

Colorado Supreme Court

Rules Committees

Correction to Rule Change 2017(12) Colorado Rules of Civil Procedure

The corrected text, which was inadvertently struck in the original order, is highlighted.

(a)–(c) [NO CHANGE]

Section 1–1 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)–(d) [NO CHANGE]

2. [NO CHANGE]

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.

4–7 [NO CHANGE]

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 – 11 [NO CHANGE]

Section 1–16–1–26 [NO CHANGE]

COMMENTS [NO CHANGE]

Amended and Adopted by the Court, En Banc, April 5, 2018, effective immediately.

By the Court:

Richard L. Gabriel

Justice, Colorado Supreme Court

Rule Change 2018(05) Colorado Rules of Criminal Procedure

The order amends Form 4, Petition for Postconviction Relief Pursuant to Crim. P. 35(c), and is effective immediately.

Amended and Adopted by the Court, En Banc, April 12, 2018, effective immediately.

By the Court:

Nathan B. Coats

Justice, Colorado Supreme Court

Rule Change 2018(06) Colorado Rules of Civil Procedure

Rule 16.1. Simplified Procedure for Civil Actions

(a) Purpose of Simplified Procedure. The purpose of this rule, which establishes Simplified Procedure, is to provide maximum access to the district courts in civil actions; to enhance the provision of just, speedy, and inexpensive determination of civil actions; to allow earlier trials; and to limit discovery and its attendant expense.

(b) Actions Subject to Simplified Procedure. Simplified Procedure applies to all civil actions other than:

- (1) civil actions that are class actions, domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C.R.C.P. 106 and 120, or other similar expedited proceedings, unless otherwise stipulated by the parties; or
- (2) civil actions in which any one party seeks monetary judgment from any other party of more than \$100,000, exclusive of reasonable allowable attorney fees, interest and costs, as shown by a statement on the Civil Cover Sheet by the party's attorney or, if unrepresented, by the party, that "In compliance with C.R.C.P. 11,

based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed \$100,000."

(c) Civil Cover Sheet. Each pleading containing an initial claim for relief in a civil action, other than class actions, domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C.R.C.P. 106 and 120 shall be accompanied at the time of filing by a completed Civil Cover Sheet in the form and content of Appendix to Chapters 1 to 17A, Form 1.2 (JDF 601). Failure to file the Civil Cover Sheet shall not be considered a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.

(d) Motion for Exclusion from Simplified Procedure. Simplified Procedure shall apply unless, no later than 42 days after the case is at issue as defined in C.R.C.P. 16(b)(1), any party files a motion, signed by both the party and its counsel, if any, establishing good cause to exclude the case from the application of Simplified Procedure.

(1) Good cause shall be established and the motion shall be granted if a defending party files a statement by its attorney or, if unrepresented, by the party, that "In compliance with C.R.C.P. 11, based upon information reasonably available to me at this time, I certify that the value of this party's claims against one of the other parties is reasonably believed to exceed \$100,000" or

(2) The trial court, in its discretion, may determine other good cause for exclusion, considering factors such as the complexity of the case, the importance of the issues at stake, the parties' relative access to relevant information, the parties' resources, the importance of discovery in resolving the issues, and whether the burden or expense of proposed discovery outweighs its likely benefit.

(e) Election for Inclusion Under this Rule. In actions excluded from Simplified Procedure by subsection (b)(2), within 42 days after the case is at issue, as defined in C.R.C.P. 16(b)(1), the parties may file a stipulation to be governed by this Rule.

(f) Case Management Orders. In actions subject to Simplified Procedure, the case management

order requirements of C.R.C.P. 16(b)(2), (3) and (7) shall apply, except that preparing and filing a Proposed Case Management Order is not required.

(g) Trial Setting. No later than 42 days after the case is at issue, the responsible attorney shall set the case for trial pursuant to C.R.C.P. 121, section 1-6, unless otherwise ordered by the court.

(h) Certificate of Compliance. No later than 49 days after the case is at issue, the responsible attorney shall file a Certificate of Compliance stating that the parties have complied with all the requirements of sections (f), (g) and (k)(1) of this Rule or, if the parties have not complied with each requirement, shall identify the requirements which have not been fulfilled and set forth any reasons for the failure to comply.

(i) Expedited Trials. Trial settings, motions and trials in actions subject to Simplified Procedure should be given early trial settings, hearings on motions and trials, if possible.

(j) Case Management Conference. If any party believes that it would be helpful to conduct a case management conference, a notice to set a case management conference shall be filed stating the reasons why such a conference is requested. If any party is unrepresented or if the court determines that such a conference should be held, the court shall set a case management conference. The conference may be conducted by telephone.

(k) Simplified Procedure. Cases subject to Simplified Procedure shall not be subject to C.R.C.P. 16, 26-27, 31, 33 and 36, unless otherwise specifically provided in this Rule, and shall be subject to the following requirements:

(1) Required Disclosures.

