy or other person authorized to perform such officer's duties. The word "oath" includes the word "affirmation." The phrase "to swear" includes "to affirm." Signature or subscription shall include mark when the person is unable to write, the person's name is written near the mark, and the marking is witnessed by a person who writes such person's own name as a witness. A superintendent, overseer, foreman, sales director, or person occupying a similar position, may be considered a managing agent for the purposes of these rules.

(c) Certificates. Certificates shall be made in the name of the officer either by the officer or by the officer's deputy.

(d) [NO CHANGE]

Rule 121. Local Rules--Statewide Practice Standards

[NO CHANGE]

Section 1-1. to Section 1-5. [NO CHANGE]

Section 1-6. SETTINGS FOR TRIALS OR HEARINGS/SETTINGS BY TELEPHONE

1. to **2. [NO CHANGE]**

3. Any attorney receiving the notice to set who does not personally appear at the setting shall have personnel at the attorney's office, supplied with a current appointment calendar and authorized to make settings for that attorney, at the date and time in the notice.

4. [NO CHANGE]

COMMITTEE COMMENT [NO CHANGE]

Section 1-7. to Section 1-13. [NO CHANGE]

Section 1-14. DEFAULT JUDGMENTS

1. to 2. [NO CHANGE]

3. If the party against whom default judgment is sought is in the military service, or the party's 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 members Civil Relief Act (SCRA), 50 U.S.C. § 3931, 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. In proceedings which come within the provisions of Rules 55 or 120, C.R.C.P., attendance by the moving party or the moving party's attorney shall not be necessary in any instance in which all necessary elements for entry of default under those rules are self-evident from verified motion in the court file. When such matter comes up on the docket with no party or attorney appearing and the court is of the opinion that necessary elements are not so established, the court shall continue or vacate the hearing and advise the moving party or attorney accordingly.

COMMENT [NO CHANGE]

Section 1-15. to Section 1-26. [NO CHANGE]

June 5, 2025

J. Aaron Atkinson, Esq.
aa@hsaglaw.com
(303) 534 -4317

VIA Electronic Mail
The Civil Rules Committee
Attention: Kathryn Michaels
Colorado Judicial Branch
Kathryn.michaels@judicial.state.co.us

Re: Proposed Rule Change
Subject: Colorado Rule of Civil Procedure 121(c), sections 1-1 and 1-15

Dear Ms. Michaels,

We are writing to the Civil Rules Committee to propose two changes to the Colorado Rules of Civil Procedure, specifically to Rule 121(c), sections 1–1 and 1–15. Attached to this letter in support is a draft of our proposed changes. Our analysis for these recommended amendments is set forth below.

Section 1-1. Entry of Appearance and Withdrawal

Our first proposed change aims to clarify the procedural requirements that a moving party must follow when requesting attorney fees as a sanction against withdrawn counsel. Colorado Rule of Civil Procedure 121(c), which addresses standard practice for both motions and attorney fees, does not currently specify the procedures for a motion for attorney fees against counsel after the Court has granted the attorney leave to withdraw.

The lack of specificity in the Rules can result in a lack of proper notice and prevent withdrawn counsel from adequate participation in the proceedings against them.

This revision to the Practice Standard is necessary to cure the lack of guidance in these situations, thereby ensuring that withdrawn attorneys receive notice and opportunity to rebut the claims against them. Withdrawn attorneys occupy a unique position in the context of the case, as they were never parties to the case. However, they maintain a certain relationship to the case by virtue of

their licensure and appearance on behalf of a party. It is because of this that withdrawn attorneys may still be subject to court-ordered sanctions for their pre-withdrawal conduct in the case.

In these circumstances, the lack of guidance is found in the manner of notice that is necessary for this unique situation, i.e., service of the motion for attorney fees pursuant to Rule 4 or Rule 5. Further, there is no consistency as to the level of conferral that is necessary with the attorney who is no longer officially affiliated with a case following withdrawal because the Court has not formally joined the withdrawn attorney under these Rules. The amendment also reinforces the concepts of conferral prior to filing a motion and certification in the motion regarding the same.

