

CHANGES TO THE COLORADO RULES OF CIVIL PROCEDURE

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CIVIL ACCESS PILOT PROJECT

(CAPP)

- ❖ Adopted in 2012 and applied in four districts
- ❖ Increased judicial case management
- ❖ Emphasized disclosures
- ❖ Accelerated discovery
- ❖ Limited experts and expert discovery
- ❖ C.R.C.P. 1: “Just, speedy, inexpensive determination of every action”
- ❖ Key CAPP provisions incorporated into 2015 rules changes

KEY CIVIL RULES AFFECTED

- ▶ C.R.C.P. 12
- ▶ C.R.C.P. 16
- ▶ C.R.C.P. 26
- ▶ C.R.C.P. 30
- ▶ C.R.C.P. 31
- ▶ C.R.C.P. 33
- ▶ C.R.C.P. 34
- ▶ C.R.C.P. 37
- ▶ C.R.C.P. 54
- ▶ C.R.C.P. 121, § 1-22
- ▶ Motions on Pleadings
- ▶ Case Management
- ▶ Discovery and Disclosure
- ▶ Depositions
- ▶ Depositions/Written Questions
- ▶ Interrogatories
- ▶ Document Requests
- ▶ Sanctions
- ▶ Judgments and Costs
- ▶ Costs and Fees

**Only applies to cases filed after July 1, 2015

Rules Modified

Rule Content

MOTIONS ON PLEADINGS

[C.R.C.P. 12]

- ▶ **Domestic Relations Pleadings**
 - Petition and Response [C.R.S. § 14-10-107(2.5), (4)(a)]
 - C.R.C.P. 7(a): Seven pleading types in civil cases
- ▶ **Motions under Rule 12: Pleadings Only**
- ▶ **C.R.C.P. 12(f): Motions to Strike**
 - Rule applies only to motions directed at pleadings
 - Does not apply to other motions
 - C.R.C.P. 7(b)(1): Motion = “application to court for an order”
 - Strike “redundant, immaterial, impertinent, or scandalous matter
 - Only for “any pleading, motion, or other paper”
 - Only for “motion filed within time for responding to a pleading”

C.R.C.P. 16 Case Management

- ▶ Comprehensive changes to case management rules
- ▶ Incorporation of CAPP rules and procedures
- ▶ But does not affect Domestic Relations cases
- ▶ C.R.C.P. 16.2 still controls case management
- ▶ Some C.R.C.P. 16 modifications worth noting:
 - C.R.C.P. 16(b)(1): “At-Issue Date”: all parties served
 - C.R.C.P. 16(b)(2): “Responsible Attorney”: Petitioner’s counsel or Respondent’s counsel if Petitioner *pro se*
 - C.R.C.P. 16(b) v. 16.2(c)(1)(C): Use of stipulated case management plan
 - C.R.C.P. 16(b)(15): Electronically stored information
 - C.R.C.P. 16(c): Pretrial motions (motions in limine, expert admissibility)

C.R.C.P. 26(a)(2) Experts: Required Disclosures

▶ Written Report only

- Complete statement of all opinions
- List of data/information “considered”
- Copies of any exhibits for opinions
- All publications in past 10 years
- All expert testimony at trial or deposition in preceding four years

- References to literature for testimony
- Fee agreement: study, preparation, and testimony
- Itemized statement of all fees
- Fee statement supplemented 14 days before trial
- Direct testimony limited to “matters disclosed in detail in report”

▶ Other Experts

- Expert “not retained or specially employed”
- Direct testimony limited to “matters disclosed in detail in report”

- Applies to parties who are experts
- Only “written statement,” not written report required
- “Complete description” of opinions v. “complete statement”
- List of witness qualifications
- Copies of exhibits used as summary of/support for opinions
- If no written report, party’s lawyer or party prepares and delivers signed report

**Points in Blue have been changed effective July 1st, 2015

Retained Experts

[C.R.C.P. 26(a)(2)(B)(I)]

