The Colorado
Rules of Civil Procedure
For
Courts of Record in Colorado

Adopted by the
SUPREME COURT OF COLORADO

ANALYSIS BY CHAPTER

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CHAPTER 1

Scope of Rules, One Form of Action, Commencement of Action, Service of Process, Pleadings, Motions and Orders

CHAPTER 1

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

Rule 1. Scope of Rules

(a) Procedure Governed. These rules govern the procedure in the supreme court, court of appeals, district court and superior courts and in the juvenile and probate courts of the City and County of Denver, in all actions, suits and proceedings of a civil nature, whether cognizable as cases at law or in equity, and in all special statutory proceedings, with the exceptions stated in Rule 81. They shall be liberally construed to secure the just, speedy, and inexpensive determination of every action. Rules of civil procedure governing county courts shall be in accordance with Chapter 25 of this volume. Rules of Procedure governing probate courts and probate proceedings in the district courts shall be in accordance with these rules and Chapter 27 of this volume. (In case of conflict between rules, those set forth in Chapter 27 shall control.) Rules of Procedure governing juvenile courts and juvenile proceedings in the district courts shall be in accordance with these rules and Chapter 28 made effective on the same date as these rules. In case of conflict between rules those set forth in Chapter 28 shall control. Rules of Procedure in Municipal Courts are in Chapter 30.

(b) Effective Date. Amendments of these rules shall be effective on the date established by the Supreme Court at the time of their adoption, and thereafter all laws in conflict therewith shall be of no further force or effect. Unless otherwise stated by the Supreme Court as being applicable only to actions brought after the effective date of an amendment, they govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

(c) How Known and Cited. These rules shall be known and cited as the Colorado Rules of Civil Procedure, or C.R.C.P.

Rule 2. One Form of Action

There shall be one form of action to be known as "civil action".

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 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 4. Process

(a) To What Applicable. This Rule applies to all process except as otherwise provided by these rules.

(b) Issuance of Summons by Attorney or Clerk. The summons may be signed and issued by the clerk, under the seal of the court, or it may be signed and issued by the attorney for the plaintiff. Separate additional or amended summons may issue against any defendant at any time. All other process shall be issued by the clerk, except as otherwise provided in these rules.

(c) Contents of Summons. The summons shall contain the name of the court, the county in which the action is brought, the names or designation of the parties, shall be directed to the defendant, shall state the time within which the defendant is required to appear and defend against the claims of the complaint, and shall notify the defendant that in case of the defendant's failure to do so, judgment by default may be rendered against the defendant. If the summons is served by publication, the summons shall briefly state the sum of money or other relief demanded. The summons shall contain the name, address, and registration number of the plaintiff's attorney, if any, and if none, the address of the plaintiff. Except in case of service by publication under Rule 4(g) or when otherwise ordered by the court, the complaint shall be served with the summons. In any case, where by special order personal service of summons is allowed without the complaint, a copy of the order shall be served with the summons.

(d) By Whom Served. Process may be served within the United States or its Territories by any person whose age is eighteen years or older, not a party to the action. Process served in a foreign country shall be according to any internationally agreed means reasonably calculated to give notice, the law of the foreign country, or as directed by the foreign authority or the court if not otherwise prohibited by international agreement.

(e) Personal Service. Personal service shall be as follows:

(1) Upon a natural person whose age is eighteen years or older by delivering a copy thereof to the person, or by leaving a copy thereof at the person's usual place of abode, with any person whose age is eighteen years or older and who is a member of the person's family, or at the person's usual workplace, with the person's supervisor, secretary, administrative

assistant, bookkeeper, human resources representative or managing agent; or by delivering a copy to a person authorized by appointment or by law to receive service of process.

(2) Upon a natural person whose age is at least thirteen years and less than eighteen years, by delivering a copy thereof to the person and another copy thereof to the person's father, mother, or guardian, or if there be none in the state, then by delivering a copy thereof to any person in whose care or control the person may be; or with whom the person resides, or in whose service the person is employed; and upon a natural person under the age of thirteen years by delivering a copy to the person's father, mother, or guardian, or if there be none in the state, then by delivering a copy thereof to the person in whose care or control the person may be.

(3) Upon a person for whom a conservator has been appointed, by delivering a copy thereof to such conservator.

(4) Upon any form of corporation, partnership, association, cooperative, limited liability company, limited partnership association, trust, organization, or other form of entity that is recognized under the laws of this state or of any other jurisdiction, (including any such organization, association or entity serving as an agent for service of process for itself or for another entity) by delivering a copy thereof to the registered agent for service as set forth in the most recently filed document in the records of the secretary of state of this state or of any other jurisdiction, or that agent's secretary or assistant, or one of the following:

(A) An officer of any form of entity having officers, or that officer's secretary or assistant;

(B) A general partner of any form of partnership, or that general partner's secretary or assistant;

(C) A manager of a limited liability company or limited partnership association in which management is vested in managers rather than members, or that manager's secretary or assistant;

(D) A member of a limited liability company or limited partnership association in which management is vested in the members or in which management is vested in managers and there are no managers, or that member's secretary or assistant;

(E) A trustee of a trust, or that trustee's secretary or assistant;

(F) The functional equivalent of any person described in paragraphs (A) through (E) of this subsection (4), regardless of such person's title, under:

(I) the articles of incorporation, articles of organization, certificate of limited partnership, articles of association, statement of registration, or other documents of similar import duly filed or recorded by which the entity or any or all of its owners obtains status as an entity or the attribute of limited liability, or

(II) the law pursuant to which the entity is formed or which governs the operation of the entity;

(G) If no person listed in subsection (4) of this rule can be found in this state, upon any person serving as a shareholder, member, partner, or other person having an ownership or similar interest in, or any director, agent, or principal employee of such entity, who can be found in this state, or service as otherwise provided by law.

(5) Repealed.

(6) Upon a municipal corporation, by delivering a copy thereof to the mayor, city manager, clerk, or deputy clerk.

(7) Upon a county, by delivering a copy thereof to the county clerk, chief deputy, or county commissioner.

(8) Upon a school district, by delivering a copy thereof to the superintendent.

(9) Upon the state by delivering a copy thereof to the attorney general.

(10) (A) Upon an officer, agent, or employee of the state, acting in an official capacity, by delivering a copy thereof to the officer, agent, or employee, and by delivering a copy to the attorney general.

(B) Upon a department or agency of the state, subject to suit, by delivering a copy thereof to the principal officer, chief clerk, or other executive employee thereof, and by delivering a copy to the attorney general.

(C) For all purposes the date of service upon the officer, agent, employee, department, or agency shall control, except that failure to serve copies upon the attorney general within 7 days of service upon the officer, agent, employee, department, or agency shall extend the time within which the officer, agent, employee, department, or agency must file a responsive pleading for 63 days (9 weeks) beyond the time otherwise provided by these Rules.

(11) Upon other political subdivisions of the State of Colorado, special districts, or quasi-municipal entities, by delivering a copy thereof to any officer or general manager, unless otherwise provided by law.

(12) Upon any of the entities or persons listed in subsections (4) through (11) of this section (e) by delivering a copy to any designee authorized to accept service of process for such entity or person, or by delivery to a person authorized by appointment or law to receive service of process for such entity or person. The delivery shall be made in any manner permitted by such appointment or law.

(f) Substituted Service. In the event that a party attempting service of process by personal service under section (e) is unable to accomplish service, and service by publication or mail is not otherwise permitted under section (g), the party may file a motion, supported by an affidavit of the person attempting service, for an order for substituted service. The motion shall state (1) the efforts made to obtain personal service and the reason that personal service could not be obtained, (2) the identity of the person to whom the party wishes to deliver the process, and (3) the address, or last known address of the workplace and residence, if known, of the party upon whom service is to be effected. If the court is satisfied that due diligence has been used to attempt personal service under section (e), that further attempts to obtain service under section (e) would be to no avail, and that the person to whom delivery of the process is appropriate under the circumstances and reasonably calculated to give actual notice to the party upon whom service is to be effective, it shall:

(1) authorize delivery to be made to the person deemed appropriate for service, and

(2) order the process to be mailed to the address(es) of the party to be served by substituted service, as set forth in the motion, on or before the date of delivery. Service shall be complete on the date of delivery to the person deemed appropriate for service.

(g) Other Service. Except as otherwise provided by law, service by mail or

publication shall be allowed only in actions affecting specific property or status or other proceedings in rem. When service is by publication, the complaint need not be published with the summons. The party desiring service of process by mail or publication under this section (g) shall file a motion verified by the oath of such party or of someone in the party's behalf for an order of service by mail or publication. It shall state the facts authorizing such service, and shall show the efforts, if any, that have been made to obtain personal service and shall give the address, or last known address, of each person to be served or shall state that the address and last known address are unknown. The court, if satisfied that due diligence has been used to obtain personal service or that efforts to obtain the same would have been to no avail, shall:

(1) Order the party to send by registered or certified mail a copy of the process addressed to such person at such address, requesting a return receipt signed by the addressee only. Such service shall be complete on the date of the filing of proof thereof, together with such return receipt attached thereto signed by such addressee, or

(2) Order publication of the process in a newspaper published in the county in which the action is pending. Such publication shall be made once each week for five successive weeks. Within 14 days after the order the party shall mail a copy of the process to each person whose address or last known address has been stated in the motion and file proof thereof. Service shall be complete on the day of the last publication. If no newspaper is published in the county, the court shall designate one in some adjoining county.

(h) Manner of Proof. Proof of service shall be made as follows:

(1) If served personally, by a statement, certified by the sheriff, marshal or similar governmental official, or statement duly acknowledged under oath by any other person completing the service as to date, place, and manner of service;

(2) Repealed.

(3) If served by mail, by an affidavit showing the date of the mailing with the return receipt attached, where required;

(4) If served by publication, by the affidavit of publication, together with an affidavit as to the mailing of a copy of the process where required;

(5) If served by waiver, by the written admission or waiver of service by the person or persons served, duly acknowledged, or by their attorney;

(6) If served by substituted service, by a duly acknowledged statement as to the date, place, and manner of service, accompanied by an affidavit that the process was also mailed to the party to be served by substituted service, setting forth the address(es) where the process was mailed.

(i) Waiver of Service of Summons. A defendant who waives service of a summons does not thereby waive any objection to the venue or to the jurisdiction of the court over the defendant.

(j) Amendment. At any time in its discretion and upon such terms as it deems just, the court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process is issued.

(k) Refusal of Copy. If a person to be served refuses to accept a copy of the process,

service shall be sufficient if the person serving the process knows or has reason to identify the person who refuses to be served, identifies the documents being served, offers to deliver a copy of the documents to the person who refuses to be served, and thereafter leaves a copy in a conspicuous place.

Rule 5. Service and Filing of Pleadings and Other Papers

(a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4.

(b) Making Service: (1) Service under C.R.C.P. 5(a) on a party represented by an attorney is made upon the attorney unless the court orders personal service upon the party. A resident attorney, on whom pleadings and other papers may be served, shall be associated as attorney of record with any out-of-state attorney practicing in any courts of this state.

(2) Service under C.R.C.P. 5(a) is made by:

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

(i) handing it to the person;

(ii) leaving it at the person's office with a clerk or other person in charge, or if no one is in charge, leaving it in a conspicuous place in the office; or

(iii) if the person has no office or the office is closed, leaving it at the person's dwelling house or usual place of abode with someone 18 years of age or older residing there;

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

(C) If the person served has no known address, leaving a copy with the clerk of the court; or

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

(c) Service: Numerous Defendants. In any action in which there are unusually large numbers of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the

defendants and that any cross claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing Certificate of Service. All papers after the initial pleading required to be served upon a party, together with a certificate of service, must be filed with the court within a reasonable time after service, but disclosures under Rule C.R.C.P. 26(a)(1) or (2) and the following discovery requests and responses shall not be filed until they are used in the proceeding or the court orders otherwise: (i) depositions, (ii) interrogatories, (iii) requests for documents or to permit entry upon land, and (iv) requests for admission.

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

(f) Inmate Filing and Service. Except where personal service is required, a pleading or paper filed or served by an inmate confined to an institution is timely filed or served if deposited in the institution's internal mailing system on or before the last day for filing or serving. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule.