(A) Disclosures in All Cases. Each party shall make disclosures pursuant to C.R.C.P. 26(a)(1), 26(a)(4), 26(b)(5), 26(c), 26(e) and 26(g) no later than 28 days after the case is at issue as defined in C.R.C.P. 16(b)(1). In addition to the requirements of C.R.C.P. 26(g), the disclosing party shall sign all disclosures under oath.

(B) Additional Disclosures in Certain Actions. Even if not otherwise required under subsection (A), matters to be disclosed pursuant to this Rule shall also include,

but are not limited to, the following:

(i) Personal Injury Actions. In actions claiming damages for personal or emotional injuries, the claimant shall disclose the names and addresses of all doctors, hospitals, clinics, pharmacies and other health care providers utilized by the claimant within five years prior to the date of injury who or which provided services which are related to the injuries and damages claimed, and shall produce all records from those providers or written waivers allowing the opposing party to obtain those records, subject to appropriate protective provisions obtained pursuant to C.R.C.P. 26(c). The claimant shall also produce transcripts or tapes of recorded statements, documents, photographs, and video and other recorded images that address the facts of the case or the injuries sustained. The defending party shall disclose transcripts or tapes of recorded statements, any insurance company claims memos or documents, photographs, and video and other recorded images that address the facts of the case, the injuries sustained, or affirmative defenses. A party need not produce those specific records for which the party, after consultation pursuant to C.R.C.P. 26(c), timely moves for a protective order from the court.

(ii) Employment Actions. In actions seeking damages for loss of employment, the claimant shall disclose the names and addresses of all persons by whom the claimant has been employed for the ten years prior to the date of disclosure, and shall produce all documents which reflect or reference the claimant's efforts to find employment since the claimant's departure from the defending party, and written waivers allowing the defending party to obtain the claimant's personnel files and payment histories from each employer, except with respect to those records for which the claimant, after

consultation pursuant to C.R.C.P. 26(c), timely moves for a protective order from the court. The defending party shall produce the claimant's personnel file and applicable personnel policies and employee handbooks.

(C) Document Disclosure. Documents and other evidentiary materials disclosed pursuant to C.R.C.P. 16.1(k)(1)(B) and 26(a)(1) shall be made immediately available for inspection and copying to the extent not privileged or protected from disclosure.

(2) Disclosure of Expert Witnesses. The provisions of C.R.C.P. 26(a)(2)(A) and (B), 26(a)(4), 26(b)(4), 26(b)(5), 26(c), 26(e) and 26(g) shall apply to disclosure of expert witnesses. Written disclosures of experts shall be served by parties asserting claims 91 days (13 weeks) before trial; by parties defending against claims 63 days (9 weeks) before trial; and parties asserting claims shall serve written disclosures for any rebuttal experts 49 days before trial. The parties shall be limited to one expert witness per side retained pursuant to C.R.C.P. 26(a)(2)(B)(I), unless the trial court authorizes more for good cause shown.

(3) Mandatory Disclosure of Trial Testimony. Each party shall serve written disclosure statements identifying the name, address, telephone number, and a detailed statement of the expected testimony for each witness the party intends to call at trial whose deposition has not been taken, and for whom expert reports pursuant to subparagraph (k)(2) of this Rule have not been provided. For adverse parties or hostile witnesses a party intends to call at trial, written disclosure of the expected subject matters of the witness' testimony, rather than a detailed statement of the expected testimony, shall be sufficient. Written disclosure shall be served by parties asserting claims 91 days (13 weeks) before trial; by parties defending against claims 63 days (9 weeks) before trial; and parties asserting claims shall serve written disclosures for any rebuttal witnesses 49 days before trial.

(4) Permitted Discovery. The following discovery is permitted, to the extent allowed by C.R.C.P. 26(b)(1):

(A) Each party may take a combined total of not more than six hours of depositions noticed by the party;

(B) Not more than five requests for production of documents may be served by each party; and

(C) The parties may request discovery pursuant to C.R.C.P. 34(a)(2) (inspection of property) and C.R.C.P. 35 (medical examinations).

(5) Depositions for Obtaining Documents and for Trial. In addition to depositions allowed under subsection (k)(4)(A) of this Rule:

(A) Depositions may be taken for the sole purpose of obtaining and authenticating documents from a non-party; and

(B) A party who intends to offer the testimony of an expert or other witness may, pursuant to C.R.C.P. 30(b)(1)-(4) and (7), take the deposition of that witness for the purpose of preserving the witness' testimony for use at trial without being subject to the six-hour limit on depositions in subsection (k)(4)(A) of this Rule. Unless authorized by the court or stipulated to by the parties, such a deposition shall be taken at least 21 days before trial. In that event, any party may offer admissible portions of the witness' deposition, including any cross-examination during the deposition, without a showing of the witness' unavailability. Any witness who has been so deposed may not be offered as a witness to present live testimony at trial by the party taking the preservation deposition.