Experts Not Retained

[C.R.C.P. 26(a)(2)(B)(II)]

C.R.C.P. 26(b)(1): Proportionality in Discovery

- ▶ Scope unchanged: “any matter not privileged, that is relevant to claim or defense”
- ▶ New “Proportionality” factors: “Needs of case”
 - Importance of issues at stake
 - Amount in controversy
 - Relative access to relevant information
 - Parties’ resources
 - Importance of discovery in resolving issues
 - Whether burden/expense of discovery outweighs likely benefit
- ▶ Evidence must be within “scope of discovery,” not “reasonably calculated to lead to discovery of admissible evidence”

C.R.C.P. 26(b)(4): Experts

- ▶ Expert depositions: Limited to 6 hours [C.R.C.P. 26(b)(4)(A)]
- ▶ Expert materials protected from disclosure/discovery
 - Drafts of any expert report (in any form)
 - Drafts of C.R.C.P. 26(a)(2)(B) expert disclosures (in any form)
 - Communications between attorney and disclosed expert [C.R.C.P. 26(b)(4)(D)]
- ▶ Communications that must be disclosed
 - Compensation for the expert's study, preparation, testimony
 - Attorney-provided facts or data the expert *considered* in forming opinions to be expressed
 - Attorney-provided assumptions the expert *relied upon* in forming opinions to be expressed [C.R.C.P. 26(b)(4)(D)(I) through (III)]

C.R.C.P. 26(e): Expert Supplementation

- ▶ Undisclosed expert testimony to be offered on direct examination (C.R.C.P. 26(a)(2)(B))
- ▶ Based on information expert provided at deposition
- ▶ Original expert report must be supplemented to include specific description of deposition testimony relied upon
- ▶ Court discretion to permit testimony of other opinions than in disclosed report
- ▶ Testimony must be permitted if “opinions and bases and reasons therefor” disclosed at deposition
- ▶ Unless opposing party “unfairly prejudiced”

Rules 30, 31, 33, 34: Discovery

- ▶ Rule 30: Depositions
 - Limited to six (6) hours
 - “Record” time
 - Can be increased or decreased on motion of party
 - “Fair examination”
- ▶ Rule 31: Deposition on written questions
- ▶ Rule 33: Interrogatories
 - Objection to interrogatory must specify grounds for objection
 - AND, state whether responsive information withheld
 - Objection stays response until court rules on objection
- ▶ Rule 34: Requests for Production
 - Objection to interrogatory must specify grounds for objection
 - AND, state whether responsive information withheld
 - Objection stays response until court rules on objection

Depositions

Written Discovery

Rule 37: Sanctions

- ▶ “The threat and . . . application of sanctions is necessary to convince litigants of the importance of full disclosure.” [Cmte. Notes, 2015, n.3]
- ▶ Hearing on sanctions must be held if requested [C.R.C.P. 37(a)(4)(A), (B)]
- ▶ Standards:
 - “Substantially justified” for motion or action prompting motion
 - “Manifestly unjust” for award of expenses
- ▶ Sanctions for failure to disclose (C.R.C.P. 26(a) or (e)):
 - Mandatory preclusion of evidence re: Undisclosed matters
 - Unless finding of “no significant harm” or preclusion “disproportionate to harm”
 - Court given additional discretionary authority to impose other sanctions in C.R.C.P. 37(b)(2)(A), (B), and (C), plus fees

Rules 54 and 121, § 1–22: Fees and Costs

- ▶ Adding factors for determination of “reasonable” cost awards
 - Needs and complexity of case
 - Amount in controversy
 - Not limited to those two factors
- ▶ Party “affected by” bill of costs may request hearing
 - Within time permitted to file reply in support of bill
 - Must identify issues for hearing
 - Hearing request must be timely
 - Court discretion to call hearing: “materially assist”

Rule 54: Judgments,
Costs

Rule 121, § 1–22: Costs
and Attorney Fees