The Committee should amend Section 1-1 in accordance with this proposal in order to establish the minimal level of compliance necessary to ensure due process to justice.

Section 1-15. Determination of Motions

Our second proposed revision addresses the proper mechanism for requesting attorney fees generally as pretrial sanctions. We recommend amending Rule 121(c), section 1-15(7), to include language clarifying that requests for attorney fees based on pretrial conduct must not be embedded within motions, response briefs, or reply briefs. Instead, parties must present such requests in a separate motion that complies with the procedural requirements set forth in section 1-15.

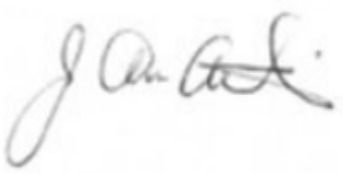
This clarification addresses the gross abuse and frequency of claims for attorney fees in the context of civil litigation in Colorado. The lack of guidance in the Rules regarding requests for sanctions under paragraph 7 leads to repetitive and often unfounded allegations of misconduct geared solely towards shifting risk or unfounded coercion in the case. By extension, this results in parties litigating threats of sanctions as opposed to the merits of a party's case. The current state of the Rules risks incentivizing the improper pursuit of attorney fees. Mandating that such requests be made independently serves to extricate threats from the process and thereby to foster a merit-based analysis of the relief requested.

This revision fits well within the current structure of section 1-15. For example, section 1-15(d) specifically provides that "[a] motion shall not be included in a response or reply to the original motion." And it has become more common in Colorado for district courts to issue pretrial orders *sua sponte* forbidding the inclusion of multiple requests for relief within a single motion.

Our proposed amendment does not curtail a party's right to seek attorney fees. Rather, it reinforces procedural integrity by requiring that such requests be made in a dedicated motion, allowing the opposing party a fair opportunity to respond. It also encourages moving parties to present well-supported and specific grounds for fee requests—rather than weaponizing them for intimidation. Ultimately, this revision promotes a more transparent and just system, discouraging the misuse of attorney fee claims and supporting the core adversarial principle that courts should decide motions on their merits.

We appreciate the Committee's consideration of our proposed revisions and welcome the opportunity to provide additional information or clarification that may assist in your review. We would be glad to discuss these recommendations further or offer supporting materials upon request. Thank you for your time and attention to these important issues.

Sincerely,



J. Aaron Atkinson
Kaylee A. Sims

JAA/kas

Rule 121. Local Rules—Statewide Practice Standards

(a)-(c) [NO CHANGE]

Section 1 – 1 ENTRY OF APPEARANCE WITH WITHDRAWAL

1. – 5. [NO CHANGE]

6. Requests for Attorney Fees Against Withdrawn Counsel. Any party requesting attorney fees as a pre-trial sanction against counsel who has withdrawn from the case shall confer with the withdrawn attorney before filing a motion in accordance with Practice Standard § 1-15(8). Upon filing, the moving party shall serve the motion for attorney fees, along with written notice that the moving party intends to seek attorney fees from the withdrawn attorney, upon withdrawn counsel pursuant to C.R.C.P. 5(b). In addition to meeting the other requirements of these Rules, the motion shall, at the beginning, contain a certification that the movant in good faith has conferred with withdrawn counsel and served a notice and copy of the motion in accordance with this standard.

COMMENTS [NO CHANGE]

Section 1 – 2 to 1 – 14 [NO CHANGE]

Section 1-15 DETERMINATION OF MOTIONS

1. – 6. [NO CHANGE]

7. Sanctions. If a frivolous motion is filed or if frivolous opposition to a motion is interposed, the court may assess reasonable attorney's fees against the party or attorney filing such motion or interposing such opposition. Requests for attorney fees related to pre-trial sanctions shall not be combined with any other motion, response brief, or reply brief. Such requests must be made in a separate motion in compliance with this section 1-15.