Rule 6. Time

(a) Computation.(1) In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included. Thereafter, every day shall be counted, including holidays, Saturdays or Sundays. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(2) As used in this Rule, "Legal holiday" includes the first day of January, observed as New Year's Day; the third Monday in January, observed as Martin Luther King Day; the third Monday in February, observed as Washington-Lincoln Day; the last Monday in May, observed as Memorial Day; the fourth day of July, observed as Independence Day; the first Monday in September, observed as Labor Day; the second Monday in October, observed as Columbus Day; the 11th day of November, observed as Veteran's Day; the fourth Thursday in November, observed as Thanksgiving Day; the twenty-fifth day of December, observed as Christmas Day, and any other day except Saturday or Sunday when the court is closed.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 59 and 60(b), except to the extent and under the conditions therein stated.

(c) Unaffected by Expiration of Term. Repealed.

(d) For Motions -- Affidavits. Repealed.

(e) Additional Time After Service Under C.R.C.P. 5(b)(2)(B), (C), or (D). Repealed.

COMMENT

After the particular effective date, time computation in most situations is intended to incorporate the Rule of Seven. Under the Rule of Seven, a day is a day, and because calendars are divided into 7-day week intervals, groupings of days are in 7-day or multiples of 7-day intervals. Groupings of less than 7 days have been left as they were because such small numbers do not interfere with the underlying concept. Details of the Rule of Seven reform are set forth in an article by Richard P. Holme, 41 Colo. Lawyer, Vol. 1, P 33 (January 2012).

Time computation is sometimes "forward," meaning starting the count at a particular stated event [such as date of filing] and counting forward to the deadline date. Counting "backward" means counting backward from the event to reach the deadline date [such as a stated number of days being allowed before the commencement of trial]. In determining the effective date of the Rule of Seven time computation/time interval amendments having a statutory basis, said amendments take effect on July 1, 2012 and regardless of whether time intervals are counted forward or backward, both the time computation start date and deadline date must be after June 30, 2012. Further, the time computation/time interval amendments do not apply to modify the settings of any dates or time intervals set by an order of a court entered before July 1, 2012.

CHAPTER 2

Pleadings and Motions

CHAPTER 2

PLEADINGS AND MOTIONS

Rule 7. Pleadings Allowed: Form of Motions

(a) Pleadings. There shall be a complaint and answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; a third-party answer, if a third-party complaint is served; and there may be a reply to an affirmative defense. No other pleading shall be allowed, except upon order of court.

(b) Motions and Other Papers.

(1) An application to the court for an order shall be made by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) These rules applicable to captions, signing and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(c) Demurrers, Pleas, etc., Abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

(d) Agreed Case, Procedure. Parties to a dispute which might be the subject of a civil action may, without pleadings, file, in the court which would have had jurisdiction if an action had been brought, an agreed statement of facts. The same shall be supported by an affidavit that the controversy is real and that it is filed in good faith to determine the rights of the parties. The matters shall then be deemed an action at issue and all proceedings thereafter shall be as provided by these rules.

Rule 8. General Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for a relief whether an original claim, counterclaim, cross-claim, or a third-party claim, shall contain: (1) If the court is of limited jurisdiction, a short and plain statement of the grounds upon which the court's jurisdiction depends; (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and (3) a demand for judgment for the relief to which the pleader claims to be entitled. No dollar amount shall be stated in the prayer or demand for relief. Relief in the alternative or of several different types may be demanded. Each pleading containing an initial claim for relief in a civil action, other than a domestic relations, probate, water, juvenile, or mental health action, shall be accompanied by a completed Civil Cover Sheet in the form and content of Appendix to Chapters 1 to 17, Form 1.2 (JDF 601), at the time of filing. Failure to file the 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.

(b) Defenses; Form of Denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments of the adverse party. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he 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 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 may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative Defenses and Mitigating Circumstances. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. Any mitigating circumstances to reduce the amount of damage shall be affirmatively pleaded. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

(d) Effect of Failure to Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required shall be taken as denied or avoided. Averments in a pleading to which a responsive pleading is permitted but not required shall be taken as denied or avoided if no responsive pleading is filed.

(e) Pleading to be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. When a pleader is without direct knowledge, allegations may be made upon information and belief. No technical forms of pleading or motions are required. Pleadings otherwise meeting the requirements of these rules shall not be considered objectionable for failure to state ultimate facts as distinguished from conclusions of law.

(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 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) Construction of Pleadings. All pleadings shall be so construed as to do

substantial justice.

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 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 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 knowledge to identify such unknown party and his 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 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) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(c) Conditions Precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity, and when so made the party pleading the performance or occurrence shall establish on the trial the facts showing such performance or occurrence.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer within the United States or within a territory or insular possession subject to the dominion of the United States, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it. A denial of jurisdiction shall be made specifically and with particularity and when so made the party pleading the judgment or decision shall establish on the trial all controverted jurisdictional facts.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damages. When items of special damage are claimed, they shall be

specifically stated.

(h) [There is no section (h).]

(i) Pleading Statute. In pleading a statute of Colorado or of the United States, the same need not be set forth at length, but it shall be sufficient to refer to such statute by the appropriate designation in the official or recognized compilation thereof, or otherwise identify the same, and the court shall thereupon take judicial knowledge thereof.

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

(a) Caption; Names of Parties. Every pleading, motion, E-filed document under C.R.C.P. 121 (1-26), or any other document filed with the court (hereinafter "document") in both civil and criminal cases shall contain a caption setting forth the name of the court, the title of the action, the case number, if known to the person signing it, the name of the document in accordance with Rule 7(a), and the other applicable information in the format specified by paragraph (d) and the captions illustrated by paragraph (e) or (f) of this rule. In the complaint initiating a lawsuit, the title of the action shall include the names of all the parties to the action. In all other documents, it is sufficient to set forth the name of the first-named party on each side of the lawsuit with an appropriate indication that there are also other parties (such as "et al."). A party whose name is not known shall be designated by any name and the words "whose true name is unknown". In an action in rem, unknown parties shall be designated as "all unknown persons who claim any interest in the subject matter of this action".

(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances. A paragraph may be referred to by its paragraph number in all succeeding documents. Each claim founded upon a separate transaction or occurrence, and each defense other than denials, shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Incorporation by Reference; Exhibits. A statement in a document may be incorporated by reference in a different part of the same document or in another document. An exhibit to a document is a part thereof for all purposes.

(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) **Paper:** Where a document is filed on paper, it shall be on plain, white, 8 1/2 by 11 inch paper (recycled paper preferred).

(2) **Format:** All documents shall be legible. They shall be printed on one side of the page only (except for E-Filed documents).

(I) **Margins:** All documents shall use margins of 1 1/2 inches at the top of each page, and 1 inch at the left, right, and bottom of each page. Except for the caption, a left-justified margin shall be used for all material.

(II) **Font:** No less than twelve (12) point font shall be used for all documents.

(III) **Case Caption Information:** All documents shall contain the following information arranged in the following order, as illustrated by paragraphs (e) and (f) of this rule, except that documents issued by the court under the signature of the clerk or judge should omit the attorney section as illustrated in paragraphs (e)(2) and (f)(2). Individual boxes should separate this case caption information; however, vertical lines are not mandatory.

On the left side:
Court name and mailing address.
Name of parties.
Name, address, and telephone number of the attorney or pro se party filing the document. Fax number and e-mail address are optional.
Attorney registration number.
Document title.

On the right side:
An area for "Court Use Only" that is at least 2 1/2 inches in width and 1 3/4 inches in length (located opposite the court and party information).
Case number, division number, and courtroom number (located opposite the attorney information above).

(3) **Spacing:** The following spacing guidelines should be followed.

(I) **Single spacing for all:**

Affidavits
Complaints, Answers, and Petitions
Criminal Informations and Complaints
Interrogatories and Requests for Admissions
Motions
Notices
Pleading forms (all case types)
Probation reports
All other documents not listed in subsection (II) below

(II) **Double spacing for all:**

Briefs and Legal Memoranda
Depositions
Documents that are complex or technical in nature
Jury Instructions
Petitions for Rehearing
Petitions for Writ of Certiorari
Petitions pursuant to C.A.R. 21
Transcripts

(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 or her address, telephone number, fax number, or e-mail address at the end of the document.

(e) Illustration of Preferred Case Caption Format:

(1) **Preferred Caption for documents initiated by a party:**

[Designation of Court from subsection (g) below] Court Address: **Plaintiff(s):** v. *[Substitute appropriate party designations & names]* **Defendant(s):**	
Attorney or Party Without Attorney: Name: Address: Phone Number: FAX Number: E-mail: Atty. Reg.#:	▲ **COURT USE ONLY** ▲ Case Number: Div: Ctrm:

NAME OF DOCUMENT

(2) **Preferred Caption for documents issued by the court under the signature of the clerk or judge:**

[Designation of Court from subsection (g) below] Court Address: **Plaintiff(s):** *[Substitute appropriate party designations & names]* v. **Defendant(s):**	▲ **COURT USE ONLY** ▲ Case Number: Div: Ctrm:

NAME OF DOCUMENT

(f) Illustration of Optional Case Caption:

(1) Optional Caption for documents initiated by a party:

[Designation of Court from subsection (g) below]

Court Address:

Plaintiff(s):

v. *[Substitute appropriate party designations & names]*

Defendant(s): ▲ **COURT USE ONLY** ▲

Attorney or Party Without Attorney:
Name:
Address:

Phone Number:
FAX Number:
E-mail:
Atty. Reg.#:

Case Number:

Div: Ctrm.:

NAME OF DOCUMENT

(2) Optional Caption for documents issued by the court under signature of the clerk or judge:

[Designation of Court from subsection (g) below]

Court Address:

Plaintiff(s):

[Substitute appropriate party designations & names]

v.

Defendant(s):

▲ **COURT USE ONLY** ▲

Case Number:

Div: Ctrm.:

NAME OF DOCUMENT

(g) Court Designation Examples:

APPELLATE
SUPREME COURT, STATE OF COLORADO
COURT OF APPEALS, STATE OF COLORADO

WATER
DISTRICT COURT, WATER DIVISION ___, COLORADO

DISTRICT

DISTRICT COURT, _____ COUNTY, COLORADO

COUNTY
COUNTY COURT, _____ COUNTY, COLORADO

CITY AND COUNTY
COUNTY COURT, CITY AND COUNTY OF _____, COLORADO
PROBATE COURT, CITY AND COUNTY OF _____, COLORADO
JUVENILE COURT, CITY AND COUNTY OF _____, COLORADO
DISTRICT COURT, CITY AND COUNTY OF _____, COLORADO

(h) The forms of case captions provided for in this rule replace those forms of captions otherwise provided for in other Colorado rules of procedure, including but not limited to the Colorado Rules of County Court Procedure, the Colorado Rules of Procedure for Small Claims Courts, and the Colorado Appellate Rules. These forms of case captions apply to criminal cases, as well as civil cases.

(i) State Judicial Pre-Printed or Computer-Generated Forms. Forms approved by the State Court Administrator's Office (designated "JDF" or "SCAO" on pre-printed or computer-generated forms), forms set forth in the Colorado Court Rules, volume 12, C.R.S., (including those pre-printed or computer-generated forms designated "CRCP" or "CPC" and those contained in the appendices of volume 12, C.R.S.), and forms generated by the state's judicial electronic system, "ICON," shall conform to criteria established by the State Court Administrator's Office with the approval of the Colorado Supreme Court. Such forms, whether preprinted or computer-generated, shall employ a form of caption similar to those contained in this rule, contain check-off boxes for the court designation, have at least a 9-point font, and 1 inch left margin, 1/2 inch right and bottom margins, and at least 1 inch top margin, except that for forms designated "JDF" or "SCAO" the requirement of at least 1 inch for the top margin shall apply to forms created or revised on and after April 5, 2010.

COMMENT

This rule sets forth forms of case captions for all documents that are filed in Colorado courts, including both criminal and civil cases. The purpose of the form captions is to provide a uniform and consistent format that enables practitioners, clerks, administrators, and judges to locate identifying information more efficiently. Judges are encouraged in their orders to employ a caption similar to that found in paragraph (e)(2).

The preferred case caption format for documents initiated by a party is found in paragraph (e)(1). The preferred caption for documents issued by the court under the signature of a clerk or judge is found in paragraph (e)(2). Because some parties may have difficulty formatting their documents to include vertical lines and boxes, alternate case caption formats are found in paragraphs (f)(1) and (f)(2). However, the box format is the preferred and recommended format.

The boxes may be vertically elongated to accommodate additional party and attorney information if necessary. The

"court use" and "case number" boxes, however, shall always be located in the upper right side of the caption.