(6) Trial Exhibits. All exhibits to be used at trial which are in the possession, custody or control of the parties shall be identified and exchanged by the parties at least 35 days before trial. Authenticity of all identified and exchanged exhibits shall be deemed admitted unless objected to in writing within 14 days after receipt of the exhibits. Documents in the possession, custody and control of third persons that have not been obtained by the identifying party pursuant to document deposition or otherwise, to the extent possible, shall be identified 35 days before trial

and objections to the authenticity of those documents may be made at any time prior to their admission into evidence.

(7) Limitations on Witnesses and Exhibits at Trial. In addition to the sanctions under C.R.C.P. 37(c), witnesses and expert witnesses whose depositions have not been taken shall be limited to testifying on direct examination about matters disclosed in reasonable detail in the written disclosures, provided, however, that adverse parties and hostile witnesses shall be limited to testifying on direct examination to the subject matters disclosed pursuant to subparagraph (k)(3) of this Rule. However, a party may call witnesses for whom written disclosures were not previously made for the purpose of authenticating exhibits if the opposing party made a timely objection to the authenticity of such exhibits specifying the factual issues concerning the authenticity of the exhibits.

(8) Juror Notebooks and Jury Instructions. Counsel for each party shall confer about items to be included in juror notebooks as set forth in C.R.C.P. 47(t). At the beginning of trial or at such other date set by the court, the parties shall make a joint submission to the court of items to be included in the juror notebook. Jury instructions and verdict forms shall be prepared pursuant to C.R.C.P. 16(g).

(I) Changed Circumstances. In a case under Simplified Procedure, any time prior to trial, upon a specific showing of substantially changed circumstances sufficient to render the application of Simplified Procedure unfair and a showing of good cause for the timing of the motion to terminate, the court shall terminate application of Simplified Procedure and enter such orders as are appropriate under the circumstances. Except in cases under subsection (e) of this Rule, if, more than 42 days after the case is at issue, any party discloses damages against another party in excess of \$100,000—including actual damages, penalties and punitive damages, but excluding allowable attorney fees, interest and costs—that defending party may move to have the case removed from Simplified Procedure and the motion shall be granted unless the claiming party stipulates to a limitation of damages against the defending party, excluding

allowable attorney fees, interest and costs, of \$100,000. The stipulation must be signed by the claiming party and, if the claiming party is represented, by the claiming party's attorney.

COMMENTS

2018

[1] Rule 16.1, which established Simplified Procedure, took effect in 2004 to enhance the application of Rule 1's admonition that the civil rules be interpreted to provide just, speedy, and inexpensive determination of cases and to increase access to the courts and justice system, particularly for cases seeking damages of less than \$100,000. As originally established, the application of Simplified Procedure was completely voluntary and parties could opt out without stating any reason or justification. A substantial majority of cases opted out of Simplified Procedure, minimizing its ability to advance its important justification and goals. However, lawyers and judges who have used Simplified Procedure strongly approve of it. See Gerety, "Simplified Pretrial Procedure in the Real World Under C.R.C.P. 16.1", 40 *The Colorado Lawyer* 23, 25 (April 2011).

[2] As a result, several significant revisions have been made to Rule 16.1. First, with the exception of several unique forms of civil actions, Simplified Procedure applies presumptively to all civil lawsuits.

[3] Excluded from Simplified Procedure are cases seeking damages from any single defending party of at least \$100,000 (not including reasonable allowable attorney fees, interest and costs). This exclusion can be met in the mandated Civil Cover Sheet to be filed in all applicable civil cases if the attorney or unrepresented party executes a certification in the Cover Sheet as set forth in Rule 16.1(b)(2). This certification allows a party or the party's attorney to reasonably estimate the value of the case, but always subject to the requirements of Rule 11.

[4] Cases can also be exempted after the case is in progress if one of the parties discovers that the claimant's damages may exceed \$100,000 and requests transfer of the case out of Simplified Procedure.

[5] Trial courts may exclude cases from Rule 16.1 even though the claims do not seek money

damages reaching the \$100,000 threshold after consideration of the factors contained in Rule 16.1(d)(2). Thus, cases with small or even no monetary damages that challenge the constitutionality of laws or procedures, seek declaratory judgments or injunctions, or raise other important and complex legal issues may be excluded from Simplified Procedure.

[6] Another important change in Simplified Procedure is that the previous cap on damage awards of \$100,000 in Simplified Procedure cases has been removed.

[7] Simplified Procedure now requires disclosures of persons, documents, damages and insurance under Rule 26 and disclosure of proposed testimony from witnesses and experts. It also allows up to 6 hours of depositions per party and, if needed, additional preservation depositions; up to five requests for production of documents; inspection of property and things; and relevant medical examinations.


[8] Because of the limited discovery, it is particularly important to the just resolution of cases under Simplified Procedure, that parties honor

the requirements and spirit of full disclosure. Parties should expect courts to enforce disclosure requirements and impose sanctions for the failure to comply with the mandate to provide full disclosures.

Amended and Adopted by the Court, En Banc, April 12, 2018, effective for cases filed on or after September 1, 2018.

By the Court:

Richard L. Gabriel

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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