8. – 11. [NO CHANGE]

COMMENTS [NO CHANGE]

Section 1 – 16 to 1 – 26 [NO CHANGE]

Rule 121. Local Rules—Statewide Practice Standards

(a)-(c) [NO CHANGE]

Section 1 – 1 ENTRY OF APPEARANCE WITH 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 14 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 proceedings affected by the withdrawal of counsel;

(IV) the client's and the other parties' right to object to the motion to withdraw within 14 days after service of the motion;

(V) if the client is not a natural person, that it must be represented by counsel in any court proceedings unless it is a closely held entity and first complies with section 13-1-127, C.R.S.; and

(VI) the client's last known address and telephone number.

(c) The client and the opposing parties shall have 14 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 14 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.

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 14 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.

5. Notice of Limited Representation Entry of Appearance and Withdrawal. In accordance with C.R.C.P. 11(b) and C.R.C.P. Rule 311(b), an attorney may undertake to provide limited representation to a pro se party involved in a court proceeding. Upon the request and with the consent of a pro se party, an attorney may make a limited appearance for the pro se party in one or more specified proceedings, if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the proceeding(s) for which the attorney appears. At the conclusion of such proceeding(s), the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance. Service on an attorney who makes a limited appearance for a party shall be valid only in connection with the specific proceeding(s) for which the attorney appears.

6. Requests for Attorney Fees Against Withdrawn Counsel. Any party requesting attorney fees as a pre-trial sanction against counsel who has withdrawn from the case shall confer with the withdrawn attorney before filing a motion in accordance with Practice Standard § 1-15(8). Upon filing, the moving party shall serve the motion for attorney fees, along with written notice that the moving party intends to seek attorney fees from the withdrawn attorney, upon withdrawn counsel pursuant to C.R.C.P. 5(b). In addition to meeting the other requirements of these Rules, the motion shall, at the beginning, contain a certification that the movant in good faith has conferred with withdrawn counsel and served a notice and copy of the motion in accordance with this standard.

COMMENTS [NO CHANGE]

Section 1 – 2 to 1 – 14 [NO CHANGE]

Section 1-15 DETERMINATION OF MOTIONS

1. Motions and Briefs; When Required; Time for Serving and Filing — Length.

(a) Except motions during trial or where the court orders that certain or all non-dispositive motions be made orally, any motions involving a contested issue of law shall be supported by a recitation of legal authority incorporated into the motion, which shall not be filed with a separate brief. Unless the court orders otherwise, motions and responsive briefs not under C.R.C.P. 12(b)(1) or (2), or 56 are limited to 15 pages, and reply briefs to 10 pages, not including the case caption, signature block, certificate of service and attachments. Unless the court orders otherwise, motions and responsive briefs under C.R.C.P. 12(b)(1) or (2) or 56 are limited to 25 pages, and reply briefs to 15 pages, not including the case caption, signature block, certificate of service and attachments. All motions and briefs shall comply with C.R.C.P. 10(d).

(b) The responding party shall have 21 days after the filing of the motion or such lesser or greater time as the court may allow in which to file a responsive brief. If a motion is filed 42 days or less before the trial date, the responding party shall have 14 days after the filing of the motion or such lesser or greater time as the court may allow in which to file a responsive brief.

(c) Except for a motion pursuant to C.R.C.P. 56, the moving party shall have 7 days after the filing of the responsive brief or such greater or lesser time as the court may allow to file a reply brief. For a motion pursuant to C.R.C.P. 56, the moving party shall have 14 days after the filing of the responsive brief or such greater or lesser time as the court may allow to file a reply brief.

(d) A motion shall not be included in a response or reply to the original motion.