Forms approved by the State Court Administrator's Office (designated "JDF" or "SCAO"), forms set forth in the Colorado Court Rules, volume 12, C.R.S. (including those designated "CRCP" or "CPC" and those contained in the appendices of volume 12, C.R.S.), and forms generated by the state's judicial electronic system, "ICON," shall conform to criteria established by the State Court Administrator's Office as approved by the Colorado Supreme Court. This includes pre-printed and computer-generated forms. JDF and SCAO forms and a flexible form of caption which allows the entry of additional party and attorney information are available and can be downloaded from the Colorado courts web page at http://www.courts.state.co.us/scao/Forms.htm.

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 individual name. The initial pleading shall state the current number of his 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 pleadings and state his 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 that he has read the pleading; that to the best of his 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 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 would not prevail on said claim, action, or defense.

(b) Limited Representation. An attorney may undertake to provide limited representation in accordance with Colo.RPC 1.2 to a pro se party involved in a court

proceeding. Pleadings or papers filed by the pro se party that were prepared with the drafting assistance of the attorney shall include the attorney's name, address, telephone number and registration number. The attorney shall advise the pro se party that such pleading or other paper must contain this statement. In helping to draft the pleading or paper filed by the pro se party, the attorney certifies that, to the best of the attorney's knowledge, information and belief, this pleading or paper is (1) well-grounded in fact based upon a reasonable inquiry of the pro se party by the attorney, (2) is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (3) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The attorney in providing such drafting assistance may rely on the pro se party's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts. Assistance by an attorney to a pro se party in filling out pre-printed and electronically published forms that are issued through the judicial branch for use in court are not subject to the certification and attorney name disclosure requirements of this Rule 11(b).

Limited representation of a pro se party under this Rule 11(b) shall not constitute an entry of appearance by the attorney for purposes of C.R.C.P. 121, section 1-1 or C.R.C.P. 5(b), and does not authorize or require the service of papers upon the attorney. Representation of the pro se party by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the pro se party constitutes an entry of an appearance pursuant to C.R.C.P. 121, section 1-1. The attorney's violation of this Rule 11(b) may subject the attorney to the sanctions provided in C.R.C.P. 11(a).

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

(a) When Presented. A defendant shall file his answer or other response within 21 days after the service of the summons and complaint on him. If, pursuant to special order, a copy of the complaint is not served with the summons, or if the summons is served without the state, or by publication, a defendant shall file his answer or other response within 35 days after the service thereof on him. A party served with a pleading stating a cross claim against him shall file an answer or other response thereto within 21 days after the service upon him. The plaintiff shall file his reply to a counterclaim in the answer within 21 days after the service of the answer. If reply is made to any affirmative defense such reply shall be filed within 21 days after service of the pleading containing such affirmative defense. If a pleading is ordered by the court, it shall be filed within 21 days after the entry of the order, unless the order otherwise directs. The filing of a motion permitted under this Rule alters these periods of time, as follows: (1) 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; (2) 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.

(b) How Presented. Every defense, in law or in fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) Lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; (4) insufficiency of service of process; (5) failure to state a claim upon which relief can be granted; (6) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or with any other motion permitted under Rule 12 or Rule 98. If a pleading sets forth a claim for relief to which the adverse party is not required to file a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated in subsections (1)-(6) of section (b) of this Rule, whether made in a pleading or by motion, and the motion for judgment mentioned in section (c) of this Rule, shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for Separate Statement, or for More Definite Statement. Before responding to a pleading or, if no responsive pleading is permitted by these rules, within 21 days after the service of the pleading upon him, a party may file a motion for a statement in separate counts or defenses, or for a more definite statement of any matter which is not averred with sufficient definiteness or particularity to enable him properly to prepare his responsive pleading. If the motion is granted and the order of the court is not obeyed within 14 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to Strike. Upon motion filed by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion filed by a party within 21 days after the service of any pleading, motion, or other paper, or upon the court's own initiative at any time, the court may order any redundant, immaterial, impertinent, or scandalous matter stricken from any pleading, motion, or other paper. The objection that a responsive pleading or separate defense therein fails to state a legal defense may be raised by motion filed under this section (f).

(g) Consolidation of Defenses in Motion. A party who makes a motion under this Rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this Rule but omits therefrom any defense or objection then available to him which this Rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in section (h)(2) of this Rule on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, insufficiency of process, or insufficiency of service of process is waived: (A) If omitted from a motion in the circumstances described in section (g); or (B) if it is neither made by motion under this Rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

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 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) Permissive Counterclaim. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(c) Counterclaim Exceeding Opposing Claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

(d) [There is no section (d).]

(e) Counterclaim Maturing or Acquired After Pleading. A claim which either matured or was acquired by the pleader after serving his 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 may by leave of

court set up the counterclaim by amendment.

(g) Cross Claim Against Coparty. A pleading may state as a cross claim any claim by one party against a coparty arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action. Such cross claim may include a claim that the party against whom it is asserted is or may be liable to the cross claimant for all or part of a claim asserted in the action against the cross claimant.

(h) Joinder of Additional Parties. Persons other than those made parties to the original action may be made parties to a counterclaim or cross claim in accordance with the provisions of Rules 19 and 20.

(i) Separate Trials; Separate Judgments. If the court orders separate trials as provided in Rule 42 (b), judgment on a counterclaim or cross claim may be rendered in accordance with the terms of Rule 54 (b) when the court has jurisdiction so to do, even if the claims of the opposing party have been dismissed or otherwise disposed of.

(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 assignee, to the extent that such claim, counterclaim, or cross claim does not exceed recovery upon the claim of the assignee.

(k) Claims Against Personal Representative. The death of a person shall not prejudice the rights of a third person to assert a claim, cross claim, or counterclaim surviving death against the personal representative of the deceased in the time and manner provided by law.

(l) Superior Courts. Repealed May 30, 1991, effective July 1, 1991.

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 for all or part of the plaintiff's claim against him. The third-party plaintiff need not obtain leave to make the service if he files the third-party complaint not later than 14 days after he serves his original answer. Otherwise he 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 defenses to the third party plaintiff's claim as provided in Rule 12 and his 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 defenses as provided in Rule 12 and his 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 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 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 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 may so amend it any time within 21 days after it is filed. Otherwise, a party may amend his 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 in maintaining his 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 law for commencing the action against him, the party to be brought in by amendment: (1) Has received such notice of the institution of the action that he will not be prejudiced in maintaining his 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.

(d) Supplemental Pleadings. Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him 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 16. Case Management and Trial Management

(a) Purpose and Scope. The purpose of this Rule 16 is to establish a uniform, court-supervised procedure involving case management which encourages professionalism and cooperation among counsel and parties to facilitate disclosure, discovery, pretrial and trial procedures. This Rule shall govern case management in all district court civil cases except as provided herein. This Rule shall not apply to domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C.R.C.P. 106 and 120, and other similar expedited proceedings, unless otherwise ordered by the court or stipulated by the parties. This Rule 16 also shall not apply to civil actions that are governed by Simplified Procedure under C.R.C.P. 16.1, except as specifically provided in Rule 16.1. The disclosures and information required to be included in both the Case Management and Trial Management Orders interrelate to discovery authorized by these rules. The right of discovery shall not constitute grounds for failing to timely disclose information required by this Rule, nor shall this Rule constitute a ground for failing to timely disclose any information sought pursuant to discovery.

(b) Presumptive Case Management Order. Except as provided in sections (c) - (e) of this Rule, the parties shall not file a Case Management Order and subsections (1) - (10) of this section shall constitute the Case Management Order and shall control the course of the action from the time the case is at issue until otherwise required pursuant to section (f) of this Rule.

(1) At Issue Date. For the purposes of this Rule, a case shall be deemed at issue at such time as all parties have been served and all pleadings permitted by C.R.C.P. 7 have been filed or defaults or dismissals have been entered against all non-appearing parties, or at such other time as the court may direct.

(2) The Responsible Attorney. For purposes of this Rule, "the responsible attorney" shall mean plaintiff's counsel, if the plaintiff is represented by counsel, or if not, the defense counsel who first enters an appearance in the case. The responsible attorney shall schedule conferences among the parties, prepare and file the certificates of compliance, prepare and submit the proposed Modified Case Management Order, if applicable, and prepare and submit the proposed Trial Management Order.

(3) Meet and Confer. No later than 14 days after the case is at issue, lead counsel for each party and any party who is not represented by counsel shall confer with each other about the nature and basis of the claims and defenses; the matters to be disclosed pursuant to C.R.C.P. 26(a)(1); and whether a Modified Case Management Order is necessary pursuant to subsection (c) of this Rule.

(4) 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 §1-6, unless otherwise ordered by the Court.

(5) Disclosures. No later than 35 days after the case is at issue, the parties shall serve their C.R.C.P. 26(a)(1) disclosures. The parties shall disclose expert testimony in accordance with C.R.C.P. 26(a)(2).

(6) Settlement Discussions. No later than 35 days after the case is at issue, the parties shall explore the possibilities of a prompt settlement or resolution of the case.

(7) Certificate of Compliance. No later than 49 days after the case is at issue, the responsible attorney shall file a Certificate of Compliance. The Certificate of Compliance shall state that the parties have complied with all requirements of subsections (b)(3)-(6), inclusive, of this Rule or, if they 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.

(8) Time to Join Additional Parties and Amend Pleadings. No later than 119 days (17 weeks) after the case is at issue, all motions to amend pleadings and add additional parties to the case shall be filed.

(9) Pretrial Motions. No later than 35 days before the trial date, pretrial motions shall be filed, except for motions pursuant to C.R.C.P. 56, which must be filed no later than 91 days (13 weeks) before the trial and except for motions challenging expert testimony pursuant to C.R.E. 702, which must be filed no later than 70 days (10 weeks) before the trial.

(10) Discovery Schedule. Discovery shall be limited to that allowed by C.R.C.P. 26(b)(2). Except as provided in C.R.C.P. 26(d), discovery may commence 42 days after the case is at issue. The date for completion of all discovery shall be 49 days before the trial date.

(c) Modified Case Management Order. Any of the provisions of section (b) of this Rule may be modified by the entry of a Modified Case Management Order pursuant to this section and section (d) of this Rule. If a trial is set to commence less than 182 days (26 weeks) after the at-issue date as defined in C.R.C.P. 16(b)(1), and if a timely request for a modified case management order is made by any party, the case management order shall be modified to allow the parties an appropriate amount of time to meet case management deadlines, including discovery, expert disclosures, and the filing of summary judgment motions. The amounts of time allowed shall be within the discretion of the court on a case-by-case basis.

(1) Stipulated Modified Case Management Order. No later than 42 days after the case is at issue, the parties may file a Stipulated proposed Modified Case Management Order, supported by a specific showing of good cause for each modification sought including, where applicable, the grounds for good cause pursuant to C.R.C.P. 26(b)(2). Such proposed order only needs to set forth the proposed provisions which would be changed from the presumptive Case Management Order set forth in section (b) of this Rule. The Court may approve and enter the Stipulated Modified Case Management Order, or may set a case management conference.

(2) Disputed Motions for Modified Case Management Orders. If any party wishes to move for a Modified Case Management Order, lead counsel and any unrepresented parties shall confer and cooperate in the development of a proposed Modified Case Management Order. A motion for a Modified Case Management Order and one form of the proposed Order shall be filed no later than 42 days after the case is at issue. To the extent possible,

counsel and any unrepresented parties shall agree to the contents of the proposed Modified Case Management Order but any matter upon which all parties cannot agree shall be designated as "disputed" in the proposed Modified Case Management Order. The proposed Order shall contain specific alternate provisions upon which agreement could not be reached and shall be supported by specific showing of good cause for each modification sought including, where applicable, the grounds for good cause pursuant to C.R.C.P. 26(b)(2). Such motion only needs to set forth the proposed provisions which would be changed from the presumptive case management Order set forth in section (b) of this Rule. The motion for a modified case management order shall be signed by lead counsel and any unrepresented parties, or shall contain a statement as to why it is not so signed.

(d) Case Management Conference. If there is a disputed modified case management order or if any counsel or unrepresented party believes that it would be helpful to conduct a case management conference, a notice to set case management conference shall be filed stating the reasons why such a conference is requested. If a Notice to Set Case Management conference is filed concerning a disputed Modified Case Management Order, 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. The court shall promptly enter a Modified Case Management Order containing such modifications as are approved by the Court.

