

# Colorado Supreme Court

## Rules Committees

### Rule Change 2018(17)

### Uniform Local Rules for All State Water Court Divisions Rules 4, 6, 11, and 12

#### Rule 4. Amendments or Corrections

(a) through (c) [NO CHANGE]

(d) If the water judge or referee determines republication is necessary for an amended application, the consultation and recommendation procedures (as supplemented by Water Court Rule 6(e) and (n)) and state engineer determination of facts procedures described in C.R.S. §§ 37-92-302(2)(a) and -302(4) shall apply to the amended application. If the water judge's order for republication provides for the water judge to retain the application as amended, then the division engineer shall file a written recommendation in the proceedings as required by C.R.S. § 37-92-302(4) within thirty-five days of the order requiring republication of the amended application and, in the case of an amendment to an application for determinations of rights to groundwater from wells described in C.R.S. § 37-90-137(4), the state engineer shall file any determination as to the facts of such amended application as required by C.R.S. § 37-92-302(2)(a) within four months of the order requiring republication or shall promptly file a notice that no such determination is necessary.

#### Rule 6. Referral to Referee,

#### Case Management, Rulings, and Decrees

(a) The water judge shall promptly refer to the water referee all applications. The referee upon referral by the water judge has the authority and duty in the first instance to promptly begin investigating and to rule upon applications for

determinations of water rights, determinations of conditional water rights, changes of water rights, approval of plans for augmentation, findings of reasonable diligence in the development of conditional water rights, approval of a proposed or existing exchange of water, approval to use water outside of the state, and other water matters, in accordance with the applicable constitutional, statutory, and case law.

(b) [NO CHANGE]

(c) The referee shall work promptly to identify applications that will require water judge adjudication of the facts and/or rulings of law and re-refer those applications to the water judge. The referee may re-refer a case to the water judge without first holding a status conference described in Water Court Rule 6(h). In the event that a matter is re-referred within three months after filing of an application that will require construction of a well, other than applications for determinations of rights to groundwater from wells described in C.R.S. § 37-90-137(4), the water judge may extend the time for the division engineer to file the type of written consultation report or recommendation required by C.R.S. § 37-92-302(2)(a) and (4) upon the division engineer having filed a notice showing good cause for such an extension.

(d) through (q) [NO CHANGE]

#### Rule 11. Pre-Trial Procedure, Case Management, Disclosure, And Simplification of Issues

Rule 11 [NO CHANGE]

COMMITTEE COMMENT:

Rule 11(b)(5)(D)(III)

Amended Rule 11, which became effective July 1, 2009, provides for meetings of the experts without attorneys for the parties or the parties

themselves. Effective July 1, 2011, Rule 11(b)(5)(D)(III) was amended, nunc pro tunc on and after July 1, 2009, to make explicit the nondiscoverability and non-admissibility of the notes, records, content of discussions, and the experts' written statement prepared in accordance with Rule 11(b)(5)(D)(II). In response to arguments that this provision does not prohibit use of such material in pretrial proceedings, Rule 11(b)(5)(D)(III) is further amended to clarify the original intent of the rule that the only permissible use of information from the expert meetings is for purposes of the preparation of the written statements and reports required or permitted by Rule 11(b)(5)(D). This clarifying change applies nunc pro tunc on and after July 1, 2009.

Rule 11(b)(5) and (9)

Effective January 1, 2018, Rule 11(b)(5) was amended to require expert disclosures to be made earlier than deadlines under the previous rule. For the applicant's expert disclosure, supplemental expert disclosure, and opposer's expert disclosure, the new deadline is five weeks earlier than the previous rule. For rebuttal expert disclosures, the new deadline is four weeks earlier than the previous rule. This change was to allow more time after expert disclosures for settlement discussions, mediation, and preparation of pretrial motions pursuant to C.R.C.P. 56. At the same time, Rule 11(b)(9) was amended to require that pretrial motions pursuant to C.R.C.P. 56 be filed 91 days before trial instead of the previous rule requiring such motions to be filed 84 days before trial.

Amended Rule 11, which became effective July 1, 2009, provides for meetings of the experts without attorneys for the parties or the parties

themselves. Effective July 1, 2011, Rule 11 is further amended in subsection (b)(5)(D)(III) to make explicit the non-discoverability and nonadmissibility of the notes, records, content of discussions, and written statement prepared by the experts in accordance with the rule, and, further, to clarify that the meetings of the experts exclude attorneys for the parties or the parties themselves unless they are designated experts. These clarifying changes apply nunc pro tunc on and after July 1, 2009. In addition, the following Suggested Guide is included in this Comment by way of example for conduct of the meetings of the experts and preparation of the joint written statement of the experts.

**Rule 12. Procedure Regarding Decennial Abandonment Lists**

(a) [NO CHANGE]

(b) Any protest filed pursuant to C.R.S. § 37-92-

401(5) shall automatically trigger a bifurcation from the original case in which the decennial abandonment list was filed without the necessity of a motion to bifurcate or any bifurcation order by the court. Each bifurcated protest case shall be assigned a new case number by the water clerk, shall include a reference to the original abandonment case number, and shall be published in the water court resume and newspapers in accordance with C.R.C.P. Rule 90 and C.R.S. § 37-92-302(3) and with notice of the deadline for any entry of appearance under Water Court Rule 12(d). The protestor shall be responsible for the costs of publication. Parties to the bifurcated protest cases shall not be considered parties to the original abandonment case for the purpose of filings and service in the original abandonment case, except as provided in Water Court Rule 12(j).

(c) through (j) [NO CHANGE]

**Amended and Adopted by the Court, En Banc, December 13, 2018, effective immediately.**

**By the Court:**

*Monica M. Márquez*

*Justice, Colorado Supreme Court* 

Visit the Supreme Court's website for complete text of rule changes, including corresponding forms and versions with highlights of revisions (deletions and additions), which are not printed in Court Business. Material printed in Court Business appears as submitted by the Court and has not been edited by *Colorado Lawyer* staff.



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