2. Affidavits. If facts not appearing of record may be considered in disposition of the motion, the parties may file affidavits with the motion or within the time specified for filing the party's brief in this section 1-15, Rules 6, 56 or 59, C.R.C.P., or as otherwise ordered by the court. Copies of such affidavits and any documentary evidence used in connection with the motion shall be served on all other parties.

3. Effect of Failure to File Legal Authority. If the moving party fails to incorporate legal authority into a written motion, the court may deem the motion abandoned and may enter an order denying the motion. Other than motions seeking to resolve a claim or defense under C.R.C.P. 12 or 56, failure of a responding party to file a responsive brief may be considered a confession of the motion.

4. Motions to Be Determined on Briefs, When Oral Argument Is Allowed; Motions Requiring Immediate Attention. Motions shall be determined promptly if possible. The court has discretion to order briefing or set a hearing on the motion. If possible, the court shall determine oral motions at the conclusion of the argument, but may take the motion under advisement or require briefing before ruling. Any motion requiring immediate disposition shall be called to the attention of the courtroom clerk by the party filing such motion.

5. Notification of Court's Ruling; Setting of Argument or Hearing When Ordered. Whenever the court enters an order denying or granting a motion without a hearing, all parties shall be forthwith notified by the court of such order. If the court desires or authorizes oral argument or an evidentiary hearing, all parties shall be so notified by the court. After notification, it shall be the responsibility of the moving party to have the motion set for oral argument or hearing. Unless the court orders otherwise, a notice to set oral argument or hearing shall be filed in accordance with Practice Standard § 1-6 within 7 days of notification that oral argument or hearing is required or authorized.

6. Effect of Failure to Appear at Oral Argument or Hearing. If any of the parties fails to appear at an oral argument or hearing, without prior showing of good cause for non-appearance, the court may proceed to hear and rule on the motion.

7. Sanctions. If a frivolous motion is filed or if frivolous opposition to a motion is interposed, the court may assess reasonable attorney's fees against the party or attorney filing such motion or interposing such opposition. Requests for attorney fees related to pre-trial sanctions shall not be combined with any other motion, response brief, or reply brief. Such requests must be made in a separate motion in compliance with this section 1-15.

8. Duty to Confer. Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel and any self-represented party shall confer with opposing counsel and any self-represented parties before filing a motion. The requirement of self-represented parties to confer and the requirement to confer with self-represented parties shall not apply to any incarcerated person, or any self-represented party as to whom the requirement is contrary to court order or statute, including, but not limited to, any person as to whom contact would or precipitate a violation of a protection or restraining order. The motion shall, at the beginning, contain a certification that the movant in good faith has conferred with opposing counsel and any self-represented parties about the motion. 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, including all efforts to confer, shall be stated.

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

10. Proposed Order. Except for orders containing signatures of the parties or attorneys as required by statute or rule, each motion shall be accompanied by a proposed order submitted in editable format. The proposed order complies with this provision if it states that the requested relief be granted or denied.

11. Motions to Reconsider. Motions to reconsider interlocutory orders of the court, meaning motions to reconsider other than those governed by C.R.C.P. 59 or 60, are disfavored. A party moving to reconsider must show more than a disagreement with the court's decision. Such a motion must allege a manifest error of fact or law that clearly mandates a different result or other circumstance resulting in manifest injustice. The motion shall be filed within 14 days from the date of the order, unless the party seeking reconsideration shows good cause for not filing within that time. Good cause for not filing within 14 days from the date of the order includes newly available material evidence and an intervening change in the governing legal standard. The court may deny the motion before receiving a responsive brief under paragraph 1(b) of this standard.

COMMENTS [NO CHANGE]

Section 1 – 16 to 1 – 26 [NO CHANGE]

THE BYRNES LAW FIRM

1530 S. Tejon Street

Colorado Springs, Colorado

719-304-0005 / jim.yontz@laurelbyrnes.com

July 2, 2025

Re: Suggested addition to Rules of Civil Procedure

The Honorable Jerry N. Jones, Colorado Court of Appeals

Justice Richard L. Gabriel, Supreme Court of Colorado

Judge Jones and Justice Gabriel,

For about 37 years I practiced criminal law as a District Attorney and Assistant Attorney General. For the past 5 years I have been involved primarily in the practice of Civil Law, the majority of my practice being Family Law.