(e) Amendment of the Case Management Order. At any time following the entry of the Case Management Order, a party wishing to amend the presumptive Case Management Order or a Modified Case Management Order shall file a motion stating each proposed amendment and a specific showing of good cause for the timing and necessity for each modification sought including, where applicable, the grounds for good cause pursuant to C.R.C.P. 26(b)(2).

(f) Trial Management Order. No later than 28 days before the trial date, the responsible attorney shall file a proposed Trial Management order with the court. Prior to trial, a Trial Management Order shall be entered by the Court.

(1) Cases with Unrepresented Parties. If any unrepresented party will be participating in the trial, the responsible attorney shall promptly file a Notice to Set Trial Management conference after all disclosures have been served and discovery has been completed and the court shall conduct a Trial Management conference on the record and issue a Trial Management Order pursuant to subsection (f)(4) of this Rule. The responsible attorney shall submit a proposed Trial Management Order prior to the conference by filing the same with the Court and serving a copy thereof on all other parties.

(2) All Parties Represented by Counsel.

(A) If all parties are represented by counsel, lead counsel for each party shall confer with each other to develop jointly a proposed trial management order. Plaintiff's counsel shall be responsible for scheduling conferences among counsel and preparing and filing the proposed trial management order.

(B) Not later than 42 days before the trial date, each counsel shall exchange a draft of the lists of witnesses and exhibits required in subsections (f)(3)(VI)(A) and (B) of this Rule together with a copy of each documentary exhibit to be listed pursuant to subsection

(f)(3)(VI)(B) of this Rule.

(C) To the extent possible, counsel shall agree to the contents of the proposed Trial Management Order. Any matter upon which all counsel cannot agree shall be designated as "disputed" in the proposed order and the proposed trial management order shall contain specific alternative provisions upon which agreement could not be reached. The proposed Trial Management Order shall be signed by lead counsel for each party and shall include a place for the court's approval.

(D) If there are any disputed matters or if any counsel believes that it would be helpful to conduct a Trial Management conference, the filing of the proposed Trial Management order shall be accompanied by a Notice to Set Trial Management conference, stating the reasons why such a conference is requested.

(3) Form of Trial Management Order. The proposed Trial Management Order shall contain the following matters under the following captions and in the following order:

I. STATEMENT OF CLAIMS AND DEFENSES. The parties shall set forth a brief description of the nature of the case and a summary identification of the claims and defenses remaining for trial. Any claims or defenses set forth in the pleadings which will not be at issue at trial shall be designated as "withdrawn" or "resolved."

II. STIPULATED FACTS. The parties shall set forth a plain, concise statement of all facts which the trier of fact shall accept as undisputed. If the matter is scheduled for a jury trial, a proposed jury instruction containing these undisputed facts shall be submitted as provided in section (g) of this Rule.

III. PRETRIAL MOTIONS. The parties shall list any pending motions.

IV. TRIAL BRIEFS. The parties shall indicate whether trial briefs will be filed, including a schedule for their filing. Trial briefs shall be filed no later than 14 days before the trial date.

V. ITEMIZATION OF DAMAGES OR OTHER RELIEF SOUGHT. Each claiming party shall set forth a detailed description of the categories of damages or other relief sought and a computation of any economic damages claimed.

VI. IDENTIFICATION OF WITNESSES AND EXHIBITS--JUROR NOTEBOOKS. Each party shall provide the following information:

(A) Witnesses. Each party shall attach to the proposed trial management order separate lists containing the name, address, telephone number and the anticipated length of each witness' testimony, including cross examination, (i) of any person whom the party "will call" and (ii) of any person whom the party "may call" as a witness at trial. When a party lists a witness as a "will call" witness, the party does not have to call the witness to testify, but must ensure that the witness will be available to testify at trial if called by any party without the necessity for any other party to subpoena the witness for the trial. For each expert witness, the list shall also indicate whether the opposing party accepts or challenges the qualifications of a witness to testify as an expert as to the opinions expressed. If there is a challenge, the list shall be accompanied by a resume setting forth the basis for the expertise of the challenged witness. Where appropriate, the court may order the parties to provide written notice to the other parties and to the court of the order in which the parties expect to present their witnesses.

(B) Exhibits. Each party shall attach to the proposed trial management order a list of exhibits including physical evidence which the party intends to introduce at trial. Unless stipulated by the parties, each list shall assign a number (for plaintiff or petitioner) or letter (for defendant or respondent) designation for each exhibit. Proposed excerpted or highlighted exhibits shall be attached. If any party objects to the authenticity of any exhibit as offered, such objection shall be noted on the list, together with the ground therefor. If any party stipulates to the admissibility of any exhibit, such stipulation shall be noted on the list. On or before the trial date, a set of the documentary exhibits shall be provided to the court.

(C) Juror Notebooks. Counsel for each party shall confer about items to be included in juror notebooks as set forth in C.R.C.P. 47(t) and at the Trial Management conference or other date set by the Court make a joint submission to the Court of items to be included in the juror notebook. By agreement of the parties or in the discretion of the Court, important exhibits may be highlighted or excerpted and may be included in juror notebooks.

(D) Deposition and other preserved testimony. If the preserved testimony of any witness is to be presented the proponent of the testimony shall provide the other parties with its designations of such testimony at least 28 days before the trial date. Any other party may provide all other parties with its designations and shall do so at least 14 days before the trial date. The proponent may provide reply designations and shall do so at least 7 days before the trial date. A copy of the preserved testimony to be presented at trial shall be submitted to the court and include the proponent's and opponent's anticipated designations of the pertinent portions of such testimony or a statement why designation is not feasible at least 3 days before the trial date. If any party wishes to object to the admissibility of the testimony or to any tendered question or answer therein, it shall be noted, setting forth the grounds therefor.

VII. TRIAL EFFICIENCIES AND OTHER MATTERS. If the anticipated length of the trial has changed, the parties shall so indicate. The parties shall also include any other matters which are appropriate under the circumstances of the case or directed by the court to be included in the proposed Trial Management Order. The parties shall confirm that they have considered ways in which the use of technology can simplify the case and make it more understandable. In all cases where a jury trial will be held, the parties shall confer regarding the amount of time requested for juror examination and provide their positions along with their reasons therefor.

(4) Approval of Trial Management Order. If a Notice to Set Trial Management Conference is filed or the Court determines that such a conference should be held, the Court shall set a trial management conference. The conference may be conducted by telephone. The court shall promptly enter the Trial Management Order.

(5) Effect of Trial Management Order. The Trial Management Order shall control the subsequent course of the trial. Modification to or divergence from the Trial Management Order, whether prior to or during trial, shall be permitted upon a demonstration that the modification or divergence could not with reasonable diligence have been anticipated. In the event of any ambiguity in the Trial Management Order, the Court shall interpret the Order in the manner which best advances the interests of justice.

(g) Jury Instructions and Verdict Forms. Counsel for the parties shall confer to develop jointly proposed jury instructions and verdict forms to which the parties agree. No

later than 7 days prior to the date scheduled for commencement of the trial or such other time as the court shall direct, a set of the proposed jury instructions and verdict forms shall be filed with the courtroom clerk. The first party represented by counsel to demand a jury trial pursuant to C.R.C.P. 38 and who has not withdrawn such demand shall be responsible for filing the proposed jury instructions and verdict forms. If any jury instruction or verdict form is disputed, the party propounding the instruction or verdict form shall separately file with the courtroom clerk a set of the disputed jury instructions and verdict forms. Each instruction or verdict form shall have attached a brief statement of the legal authority on which the proposed instruction or verdict form is based. Compliance with this Rule shall not deprive parties of the right to tender additional instructions or verdict forms or withdraw proposed instructions or verdict forms at trial. All jury instructions and verdict forms submitted by the parties shall be in final form and reasonably complete. The court shall permit the use of photocopied instructions and verdict forms, without citations, in its submission to the jury.

COMMITTEE COMMENT

History and Philosophy

Effective differential case management has been a long-term goal of the Bench, Bar, and Public. Adoption by the Colorado Supreme Court of C.R.C.P. 121 and its practice standards in 1983; revised C.R.C.P. 16 in 1988 to require earlier disclosure of matters necessary for trial; and the Colorado Standards for Case Management--Trial Courts in 1989 were a continuing and evolving effort to achieve an orderly, fair and less expensive means of dispute resolution. Those rules and standards were an improvement over prior practice where there was no prescribed means of case management, but problems still remained. There were problems of discovery abuse, late or inadequate disclosure, lack of professionalism, slow case disposition, outrageous expense and failure to achieve an early settlement of those cases that ultimately settled.

In the past several years, a recognition by the organized Bar of increasing unprofessional conduct by some attorneys led to further study of problems in our civil justice system and new approaches to resolve them. New Federal Rules of Civil Procedure were developed to require extensive early disclosure and to limit discovery. The Colorado Bar Association's Professionalism Committee made recommendations concerning improvements of Colorado's case management and discovery rules.

After substantial input through surveys, seminars and Bench/Bar committees, the Colorado Supreme Court appointed a special Ad Hoc Committee to study and make recommendations concerning Colorado's Civil Rules pertaining to case management, disclosure/discovery and motions practice. Reforms of Rules 16, 26, 29, 30, 31, 32, 33, 34, 36, 37, 51, 121 § 1-11, 121 § 1-12, 121 § 1-15, and 121 § 1-19 were developed by this Committee.

The heart of the reform is a totally rewritten Rule 16 which sets forth a new system of case management. Revisions to Rules 26, 29, 30, 31, 32, 33, 34, 36, and 37 are patterned after December 1, 1993, revisions to Federal Rules of the same number, but are not in all respects identical. Colorado Rules 16, 26, 29, 30,

31, 32, 33, 34, 36, and 37 were developed to interrelate with each other to provide a differential case management/early disclosure/limited discovery system designed to resolve difficulties experienced with prior approaches. Changes to C.R.C.P. 121 §§ 1-11, 1-12, 1-15, and 1-19 are designed to interrelate with the case management/disclosure/ discovery reform to improve motions practice. In developing these rules, the Committee paid particular attention to the 1993 revisions of the Federal Rules of Civil Procedure and the work of the Colorado Bar Association regarding professionalism.

Operation

New Rule 16 and revisions of Rules 26, 29, 30, 31, 32, 33, 34, 36, 37, 51, and 121 §§ 1-11, 1-12, 1-15, and 1-19 are designed to accomplish early purposeful and reasonably economical management of cases by the parties with Court supervision. The system is based on communication, including required early disclosure of persons with knowledge and documents relevant to the case, which disclosure should lead in many cases to early evaluation and settlement efforts, and/or preparation of a workable Case Management Order. Lead attorneys for each party are to communicate with each other in the spirit of cooperation in the preparation of both the Case and Trial Management Orders. Court Case Management Conferences are available where necessary for any reasonable purpose. The Rules require a team effort with Court leadership to insure that only appropriate discovery is conducted and to carefully plan for and conduct an efficient and expeditious trial.

Rules 16 and 26 should work well in most cases filed in Colorado District Courts. However, where a case is complex or requires special treatment, the Rules provide flexibility so that the parties and Court can alter the procedure. The importance of economy is encouraged and fostered in a number of ways, including authorized use of the telephone to conduct in-person attorney and Court conferences.

The Committee acknowledges the greater length of the Rules comprising this reformed system. However, these Rules have been developed to describe and to eliminate "hide-the-ball" and "hardball" tactics under previous Disclosure Certificate and Discovery Rules. It is expected that trial judges will assertively lead the management of cases to ensure that justice is served. In the view of the Committee, abuses of the Rules to run up fees, feed egos, bludgeon opponents into submission, force unfair settlements, build cases for sanctions, or belittle others should not be tolerated.

These Rules have been drafted to emphasize and foster professionalism and to de-emphasize sanctions for non-compliance. Adequate enforcement provisions remain. It is expected that attorneys will strive diligently to represent their clients' best interests, but at the same time conduct themselves as officers of the Court in the spirit of the recently adopted Rules of Professional Conduct.

(a)

The purpose and scope of Rule 16 are as set forth in subsection (a). Unless otherwise ordered by the Court or stipulated by the parties, Rule 16 does not mandatorily apply to domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, Rule 120, or

other expedited proceedings. Provisions of the Rule could be used, however, and Courts involved in those proceedings should consider their possible applicability to particular cases.