I have handled many cases dealing with both Punitive and Remedial Contempt proceedings. In dealing with Contempt matters, I have become fairly well acquainted with the law surrounding these proceedings. It is my understanding that the Contempt proceeding is *quasi-criminal* in nature. The accused is afforded many of the same rights and protections that are afforded to criminal defendants. However, there appears to be one significant area that is *not* covered in Contempt Proceedings but is, nonetheless, a major concern in criminal proceedings. This is the issue of speedy trial.

Both the Court of Appeals and the Supreme Court are aware of the law regarding these matters, so I will avoid the temptation to restate the law. Nevertheless, my suggestion is to place a *speedy trial* requirement on Contempt Proceedings. I suggest the rules be amended to require the matter to be heard within 180 days of the Advisement Hearing or Waiver of Advisement where a plea is entered. This would both foster judicial economy and protect the accused from the protracted uncertainty of receiving a fine or loss of property or liberty hanging over his head. This would also be consistent with the other safeguards afforded an accused in a Contempt Proceeding as well as meet the constitutional standard for a speedy trial.

Should you have questions, please contact me. I sincerely appreciate your taking time to look at this matter.

Sincerely,

Jim Yontz

Attorney Registration # 41935

From:	jones, jerry
To:	michaels, kathryn
Subject:	FW: Civil Rules Committee - VD rule changes
Sent:	8/29/2025 2:09:47 PM

Here's the one from Brad Levin.

From: Bradley A. Levin <brad@lsw-legal.com>
Sent: Monday, August 4, 2025 12:46 PM
To: jones, jerry <jerry.jones@judicial.state.co.us>
Subject: [EXTERNAL] FW: Civil Rules Committee - VD rule changes

Judge Jones,

I received the below email from Kevin Cheney, a member of the Colorado Trial Lawyers Association which, as I understand it, has a committee that has been studying potential changes to Colorado's rules concerning voir dire in civil cases. Mr. Cheney has asked whether members of the committee can be included on the agenda for the next meeting to present the proposals set forth in the email.

Brad

Bradley A. Levin
Attorney
LEVIN SITCOFF
455 Sherman St., Ste. 490
Denver, CO 80203
Tel: 303-575-9390
www.lsw-legal.com

From: Kevin Cheney <kevin@cghlawfirm.com>
Sent: Monday, August 4, 2025 10:30 AM
To: Bradley A. Levin <brad@lsw-legal.com>
Subject: Civil Rules Committee - VD rule changes

Hey Brad,

The VD reform group met today and we are now ready to move forward with

proposing it to the rules committee. Can you please ask about getting us on the agenda for the next meeting?

The proposal would be as follows:

Idea 1 - Questionnaires - make them mandatory upon request of either party

Change C.R.C.P. 47(a)(3) from "In the discretion of the judge, juror questionnaires, posterboards and other methods may be used." to "Upon request of either party, a questionnaire shall be provided to potential jurors. At the discretion of the judge, posterboards and other methods may be used."

Idea 2 - Length of VD - 1 hour mandatory minimum

Change C.R.C.P. 47(a)(3) from "The judge may limit the time available to the parties or their counsel for juror examination based on the needs of the case." to "The judge may limit the time available to the parties or their counsel for juror examination based on the needs of the case, but in no case shall the judge provide less than one hour per side."

Idea 3 - Rehabilitation reform

Change C.R.C.P. 47(e)(6 -7) by adding section (8) from "**(6)** Having formed or expressed an unqualified opinion or belief as to the merits of the action; **(7)** The existence of a state of mind in the juror evincing enmity against or bias to either party." to (8) no juror expressing unqualified opinions under section (6) or enmity or bias under section (7) may be deemed rehabilitated regardless of their willingness to follow the law or set those opinions or bias aside.