(b)

The "Case Management Order" is the central coordinating feature of the Rule 16 case management system. It comes at a relatively early but realistic time in the case. The Case Management Order governs the trial setting; contains or coordinates disclosure; limits discovery and establishes a discovery schedule; establishes the deadline for joinder of additional parties and amendment of pleadings; coordinates handling of pretrial motions; requires a statement concerning settlement; and allows opportunity for inclusion of other provisions necessary to the case.

Lead counsel for each of the parties are required to confer about the nature and bases of their claims and defenses, discuss the matters to be disclosed and explore the possibilities of a prompt settlement or other resolution of the case. As part of the conferring process, lead counsel for each of the parties are required to cooperate in the development of the Case Management Order, which is then submitted to the Court for approval. If there is disagreement about any aspect of the proposed Case Management Order, or if some aspect of the case requires special treatment, the parties are entitled to an expeditious Case Management Conference. If any party is appearing pro se an automatic mandatory Case Management Conference is triggered.

A time line is specified in C.R.C.P. 16(b) for the C.R.C.P. 26(a)(1) disclosures, conferring of counsel and submission of the proposed Case Management Order. The time line in section (b) is triggered by the "at issue" date, which is defined at the beginning of C.R.C.P. 16(b).

Disclosure requirements of C.R.C.P. 26, including the duty to timely supplement and correct disclosures, together with sanction provisions of C.R.C.P. 37 for failure to make disclosure, are incorporated by reference. Because of mandatory disclosure, there should be substantially less need for discovery. Presumptive limitations on discovery are specified in C.R.C.P. 26(b)(2). The limitations contained in C.R.C.P. 26 and Discovery Rules 29, 30, 31, 32, 33, 34, and 36 are incorporated by reference and provision is made for discovery above presumptive limitations if, upon good cause shown (as defined in C.R.C.P. 26(b)(2)), the particular case warrants it. The system established by C.R.C.P. 16(b)(1)(IV) requires the parties to set forth and obtain Court approval of a schedule of discovery for the case, which includes the timing and number of particular forms of discovery requests. The system established by C.R.C.P. 16(b)(1)(IV) also requires lead counsel for each of the parties to set forth the basis of and necessity for all such discovery and certify that they have advised their clients of the expenses and fees involved with each such item of discovery. The purpose of such discovery schedule and expense estimate is to bring about an advanced realization on the part of the attorneys and clients of the expense and effort involved in the schedule so that decisions can be made concerning propriety, feasibility, and possible alternatives (such as settlement or

other means of obtaining the information). More stringent standards concerning the oftlinenecessity of discovery contained in C.R.C.P. 26(b)(2) are incorporated into C.R.C.P. 16(b)(l)(IV). A Court should not simply "rubber-stamp" a proposed discovery schedule even if agreed upon by counsel.

A Court Case Management Conference will not be necessary in every case. It is anticipated that many cases will not require a Court Case Management Conference, but such conference is available should the parties or the Court find it necessary. Regardless of whether there is a Court Case Management Conference, there will always be the Case Management Order which, along with the later Trial Management Order, should effectively govern the course of the litigation through the trial.

(c)

The Trial Management Order is jointly developed by the parties and filed with the Court as a proposal no later than thirty days prior to the date scheduled for the trial (or at such other time as the Court directs). The Trial Management Order contains matters for trial (see specific enumeration of elements to be contained in the Trial Management Order). It should be noted that the Trial Management Order references the Case Management Order and, particularly with witnesses, exhibits, and experts, contemplates prior identification and disclosure concerning them. Except with permission of the Court based on a showing that the witness, exhibit, or expert could not have, with reasonable diligence, been anticipated, a witness, exhibit, or expert cannot be revealed for the first time in the Trial Management Order.

As with the Case Management Order, Trial Management Order provisions of the Rule are designed to be flexible so as to fit the particular case. If the parties cannot agree on any aspect of the proposed Trial Management Order, a Court Trial Management Conference is triggered. The Court Trial Management Conference is mandatory if any party is appearing in the trial *pro se*.

As with the Case Management Order procedure, many cases will not require a Court Trial Management Conference, but such a conference is available upon request and encouraged if there is any problem with the case that is not resolved and managed by the Trial Management Order.

The Trial Management Order process will force the attorneys to make decisions on which claims or defenses should be dropped and identify legal issues that are truly contested. Both of those requirements should reduce the expenses associated with trial. In addition, the requirement that any party seeking damages define and itemize those damages in detail should facilitate preparation and trial of the case.

Subsection (c)(IV), pertaining to designation of "order of proof," is a new feature not contained in Federal or State Rules. To facilitate scheduling and save expense, the parties are required to specifically identify those witnesses they anticipate calling in the order to be called, indicating the anticipated length of their testimony, including cross-examination.

(d)

Provision is made in the C.R.C.P. 16 case management system for an orderly advanced exchange and filing of jury

instructions and verdict forms. Many trial courts presently require exchange and submission of a set of agreed instructions during the trial. C.R.C.P. 16(d) now requires such exchange, conferring, and filing no later than three (3) days prior to the date scheduled for the commencement of the trial (or such other time as the Court otherwise directs).

Rule 16.1. Simplified Procedure for Civil Actions

(a) Purpose and Summary of Simplified Procedure.

(1) Purpose of Simplified Procedure. The purpose of this rule 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 provide the earliest practical trials; and to limit discovery and its attendant expense.

(2) Summary of Simplified Procedure. Under this Rule, Simplified Procedure generally applies to all civil actions, whether for monetary damages or any other form of relief unless expressly excluded by this Rule or the pleadings, or unless a party timely and properly elects to be excluded from its provisions. This Rule normally limits the maximum allowable monetary judgment to $100,000 against any one party. This Rule requires early, full disclosure of persons, documents, damages, insurance and experts, and early, detailed disclosure of witnesses' testimony, whose direct trial testimony is then generally limited to that which has been disclosed. Normally, no depositions, interrogatories, document requests or requests for admission are allowed, although examination under C.R.C.P. 34(a)(2) and 35 is permitted.

(b) Actions Subject to Simplified Procedure. This Rule 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 party seeks a monetary judgment from any other party of more than $100,000, exclusive of interest and costs.

(3) Each pleading containing an initial claim for relief in a civil action, other than a domestic relations, probate, water, juvenile, or mental health action, shall be accompanied by a completed Civil Cover Sheet in the form and content of Appendix to Chapters 1 to 17, Form 1.2 (JDF 601), at the time of filing. Failure to file the 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.

(c) Limitations on Damages. In cases subject to this Rule, a claimant's right to a monetary judgment against any one party shall be limited to a maximum of $100,000, including any attorney fees, penalties or punitive damages, but excluding interest and costs. The $100,000 limitation shall not restrict an award of non-monetary relief. The jury shall not be informed of the $100,000 limitation. If the jury returns a verdict for damages in excess of $100,000, the trial court shall reduce the verdict to $100,000.

(d) Election for Exclusion from This Rule. This Rule shall apply unless, no later than 35 days after the case is at issue as defined in C.R.C.P. 16(b)(1), any party files a written notice, signed by the party and its counsel, if any, stating that the party elects to be excluded from the application of Simplified Procedure, set forth in this rule 16.1. The use of a "Notice to Elect Exclusion From C.R.C.P. 16.1 Simplified Procedure" in the form and content of Appendix to Chapters 1 to 17, Form 1.3 (JDF 602), shall comply with this section. In the event a notice is filed, C.R.C.P. 16 shall govern the action.

(e) Election for Inclusion Under This Rule. In actions excluded by subsection (b)(2) of this Rule, within 49 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. In such event, they will not be bound by the $100,000 limitation on judgments contained in section (c) of this Rule.

(f) Case Management Orders. In actions subject to Simplified Procedure pursuant to this Rule, the presumptive case management order requirements of C.R.C.P. 16(b)(1), (2), (3), (5) and (6) shall apply.

(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 also file a Certificate of Compliance stating that the parties have complied with all the requirements of sections (f) and (g) of this Rule or, if they 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 under this Rule should be given early trial settings, hearings on motions and trials.

(j) Case Management Conference. If any party believes that it would be helpful to conduct a case management conference, a notice to set 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. Simplified Procedure means that the action shall not be subject to C.R.C.P. 16, 26-33, 34(a)(1), 34(c) 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 35 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, and shall produce all records from those providers or written waivers allowing the opposing party to obtain those records subject to appropriate protective provisions authorized by 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 claimant's efforts to find employment since the claimant's departure from the defending party, and written waivers allowing the opposing 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;

(iii) ***Requested Disclosures.*** Before or after the initial disclosures, any party may make a written designation of specific information and documentation that party believes should be disclosed pursuant to C.R.C.P. 26(a)(1). The other party shall provide a response and any agreed upon disclosures within 21 days of the request or at the time of initial disclosures, whichever is later. If any party believes the responses or disclosures are inadequate, it may seek relief pursuant to C.R.C.P. 37.

(C) Document Disclosure. Documents and other evidentiary materials disclosed pursuant to C.R.C.P.26 (a)(1) and 16.1(k)(1)(B) 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(a)(6), 26(c), 26(e) and 26(g) shall apply to disclosure for expert witnesses. Written disclosures of experts shall be served by parties asserting claims 91 days (13 weeks) before trial; by parties defending against claims 56 days (8 weeks) before trial; and parties asserting claims shall serve written disclosures for any rebuttal experts 35 days before trial.

(3) Disclosure of Non-expert 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 party or hostile witnesses, written disclosure of the expected subject matters of the witness's 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 56 days (8 weeks) before trial; and parties asserting claims shall serve written disclosures for any

rebuttal witnesses 35 days before trial.

(4) Depositions of Witnesses in Lieu of Trial Testimony. 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), take the deposition of that witness for the purpose of preserving the witness' testimony for use at trial. Such a deposition shall be taken at least 7 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 deposition.

(5) Depositions for Obtaining Documents. Depositions also may be taken for the sole purpose of obtaining and authenticating documents from a non-party.

(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.

(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).

(9) Voluntary Discovery. In addition to the disclosures required by this Rule, voluntary discovery may be conducted as agreed to by all the parties. However, the scheduling of such voluntary discovery may not serve as the basis for a continuance of the trial, and the costs of such discovery shall not be deemed to be actual costs recoverable at the conclusion of the action. Disputes relating to such agreed discovery may not be the subject of motions to the court. If a voluntary deposition is taken, such deposition shall not preclude the calling of the deponent as a witness at trial.

(l) Changed Circumstances. In a case governed by this Rule, any time prior to trial, upon a specific showing of substantially changed circumstances sufficient to render the application of Simplified Procedure under this Rule unfair and a showing of good cause for the timing of the motion to terminate, the court shall terminate application of this Rule and

enter such orders as are appropriate under the circumstances.

Rule 16.2. Court Facilitated Management of Domestic Relations Cases and General Provisions Governing Duty of Disclosure

(a) Purpose and Scope. Family members stand in a special relationship to one another and to the court system. It is the purpose of Rule 16.2 to provide a uniform procedure for resolution of all issues in domestic relations cases that reduces the negative impact of adversarial litigation wherever possible. To that end, this Rule contemplates management and facilitation of the case by the court, with the disclosure requirements, discovery and hearings tailored to the needs of the case. This Rule shall govern case management in all district court actions under Articles 10, 11 and 13 of Title 14 of the Colorado Revised Statutes, including post decree matters. The Child Support Enforcement Unit (CSEU) shall be exempted under this Rule unless the CSEU enters an appearance in an ongoing case. Upon the motion of any party or the court's own motion, the court may order that this Rule shall govern juvenile, paternity or probate cases involving allocation of parental responsibilities (decision-making and parenting time), child support and related matters. Any notice or service of process referenced in this Rule shall be governed by the Colorado Rules of Civil Procedure.

(b) Active Case Management. The court shall provide active case management from filing to resolution or hearing on all pending issues. The parties, counsel and the court shall evaluate each case at all stages to determine the scheduling of that individual case, as well as the resources, disclosures/discovery, and experts necessary to prepare the case for resolution or hearing. The intent of this Rule is to provide the parties with a just, timely and cost effective process. The court shall consider the needs of each case and may modify its Standard Case Management Order accordingly. Each judicial district may adopt a Standard Case Management Order that is consistent with this Rule and takes into account the specific needs and resources of the judicial district.

(c) Scheduling and Case Management for New Filings.

(1) Initial status conferences/Stipulated Case Management Plans.

(A) Petitioner shall be responsible for scheduling the initial status conference and shall provide notice of the conference to all parties. Each judicial district shall establish a procedure for setting the initial status conference. Scheduling of the initial status conference shall not be delayed in order to accomplish service.

(B) All parties and counsel, if any, shall attend the initial status conference, except as provided in subsection (c)(1)(C) or (c)(1)(D). At that conference, the parties and counsel shall be prepared to discuss the issues requiring resolution and any special circumstances of the case. The court may permit the parties and/or counsel to attend the initial conference and any subsequent conferences by telephone.

(C) If both parties are represented by counsel, counsel may submit a Stipulated Case Management Plan signed by counsel and the parties. Counsel shall also exchange Mandatory Disclosures and file a Certificate of Compliance. The filing of such a plan, the Mandatory Disclosures and Certificate of Compliance shall exempt the parties and counsel from attendance at the initial status conference. The court shall retain discretion to require a status

conference after review of the Stipulated Case Management Plan.

(D) Parties who file an affidavit for entry of decree without appearance with all required documents before the initial status conference shall be excused from that conference.

(E) The initial status conference shall take place, or the Stipulated Case Management Plan shall be filed with the court, as soon as practicable but no later than 42 days from the filing of the petition.

(F) At the initial status conference, the court shall set the date for the next court appearance. The court may direct one of the parties to send written notice for the next court appearance or may dispense with written notice.

(2) Status conference procedures.

(A) At each conference the parties shall be prepared to discuss what needs to be done and determine a timeline for completion. The parties shall confer in advance on any unresolved issues.

(B) The conferences shall be informal.

(C) Family Court Facilitators may conduct conferences. Family Court Facilitators shall not enter orders but may confirm the agreements of the parties in writing. Agreements which the parties wish to have entered as orders shall be submitted to the judge or magistrate for approval.

(D) The judge or magistrate may enter interim orders at any status conference either upon the stipulation of the parties or to address emergency circumstances.

(E) A record of any part of the proceedings set forth in this section shall be made if requested by a party or by order of the court.

(F) The court shall either enter minute orders, direct counsel to prepare a written order, or place any agreements or orders on the record.

(3) Emergency matters/evidentiary hearings/temporary orders.

(A) Emergency matters may be brought to the attention of the clerk or the Family Court Facilitator for presentation to the court. Issues related to children shall be given priority on the court's calendar.

(B) At the request of either party or on its own motion, the court shall conduct an evidentiary hearing, subject to the Colorado Rules of Evidence, to resolve disputed questions of fact or law. The parties shall be given notice of any evidentiary hearing. Only a judge or magistrate may determine disputed questions of fact or law or enter orders.

(C) Hearings on temporary orders shall be held as soon as possible. The parties shall certify on the record at the time of the temporary orders hearing that they have conferred and attempted in good faith to resolve temporary orders issues. If the parties do not comply with this requirement, the court may vacate the hearing unless an emergency exists that requires immediate court attention.

(4) Motions.

(A) Motions related to the jurisdiction of the court, change of venue, service and consolidation, protection orders, contempt, motions to amend the petition or response, withdrawal or substitution of counsel, motions to seal the court file or limit access to the court file, motions in limine related to evidentiary hearings, motions for review of an order by a magistrate, and post decree motions may be filed with the court at any time.

(B) All other motions shall only be filed and scheduled as determined at a status conference or in an emergency upon order of court.

(d) Scheduling and Case Management for post-decree/modification matters. Within 49 days of the date a post decree motion or motion to modify is filed, the court shall review the matter and determine whether the case will be scheduled and resolved under the provisions of (c) or will be handled on the pleadings or otherwise.

(e) Disclosure.

(1) Parties to domestic relations cases owe each other and the court a duty of full and honest disclosure of all facts that materially affect their rights and interests and those of the children involved in the case. The court requires that, in the discharge of this duty, a party must affirmatively disclose all information that is material to the resolution of the case without awaiting inquiry from the other party. This disclosure shall be conducted in accord with the duty of candor owing among those whose domestic issues are to be resolved under this Rule 16.2.

(2) A party shall, without a formal discovery request, provide the Mandatory Disclosures, as set forth in the form and content of Appendix to Chapters 1 to 17A, Form 35.1, C.R.C.P., and shall provide a completed Sworn Financial Statement and (if applicable) Supporting Schedules as set forth in the form and content of Appendix to Chapters 1 to 17A, Form 35.2 and Form 35.3, C.R.C.P, to the other party within 42 days after service of a petition or a post decree motion involving financial issues. The parties shall exchange the required Mandatory Disclosures, the Sworn Financial Statement and (if applicable) Supporting Schedules by the time of the initial status conference to the extent reasonably possible.

(3) A party shall, without a formal discovery request, also provide a list of expert and lay witnesses whom the party intends to call at a contested hearing or final orders. This disclosure shall include the address, phone number and a brief description of the testimony of each witness. This disclosure shall be made no later than 63 days (9 weeks) prior to the date of the contested hearing or final orders, unless the time for such disclosure is modified by the court.

Unless otherwise stipulated or ordered by the court and subject to the provisions of subsection (g) of this Rule, the disclosure of expert testimony shall be governed by the provisions of C.R.C.P. 26(a)(2)(B). The time for the disclosure of expert or lay witnesses whom a party intends to call at a temporary orders hearing or other emergency hearing shall be determined by the court.

(4) A party is under a continuing duty to supplement or amend any disclosure in a timely manner. This duty shall be governed by the provisions of C.R.C.P. 26(e).

(5) If a party does not timely provide the Mandatory Disclosure, the court may impose sanctions pursuant to subsection (j) of this Rule.

(6) The Sworn Financial Statement, Supporting Schedules (if applicable) and child support worksheets shall be filed with the court. Other mandatory disclosure documents shall not be filed with the court.

(7) A Certificate of Compliance shall accompany the Mandatory Disclosures and shall be filed with the court. A party's signature on the Certificate constitutes certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry,

the Mandatory Disclosure is complete and correct as of the time it is made, except as noted with particularity in the Certificate of Compliance.

(8) Signing of all disclosures, discovery requests, responses and objections shall be governed by C.R.C.P. 26(g).

(9) A Court Authorization For Financial Disclosure shall be issued at the initial status conference if requested, or may be executed by those parties who submit a Stipulated Case Management Plan pursuant to (c)(1)(C), identifying the persons authorized to receive such information.

(10) As set forth in this section, it is the duty of parties to an action for decree of dissolution of marriage, legal separation, or invalidity of marriage, to provide full disclosure of all material assets and liabilities. If the disclosure contains misstatements or omissions, the court shall retain jurisdiction after the entry of a final decree or judgment for a period of 5 years to allocate material assets or liabilities, the omission or non-disclosure of which materially affects the division of assets and liabilities. The provisions of C.R.C.P. 60 shall not bar a motion by either party to allocate such assets or liabilities pursuant to this paragraph. This paragraph shall not limit other remedies that may be available to a party by law.

(f) Discovery. Discovery shall be subject to active case management by the court consistent with this Rule.

(1) Depositions of parties are permitted.

(2) Depositions of non-parties upon oral or written examination for the purpose of obtaining or authenticating documents not accessible to a party are permitted.

(3) After an initial status conference or as agreed to in a Stipulated Case Management Plan filed pursuant to (c)(1)(E), a party may serve on each adverse party any of the pattern interrogatories and requests for production of documents contained in the Appendix to Chapters 1 to 17A Form 35.4 and Form 35.5, C.R.C.P. A party may also serve on each adverse party 10 additional written interrogatories and 10 additional requests for production of documents, each of which shall consist of a single question or request.

(4) The parties shall not undertake additional formal discovery except as authorized by the court or as agreed in a Stipulated Case Management Plan filed pursuant to (c)(1)(C). The court shall grant all reasonable requests for additional discovery for good cause as defined in C.R.C.P. 26(b)(2)(F). Unless otherwise governed by the provisions of this Rule additional discovery shall be governed by C.R.C.P. Rules 26 through 37 and C.R.C.P. 121 section 1-12. Methods to discover additional matters shall be governed by C.R.C.P. 26(a)(5). Additional discovery for trial preparation relating to documents and tangible things shall be governed by C.R.C.P. 26(b)(3).

(5) All discovery shall be initiated so as to be completed not later than 28 days before hearing, except that the court shall extend the time upon good cause shown or to prevent manifest injustice.

(6) Claims of privilege or protection of trial preparation materials shall be governed by C.R.C.P. 26(b)(5).

(7) Protective orders sought by a party relating to discovery shall be governed by C.R.C.P. 26(c).

(g) Use of Experts. If the matter before the court requires the use of an expert or more than one expert, the parties shall attempt to select one expert per issue. If they are unable to agree, the court shall act in accordance with CRE 706, or other applicable rule or statute.

(1) Expert reports shall be filed with the court only if required by the applicable rule or statute.

(2) If the court appoints or the parties jointly select an expert, then the following shall apply:

(A) Compensation for any expert shall be governed by the provisions of CRE 706.

(B) The expert shall communicate with and submit a draft report to each party in a timely manner or within the period of time set by the court. The parties may confer with the expert to comment on and make objections to the draft report before a final report is submitted.

(C) The court shall receive the expert reports into evidence without further foundation, unless a party notes an objection in the Trial Management Certificate. However, this shall not preclude either side from calling an expert for cross-examination, and voir dire on qualifications. Unless otherwise ordered by the court, a reasonable witness fee associated with the expert's court appearance shall be tendered before the hearing by the party disputing the expert's findings.

(3) Nothing in this rule limits the right of a party to retain a qualified expert at that party's expense, subject to judicial allocation if appropriate. The expert shall consider the report and documents or information used by the court appointed or jointly selected expert and any other documents provided by a party, and may testify at a hearing. Any additional documents or information provided to the expert shall be provided to the court appointed or jointly selected expert by the time the expert's report is submitted.

(4) The parties have a duty to cooperate with and supply documents and other information requested by any expert. The parties also have a duty to supplement or correct information in the expert's report or summary.

(5) Unless otherwise ordered by the court, expert reports shall be provided to the parties 56 days (8 weeks) prior to hearing. Rebuttal reports shall be provided 21 days thereafter.

(6) Unless otherwise ordered by the court, parental responsibility evaluations and special advocate reports shall be provided to the parties pursuant to the applicable statute.

(7) The court shall not give presumptive weight to the report of a court appointed or jointly selected expert when such report is disputed by one or both parties.

(8) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. Such trial preparation relating to experts shall be governed by C.R.C.P. 26(b)(4).

(h) Trial Management Certificates.

(1) If both parties are not represented by counsel, then each party shall file with the court a brief statement identifying the disputed issues and that party's witnesses and exhibits including updated Sworn Financial Statements and (if applicable) Supporting Schedules, together with copies thereof, mailed to the opposing party at least 7 days prior to the hearing date or at such other time as ordered by the court.

(2) If at least one party is represented by counsel, the parties shall file a joint Trial Management Certificate 7 days prior to the hearing date or at such other time as ordered by

the court. Petitioner's counsel (or respondent's counsel if petitioner is pro se) shall be responsible for scheduling meetings among counsel and parties and preparing and filing the Trial Management Certificate. The joint Trial Management Certificate shall set forth stipulations and undisputed facts, any requests for attorney fees, disputed issues and specific points of law, lists of lay witnesses and expert witnesses the parties intend to call at hearing, and a list of exhibits, including updated Sworn Financial Statement, Supporting Schedules (if applicable) and proposed child support work sheets. The parties shall exchange copies of exhibits at least 7 days prior to hearing.

(i) Alternative Dispute Resolution.

(1) Nothing in this Rule shall preclude, upon request of both parties, a judge or magistrate from conducting the conferences as a form of alternative dispute resolution pursuant to section 13-22-301, C.R.S. (2002), provided that both parties consent in writing to this process. Consent may only be withdrawn jointly.

(2) The provisions of this Rule shall not preclude the parties from jointly consenting to the use of dispute resolution services by third parties, or the court from referring the parties to mediation or other forms of alternative dispute resolution by third parties pursuant to sections 13-22-311 and 313, C.R.S. (2002).

(j) Sanctions. If a party fails to comply with any of the provisions of this rule, the court may impose appropriate sanctions, which shall not prejudice the party who did comply. If a party attempts to call a witness or introduce an exhibit that the party has not disclosed under subsection (h) of this Rule, the court may exclude that witness or exhibit absent good cause for the omission.