--

Kevin Cheney
Managing Partner

2701 Lawrence St. Suite 201
Denver, CO. 80205

303.209.9395

Kevin@cghlawfirm.com

www.cghlawfirm.com

We love referrals.
Remind your friends when life happens, CGH can help!

From:	jones, jerry
To:	michaels, kathryn
Subject:	FW: The "masters" now call themselves "neutrals"
Sent:	9/19/2025 10:08:26 AM

From: lipinsky, lino <lino.lipinsky@judicial.state.co.us>
Sent: Monday, March 10, 2025 8:59 AM
To: jones, jerry <jerry.jones@judicial.state.co.us>
Subject: RE: The "masters" now call themselves "neutrals"

I learned at the ACAN meeting that the Colorado-based members of the organization have been discussing with Rich Gabriel and Becky Kourlis a proposal to replace “master” in C.R.C.P. 53 with “court-appointed neutral.” David Tenner and Greg Whitehair, who attended Friday’s meeting in Washington, are part of this effort.

Tenner said the group was also approaching the Rules Committee of the United States Courts about the language issue but was aware it can take years to amend one of the Federal Rules. Tenner said his group hopes that the references to “master” in C.R.C.P. 53 can be addressed before the federal Rules Committee makes a decision on use of “court-appointed neutral.”

Lino S. Lipinsky de Orlov
Judge
Colorado Court of Appeals
2 East 14th Avenue
Denver, CO 80203
lino.lipinsky@judicial.state.co.us

From: lipinsky, lino
Sent: Wednesday, March 5, 2025 2:41 PM
To: jones, jerry <jerry.jones@judicial.state.co.us>
Subject: The "masters" now call themselves "neutrals"

https://www.courtappointedneutrals.org/about/about-acan/

Lino S. Lipinsky de Orlov
Judge
Colorado Court of Appeals
2 East 14th Avenue
Denver, CO 80203
lino.lipinsky@judicial.state.co.us

From:	Ross Ziev
To:	gabriel, richard; jones, jerry;
Cc:	michaels, kathryn
Subject:	[EXTERNAL] Re: Civil Rules Committee
Attachments:	Rule 69 Execution and Proceedings Subsequent to Judgment - redlined for rules committee.doc.rtf
Sent:	9/10/2025 5:30:11 PM

That is excellent, thank you for all of that information. Here is the redlined version of Rule 69 and here is my description for why this is required.

Right now, the requirement that Debtor interrogatories are served on the debtor pursuant to CRCP 45 is being interpreted as requiring personal service on a judgment debtor, even when that judgment debtor has been, and continues to be represented by counsel. This is a fantastic waste of money and resources.

C.R.C.P 45(b)(2) allows service of a subpoena by personal service or "service as otherwise ordered by the court consistent with due process." The Rule continues that "[s]ervice is also valid if the person named in the subpoena has signed a written acknowledgement or waiver of service." C.R.C.P. 5(b)(2) and C.R.C.P. 121 Section 1-26 § 1(d) make it clear that a represented party to a civil action has authorized his attorney to accept service for him through the e-filing system. "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." C.R.C.P.5(b)(2).

Regular discovery already acts in this way. A party that wishes to serve discovery on a party who is represented, must serve those papers on the attorney of record. *In re Marriage of Cooper*, 113 P.3d 1263, 1264 (Colo. App. 2005). Finally, a party is not supposed to contact a represented party directly. Colo. R. Prof'l. Cond. 4.2.