COMMITTEE COMMENT
(C.R.C.P. 16.2)

DISCLOSURES

This Rule is premised upon an expectation that regular status conferences will be conducted informally, that the parties will provide all necessary disclosures and that formal discovery, if authorized, will be tailored to the specific issues of the case. Disclosure of expert testimony and the signing of disclosures and discovery responses will be governed by C.R.C.P. 26 as specifically incorporated into section (e) of new Rule 16.2.

RULE 26.2

The current Rule 26.2 will be repealed. Disclosure of expert testimony and the signing of disclosures and discovery responses will be governed by C.R.C.P. 26 as specifically incorporated into section (e) of new Rule 16.2. Relevant provisions of C.R.C.P. 26 that relate to any additional discovery authorized by the court or stipulated to by the parties under sections (f) and (g) of the new Rule have been incorporated into new Rule 16.2. It is the intent of the committee that relevant caselaw under Rule 26.2 or Rule 26 will have precedential value. The pattern interrogatories and pattern requests for production of documents will also be modified to be consistent with new Rule 16.2.

APPENDICES AND FORMS

The Supreme Court approved the mandatory disclosures, sworn financial

statement and supporting schedules forms referenced in 16.2(e)(2), and inclusion of these forms in the Appendix to Chapters 1 to 17A of the Colorado Rules of Civil Procedure. Rule 16.2 requires compliance with the mandatory disclosures, and completion of the sworn financial statement form and supplemental schedule (if applicable) submitted with this Rule to achieve the disclosure intended by the Rule. The court also approved the amended pattern interrogatories (Form 35.4) and pattern requests for production (Form 35.5). The court further approved the form of the Stipulated Case Management Plan, an associated Order referenced in 16.2(c)(1)(C), and the Court Authorization for Financial Disclosure, referenced in 16.2(e)(9), which forms now have JDF numbers.

SETTLEMENT CONFERENCES

Rule 121, Section 1-17 has been amended to permit a judge or magistrate to conduct a settlement conference or utilize other alternative dispute resolution techniques under Rule 16.2(i).

CHAPTER 3

Parties

CHAPTER 3

PARTIES

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 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 married woman may sue and be sued in all matters the same as though she were sole. 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 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 may sue by his 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 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, 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 absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may: (A) As a practical matter impair or impede his 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 claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he 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 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) Pleading Reasons for Nonjoinder. A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons as described in subsections (a) (1) and (a) (2) of this Rule who are not joined, and the reasons why they are not joined.

(d) Exception of Class Actions. This rule is subject to the provisions of Rule 23.

Rule 20. Permissive Joinder of Parties

(a) Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action. A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more of the plaintiffs according to their respective right to relief, and against one or more defendants according to their respective liabilities.

(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 asserts

no claim and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.

(c) Parties Jointly or Severally Liable. Persons jointly or severally liable upon the same obligation or instrument, including the parties to negotiable instruments and sureties on the same or separate instruments, may all or any of them be sued in the same action, at the option of the plaintiff.

Rule 21. Misjoinder and Nonjoinder of Parties

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

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 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) In any civil action of interpleader, a district court may enter its order restraining all claimants from instituting or prosecuting any proceeding in any court of this state affecting the property, instrument, or obligation involved in the interpleader action until further order of the court.

Such district court shall hear and determine the case, and may discharge the plaintiff from further liability, make the injunction permanent, and make all appropriate orders to enforce its judgment.

Rule 23. Class Actions

(a) Prerequisites to Class Action. One or more members of a class may sue or be sued as representative parties on behalf of all only if: (1) The class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. Any action may be maintained as a class action if the prerequisites of section (a) are satisfied, and in addition:

(1) The prosecution of separate actions by or against individual members of the class would create a risk of:

(A) Inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or

(B) Adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interest; or

(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

(3) The court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. The matters pertinent to the findings include:

(A) The interest of members of the class in individually controlling the prosecution or defense of separate actions;

(B) The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

(C) The desirability or undesirability of concentrating the litigation of the claims in the particular forum;

(D) The difficulties likely to be encountered in the management of class action.

(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 from the class if he 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 desires, enter an appearance through his counsel.

(3) The judgment in an action maintained as a class action under subsections (b)(1) or (b)(2), whether or not favorable to the class, shall include and describe those whom the court finds to be members of the class. The judgment in an action maintained as a class action under subsection (b)(3), whether or not favorable to the class, shall include and specify or describe those to whom the notice provided in subsection (c)(2) was directed, and who have not requested exclusion, and whom the court finds to be members of the class.

(4) When appropriate: (A) An action may be brought or maintained as a class action with respect to particular issues, or (B) a class may be divided into subclasses and each subclass

treated as a class, and the provisions of this Rule shall then be construed and applied accordingly.

(d) Orders in Conduct of Actions. In the conduct of actions to which this Rule applies, the court may make appropriate orders:

(1) Determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;

(2) Requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, the notice be given in such manner as the court may direct to some or all of the members of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(3) Imposing conditions on the representative parties or on intervenors;

(4) Requiring that the pleadings be amended to eliminate therefrom allegations as to representation of absent persons, and that the action proceed accordingly;

(5) Dealing with similar procedural matters. The orders may be combined with an order under Rule 16, and may be altered or amended as may be desirable from time to time.

(e) Dismissal or Compromise. A class 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 all members of the class in such manner as the court directs.

(f) Appeals. An appeal from an order granting or denying class certification under this rule may be allowed pursuant to the procedures set forth in C.R.S. § 13-20-901 (2003).

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 complains or that his share or membership thereafter devolved on him by operation of law. The complaint shall also allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority and, if necessary, from the shareholders or members, and the reasons for his 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 23.2. Actions Relating to Unincorporated Associations

An action brought by or against the members of an unincorporated association as a class by naming certain members as representative parties may be maintained only if it appears

that the representative parties will fairly and adequately protect the interests of the association and its members. In the conduct of the action the court may make appropriate orders corresponding with those described in Rule 23(d), and the procedure for dismissal or compromise of the action shall correspond with that provided in Rule 23(e).

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 is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive Intervention. Upon timely application anyone may be permitted to intervene in an action: (1) When a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

Rule 25. Substitution of Parties

(a) Death.

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of process, and may be served in any county. Suggestion of death upon the record is made by service of a statement of the fact of death as provided herein for the service of the motion and by filing of proof thereof. If the motion for substitution is not made within 91 days (13 weeks) after such service, the action shall be dismissed as to the deceased party.

(2) In the event of the death of one or more of the plaintiffs or of one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate. The death shall be suggested upon the record and the action shall proceed in favor of or against

the surviving parties.

(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 representative.

(c) Transfer of Interest. In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subsection (a)(1) of this Rule.

(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 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 official capacity, he may be described as a party by his official title rather than by name; but the court may require his name to be added.

CHAPTER 4

Disclosure and Discovery

CHAPTER 4

DISCLOSURE AND DISCOVERY

Rule 26. General Provisions Governing Discovery; Duty of Disclosure

(a) Required Disclosures; Methods to Discover Additional Matter.

Unless otherwise ordered by the court or stipulated by the parties, provisions of this Rule shall not apply to domestic relations, juvenile, mental health, probate, water law, forcible entry and detainer, C.R.C.P. 120, or other expedited proceedings.

(1) Disclosures. Except to the extent otherwise directed by the court, a party shall, without awaiting a discovery request, provide to other parties:

(A) The name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying who the person is and the subjects of the information;

(B) A listing, together with a copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings, making available for inspection and copying the documents or other evidentiary material, not privileged or protected from disclosure, as though a request for production of those documents had been served pursuant to C.R.C.P. 34;

(C) A description of the categories of damages sought and a computation of any category of economic damages claimed by the disclosing party, making available for inspection and copying pursuant to C.R.C.P. 34 the documents or other evidentiary material, not privileged or protected from disclosure, as though a request for production of those documents had been served pursuant to C.R.C.P. 34; and

(D) Any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment, making such agreement available for inspection and copying pursuant to C.R.C.P. 34.

The timing of disclosures shall be within 35 days after the case is at issue as defined in C.R.C.P.16(b). A party shall make the required disclosures based on the information then known and reasonably available to the party and is not excused from making such disclosures because the party has not completed investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made the required disclosures.

(2) Disclosure of Expert Testimony.

(A) In addition to the disclosures required by subsection (a)(1) of this Rule, a party shall disclose to other parties the identity of any person who may present evidence at trial, pursuant to Rules 702, 703, or 705 of the Colorado Rules of Evidence together with an

identification of the person's fields of expertise.

(B) Except as otherwise stipulated or directed by the court, this disclosure shall:

(I) With respect to a witness who is retained or specially employed to provide expert testimony, or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report or summary. The report or summary shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. In addition, if a report is issued by the expert it shall be provided.

(II) With respect to a witness who may be called to provide expert testimony but is not within the description contained in subsection (a)(2)(B)(I) above, the report or summary shall contain the qualifications of the witness and a complete statement describing the substance of all opinions to be expressed and the basis and reasons therefor.

(C) Unless otherwise provided in the Case Management Order, the timing of the disclosures shall be as follows:

(I) The disclosure by a claiming party under a complaint, counterclaim, cross-claim or third-party claim shall be made at least 126 days (18 weeks) before the trial date.

(II) The disclosure by a defending party shall be made within 28 days after service of the claiming party's disclosure, provided, however, that if the claiming party serves its disclosure earlier than required under subparagraph 26(a)(2)(C)(I), the defending party is not required to serve its disclosures until 98 days (14 weeks) before the trial date.

(III) If the evidence is intended to contradict or rebut evidence on the same subject matter identified by another party under subparagraph (a)(2)(C)(II) of this Rule, such disclosure shall be made no later than 77 days (11 weeks) before the trial date.

(3) [There is no Colorado Rule - see instead C.R.C.P. 16(c).]

(4) Form of Disclosures; Filing. All disclosures pursuant to subparagraphs (a)(1) and (a)(2) of this Rule shall be made in writing, in a form pursuant to C.R.C.P. 10, signed pursuant to C.R.C.P. 26(g)(1), and served upon all other parties. Disclosures shall not be filed with the court unless requested by the court or necessary for consideration of a particular issue.

(5) Methods to Discover Additional Matters. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, pursuant to C.R.C.P. 34; physical and mental examinations; and requests for admission. Discovery at a place within a country having a treaty with the United States applicable to the discovery must be conducted by methods authorized by the treaty except that, if the court determines that those methods are inadequate or inequitable, it may authorize other discovery methods not prohibited by the treaty.

(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Subject to the limitations and considerations contained in subsection (b)(2) of this Rule, parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Limitations. Except upon order for good cause shown, discovery shall be limited as follows:

(A) A party may take one deposition of each adverse party and of two other persons, exclusive of persons expected to give expert testimony disclosed pursuant to subsection 26(a)(2). The scope and manner of proceeding by way of deposition and the use thereof shall otherwise be governed by C.R.C.P. Rules 26, 28, 29, 30, 31, 32 and 45.

(B) A party may serve on each adverse party 30 written interrogatories, each of which shall consist of a single question. The scope and manner of proceeding by means of written interrogatories and the use thereof shall otherwise be governed by C.R.C.P. Rules 26 and 33.

(C) A party may obtain a physical or mental examination (including blood group) of a party or of a person in the custody or under the legal control of a party pursuant to C.R.C.P. 35.

(D) A party may serve each adverse party requests for production of documents or tangible things or for entry, inspection or testing of land or property pursuant to C.R.C.P. 34, except such requests for production shall be limited to 20 in number, each of which shall consist of a single request.

(E) A party may serve on each adverse party 20 requests for admission, each of which shall consist of a single request. A party may also serve requests for admission of the genuineness of up to 50 separate documents that the party intends to offer into evidence at trial. The scope and manner of proceeding by means of requests for admission and the use thereof shall otherwise be governed by C.R.C.P. 36.

(F) In determining good cause to modify the limitations of this subsection (b)(2), the court shall consider the following:

(i) Whether the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) Whether the party seeking discovery has had ample opportunity by disclosure or discovery in the action to obtain the information sought;

(iii) Whether the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues in the litigation, and the importance of the proposed discovery in resolving the issues; and

(iv) Whether because of the number of parties and their alignment with respect to the underlying claims and defenses, the proposed discovery is reasonable.

[Subsections (E)(i)-(iv) are moved to new paragraph (F).]