Requiring personal service is almost encouraging a judgment creditor who has been fully involved in the process with an attorney or record to now buy more time by evading proper service. This rule was last amended in 2012. Through e-filing, we have a digital record showing that we have distributed the documents directly to the attorney of record. Also if we are looking at the just, speedy and inexpensive determination of the action, then the current rule, which requires the creditor who is already out money to then pay more money to hire a process server and then wait for 21 days, and then if they don't answer, file and brief a motion to the court to get an order requiring the debtor to respond to the interrogatories which they already had a duty to respond to and then once they dont respond, file and brief and motion for a contempt citation. Let's cut out the middle part of getting an order since we are already issuing the Rule 69 Interrogatories and Suboena to appear as officers of the court.

Please let me know if you have any questions. Thank you.

Ross Ziev

Founding Partner

Legal Help In Colorado - The Law Offices of Ross Ziev, P.C.

8480 E. Orchard Rd., #2400, Greenwood Village, CO 80111

Rule 69. Execution and Proceedings Subsequent to Judgment

(a) to (c) [NO CHANGE]

(d) Requirement that Judgment Debtor Answer Written Interrogatories.

(1) At any time after entry of a final money judgment, the judgment creditor may serve written interrogatories upon the judgment debtor ~~in accordance with C.R.C.P. 45~~, requiring the judgment debtor to answer the interrogatories. Within 21 days of service of the interrogatories ~~upon the judgment debtor~~, the judgment debtor shall either serve responses, signed under oath or appear before the clerk of the court in which the judgment was entered to sign the answers to the interrogatories under oath and file them.

(2) If the judgment debtor, after being properly served with written interrogatories as provided by this Rule, fails to answer the served interrogatories, the judgment creditor may file a motion, with ~~return~~ proof of service of the previously served written interrogatories attached thereto, and request an order of court requiring the judgment debtor ~~to either answer the previously served written interrogatories within 21 days in accordance with the provisions of (d)(1) of this Rule or~~to appear in court at a specified time to show cause why the judgment debtor shall not be held in contempt of court for failure to ~~comply with the order requiring answers to~~answer the interrogatories; a copy of the motion and exhibits ~~, written interrogatories and a certified order of court~~ shall be served upon judgment debtor ~~in accordance with C.R.C.P. 45~~.

(3) If judgment has entered because of default, written interrogatories shall be served on the judgment debtor in accordance with C.R.C.P. 45.

(e) Subpoena for Appearance of Judgment Debtor.

(1) At any time after entry of a final money judgment, a judgment creditor may cause a subpoena or subpoena to produce to be served ~~as provided in C.R.C.P. 45~~ requiring the judgment debtor to appear before the court, master or referee with requested documents at a specified time obtained from the court to answer concerning property. A judgment debtor may be required to attend outside the county where such judgment debtor resides and the court may make reasonable orders for mileage and expenses. The subpoena shall include on its face a conspicuous notice to the judgment debtor that provides: "Failure to Appear Will Result in Issuance of a Warrant for Your Arrest."

(2) If the judgment debtor, after being properly served with a subpoena or subpoena to produce ~~as provided in C.R.C.P. 45,~~ fails to appear, the court upon motion of the judgment creditor shall issue a bench warrant commanding the sheriff of any county in which the judgment debtor may be found, to arrest and bring the judgment debtor forthwith before the court for proceedings under this Rule.

(f) to (i) [NO CHANGE]

Thanks, Ben. Please send this to Kathryn Michaels.

From: Ben Vinci <ben@vincilaw.com>
Sent: Friday, October 31, 2025 10:39 AM
To: jones, jerry <jerry.jones@judicial.state.co.us>
Subject: [EXTERNAL] Re: Rules regarding conferral

Judge Jones

I hope this message finds you well. I apologize for any confusion caused by my earlier email—I should have included the specific rule reference at the outset.

In addition to amending Rule 1-15(8) to clarify that email communication constitutes a valid conferral, I would like to address Rule 16(b)(3). Some judges have taken the position that email exchanges do not satisfy the conferral requirement under this rule. I respectfully disagree with this interpretation, as there is no logical basis to exclude email as a form of communication for purposes of conferral. Including explicit language in the rule to recognize email as a valid method would help eliminate ambiguity and promote consistency in practice.

Additionally, I propose amending Rule 16(d)(2), which currently states:

> "Lead counsel and unrepresented parties, if any, shall attend the case management conference in person, except as provided in subsection (d)(3) of this Rule."

I recommend revising this to:

> "Counsel who is prepared to discuss the proposed order, issues requiring resolution, and any special circumstances of the case, and unrepresented parties, if any, shall attend the case management conference in person, except as provided in subsection (d)(3) of this Rule."

The current language has created challenges for firms like mine that utilize a team-based approach. In our practice, the attorney who signs pleadings is not always the one who handles hearings or trials. For example, my

partner typically reviews and signs pleadings, while I handle court appearances. Some judges have interpreted “lead counsel” to mean the attorney who signed the pleadings, which is not always feasible or reflective of our internal division of responsibilities.

Moreover, this change would support the professional development of associates by allowing them to participate in case management conferences when appropriately prepared. As long as the attending attorney is equipped to address the relevant issues and set dates in accordance with the rule, In addition, some firms may not designate a lead attorney or partner until the case is further along in litigation.

Thank you for considering these proposed amendments. I believe they would enhance clarity, flexibility, and efficiency in litigation practice.

LICENSED IN COLORADO, IDAHO, NEBRASKA, WYOMING AND UTAH.

Ben Vinci
Vinci Law Office, LLC
Attorney at Law
2250 South Oneida St. Suite 303
Denver, Co 80224
303 872-1898
ben@vincilaw.com

From: jones, jerry <jerry.jones@judicial.state.co.us>
Sent: Wednesday, October 29, 2025 12:55 PM

To: Ben Vinci <ben@vincilaw.com>
Subject: RE: Rules regarding conferral

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi, Ben. Am I correct that this has to do with Rule 121, section 1-15(8)?

From: Ben Vinci <ben@vincilaw.com>
Sent: Wednesday, September 17, 2025 1:40 PM
To: jones, jerry <jerry.jones@judicial.state.co.us>; gabriel, richard <richard.gabriel@judicial.state.co.us>
Subject: [EXTERNAL] Rules regarding conferral

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

Justice Gabriel and Judge Jones

Hope you are both well and had a great summer. I'd like to raise a concern regarding the interpretation of the duty to confer under current procedural rules. I've encountered conflicting views—some judges assert that **emailing opposing counsel or a party does not constitute conferral.** Email can clearly invite discussion and seek resolution. This interpretation seems increasingly outdated given the realities of modern legal practice.

In my experience, **email is often more effective than phone calls**, especially when dealing with pro se parties who prefer email over talking to an attorney over the phone. There is also the challenge with pro se parties who due to work-related restrictions cannot talk on the phone during the day. Playing phone tag or leaving voicemails rarely results in meaningful dialogue, whereas email provides a **clear, documented, and accessible record** of the attempt to confer and often leads to meaningful dialogue. It also allows the recipient to respond thoughtfully and at their convenience.

In motion practice, it is common to send an email to determine the opposing party's position. To suggest that this does not qualify as conferral undermines both practicality and professionalism. Many attorneys and parties are located in different regions or time zones, and email is often the **most efficient and inclusive method** of communication.

I've personally had **productive and substantive conferrals via email**, and parties are always free to follow up by phone if needed. Given the increasing reliance on digital communication, I respectfully propose that the term **"conferral" be explicitly defined in the rules to include email correspondence**, provided it is made in good faith and invites meaningful engagement.

Such a clarification would:

- Promote consistency across jurisdictions
- Reduce unnecessary disputes over procedural compliance
- Reflect the realities of modern legal practice

Thanks for your consideration.

LICENSED IN COLORADO, IDAHO, NEBRASKA, WYOMING AND UTAH.

Ben Vinci
Vinci Law Office, LLC
Attorney at Law
2250 South Oneida St. Suite 303
Denver, Co 80224
303 872-1898
ben@vincilaw.com