(3) Trial Preparation: Materials. Subject to the provisions of subsection (b)(4) of this Rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subsection (b)(1) of this Rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of C.R.C.P. 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is:

(A) A written statement signed or otherwise adopted or approved by the person making it, or

(B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(4) Trial Preparation: Experts.

(A) A party may depose any person who has been identified as an expert whose opinions may be presented at trial. Except to the extent otherwise stipulated by the parties or ordered by the court, no discovery, including depositions, concerning either the identity or the opinion of experts shall be conducted until after the disclosures required by subsection (a)(2) of this Rule.

(B) A party may, through interrogatories or by deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial only as provided by C.R.C.P. 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means.

(C) Unless manifest injustice would result, (i) the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under this subsection (b)(4); and (ii) with respect to discovery obtained pursuant to subsection (b)(4)(B) of this Rule, the court shall require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(5) Claims of Privilege or Protection of Trial Preparation Materials. When a party withholds information required to be disclosed or provided in discovery by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things

not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

[This subsection has been moved from section (a)(6) and amended.]

(c) Protective Orders. Upon motion by a party or by the person from whom disclosure is due or discovery is sought, accompanied by a certificate that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action, and for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(1) that the disclosure or discovery not be had;

(2) that the disclosure or discovery may be had only on specified terms and conditions, including a designation of the time or place;

(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) that certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;

(5) that discovery be conducted with no one present except persons designated by the court;

(6) that a deposition, after being sealed, be opened only by order of the court;

(7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; and

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or other person provide or permit discovery. The provisions of C.R.C.P. 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Timing and Sequence of Discovery. Except when authorized by these Rules, by order, or by agreement of the parties, a party may not seek discovery from any source before submission of the proposed Case Management Order pursuant to C.R.C.P. 16. Any discovery conducted prior to issuance of the Case Management Order shall not exceed the limitations established by C.R.C.P. 26(b)(2). Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence, and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Disclosures and Responses. A party is under a duty to supplement its disclosures under section (a) of this Rule when the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the disclosure or discovery process. A party is under a duty to amend a prior response to an interrogatory, request for production or request for admission when the party learns that the prior response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the

discovery process. With respect to experts, the duty to supplement or correct extends both to information contained in the expert's report or summary disclosed pursuant to section (b) of this Rule and to information provided through any deposition of or interrogatory responses by the expert. Supplementation shall be performed in a timely manner.

(f) [No Colorado Rule -- See C.R.C.P. 16.]

(g) Signing of Disclosures, Discovery Requests, Responses, and Objections.

(1) Every disclosure made pursuant to subsections (a)(1) or (a)(2) of this Rule shall be signed by at least one attorney of record in the attorney's individual name. An unrepresented party shall sign the disclosure and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the disclosure is complete and correct as of the time it is made.

(2) Every discovery request, or response, or objection made by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name. An unrepresented party shall sign the request, response, or objection and state the party's address. The signature of the attorney or party constitutes a certification that to the best of the signer's knowledge, information and belief, formed after a reasonable inquiry, the request, response or objection is:

(A) Consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law;

(B) Not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and

(C) Not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation.

If a request, response or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

(3) If without substantial justification a certification is made in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who made the certification, the party on whose behalf the disclosure, request, response or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including reasonable attorney fees.

COMMITTEE COMMENT

SCOPE

Because of its timing and interrelationship with C.R.C.P. 16, C.R.C.P. 26 does not apply to domestic relations, mental health, water law, forcible entry and detainer, C.R.C.P. 120, or other expedited proceedings. However, the Court in those proceedings may use C.R.C.P. 26 and C.R.C.P. 16 to the extent helpful to the case. In most instances, only the timing will need to be modified.

COLORADO DIFFERENCES

Revised C.R.C.P. 26 is patterned largely after Fed.R.Civ.P. 26 as amended in 1993 and 2000 and uses substantially the same numbering. There are differences, however. The differences are to fit disclosure/discovery requirements of Colorado's case/trial management system set forth in C.R.C.P. 16, which is very different from its Federal Rule counterpart. The interrelationship between C.R.C.P. 26 and C.R.C.P. 16 is described in the Committee Comment to C.R.C.P. 16.

The Colorado differences from the Fed.R.Civ.P. are: (1) timing and scope of mandatory automatic disclosures is different (C.R.C.P. 16(b)); (2) the two types of experts in the Federal Rule are clarified by the State Rule (C.R.C.P. 26(a)(2)(B)), and disclosure of expert opinions is made at a more realistic time in the proceedings (C.R.C.P. 26(a)(2)(C)); (3) sequenced disclosure of expert opinions is prescribed in C.R.C.P. 26(a)(2)(C) to avoid proliferation of experts and related expenses; (4) the parties may use a summary of an expert's testimony in lieu of a report prepared by the expert to reduce expenses (C.R.C.P. 26(a)(2)(B)); (5) claiming privilege/protection of work product (C.R.C.P. 26(b)(5)) and supplementation/correction provisions (C.R.C.P. 26(e)) are relocated in the State Rules to clarify that they apply to both disclosures and discovery; (6) a Motion for Protective Order stays a deposition under the State Rules (C.R.C.P. 121 § 1-12) but not the Federal Rule (Fed.R.Civ.P. 26(c)); (7) presumptive limitations on discovery as contemplated by C.R.C.P. 16(b)(1)(VI) are built into the rule (see C.R.C.P. 26(b)(2)); (8) counsel must certify that they have informed their clients of the expense of the discovery they schedule (C.R.C.P. 16(b)(1)(IV)); (9) the parties cannot stipulate out of the C.R.C.P. 26(b)(2) presumptive discovery limitations (C.R.C.P. 29); and (10) pretrial endorsements governed by Fed.R.Civ.P. 26(a)(3) are part of Colorado's trial management system established by C.R.C.P. 16(c) and C.R.C.P. 16(d).

As with the Federal Rule, the extent of disclosure is dependent upon the specificity of disputed facts in the opposing party's pleading (facilitated by the requirement in C.R.C.P. 16(b) that lead counsel confer about the nature and basis of the claims and defenses before making the required disclosures). If a party expects full disclosure, that party needs to set forth the nature of the claim or defense with reasonable specificity. Specificity is not inconsistent with the requirement in C.R.C.P. 8 for a "short, plain statement" of a party's claims or defenses. Obviously, to the extent there is disclosure, discovery is unnecessary. Discovery is limited under this system.

FEDERAL COMMITTEE NOTES

Federal "Committee Notes" to the December 1, 1993 and December 1, 2000 amendments of Fed.R.Civ.P. 26 are incorporated by reference and where applicable should be used for interpretive guidance.

The most dramatic change in C.R.C.P. 26 is the addition of a disclosure system. Parties are required to disclose specified information without awaiting a discovery demand. Such disclosure is, however, tied to the nature and basis of the claims and defenses of the case as set forth in the parties' pleadings facilitated by the requirement that lead counsel confer about such matters before making the required

disclosures.

Subparagraphs (a)(1)(A) and (a)(1)(B) of C.R.C.P. 26 require disclosure of persons, documents and things likely to provide discoverable information relative to disputed facts alleged with particularity in the pleadings. Disclosure relates to disputed facts, not admitted facts. The reference to particularity in the pleadings (coupled with the requirement that lead counsel confer) responds to the concern that notice pleading suggests a scope of disclosure out of proportion to any real need or use. To the contrary, the greater the specificity and clarity of the pleadings facilitated by communication through the C.R.C.P. 16(b) conference, the more complete and focused should be the listing of witnesses, documents, and things so that the parties can tailor the scope of disclosure to the actual needs of the case.

It should also be noted that two types of experts are contemplated by Fed.R.Civ.P. and C.R.C.P. 26(a)(2). The experts contemplated in subsection (a)(2)(B)(II) are persons such as treating physicians, police officers, or others who may testify as expert witnesses and whose opinions are formed as a part of their occupational duties (except when the person is an employee of the party calling the witness). This more limited disclosure has been incorporated into the State Rule because it was deemed inappropriate and unduly burdensome to require all of the information required by C.R.C.P. 26(a)(2)(B)(I) for C.R.C.P. 26(a)(2)(B)(II) type experts.

2001 COLORADO CHANGES

The change to C.R.C.P. 26(a)(2)(C)(II) effective July 1, 2001, is intended to prevent a plaintiff, who may have had a year or more to prepare his or her case, from filing an expert report early in the case in order to force a defendant to prepare a virtually immediate response. That change clarifies that the defendant's expert report will not be due until 90 days prior to trial.

The change to C.R.C.P. 26(b)(2)(A) effective July 1, 2001 was made to clarify that the number of depositions limitation does not apply to persons expected to give expert testimony disclosed pursuant to subsection 26(a)(2).

The special and limited form of request for admission in C.R.C.P. 26(b)(2)(E) effective July 1, 2001, allows a party to seek admissions as to authenticity of documents to be offered at trial without having to wait until preparation of the Trial Management Order to discover whether the opponent challenges the foundation of certain documents. Thus, a party can be prepared to call witnesses to authenticate documents if the other party refuses to admit their authenticity.

The amendment of C.R.C.P. 26(b)(1) effective January 1, 2002 is patterned after the December, 2000 amendment of the corresponding Federal rule. The amendment should not prevent a party from conducting discovery to seek impeachment evidence or evidence concerning prior acts.

Rule 26.1. Special Provisions Regarding Limited and Simplified Discovery

Repealed April 14, 1994, effective January 1, 1995.

Rule 26.2. General Provisions Governing Discovery; Duty of Disclosure (Domestic Relations)

Rule repealed and replaced by Rule 16.2 on September 30, 2004, effective for Domestic Relations Cases as defined in 16.2(a) filed on or after January 1, 2005, and for post-decree motions filed on or after January 1, 2005.

Rule 26.3. Limited Monetary Claim Actions

Repealed November 6, 2003, effective July 1, 2004.

Rule 27. Depositions Before Action or Pending Appeal

(a) Before Action.

(1) **Petition; Order; Notice.** A person who desires to perpetuate his own testimony or that of other persons may file in a district court a petition verified by his 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 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 deputy, 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 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 direct, 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 testimony and the person so designated shall take his testimony in manner aforesaid and certify and return same to the court with his certificate attached thereto showing that he has complied with the requirements of said order.

(3) **Proofs Prima Facie Evidence.** The affidavit, return, certificate and other proofs of compliance with the provisions of this section (a), or certified copies thereof, shall be prima facie evidence of the facts therein stated.

(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 or their 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 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 28. Persons Before Whom Depositions May Be Taken

(a) **Outside the State of Colorado.** Depositions outside the State of Colorado shall be taken only upon proof that notice to take deposition has been given as provided in these rules. The deposition shall be taken before an officer authorized to administer oaths by the laws of this state, the United States or the place where the examination is to be held, or before a person appointed by the court in which the action is pending. A person so appointed has the power to administer oaths and take testimony.

(b) **Disqualification for Interest.** No deposition shall be taken before a person who is a relative or employee or attorney or counsel of any of the parties, or is financially interested in the action.

(c) **Commission or Letters Rogatory.** A commission or letters rogatory shall be issued when necessary, on application and notice, and on terms that are just and appropriate. It is not a requisite to the issuance of a commission or letters rogatory that the taking of the deposition in any other manner is impracticable or inconvenient. Both a commission and letters rogatory may be issued in proper cases. Officers may be designated in the commission either by name or descriptive title. Letters rogatory may be addressed "to the appropriate authority in (here name the appropriate place)." The clerk shall issue a commission or letters rogatory in the form prescribed by the jurisdiction where the deposition is to be taken, such form to be prepared by the party seeking the deposition. The commission or letters rogatory shall inform the officer that the original sealed deposition shall be filed according to subsection (d) of this rule. Any error in the form or in the commission or letters rogatory is waived unless an objection is filed and served before the time fixed in the notice.

(d) **Filing of the Deposition.** The officer transcribing the deposition shall file the original sealed deposition pursuant to C.R.C.P. 30(f)(1).

COMMITTEE COMMENT

Commissions and letters rogatory are unnecessary when: (1) the deposition is being taken before an officer authorized to administer oaths in Colorado, (2) the Court has appointed a person under subsection (a), or (3) when the parties have stipulated to the person pursuant to C.R.C.P. 29.

The Federal Rules of Civil Procedure specifically define court-appointed persons or stipulated persons as "officers" under rules 30, 31 and 32. The Committee follows this principle but feels that it need not be specifically set forth in the Colorado rule.

Rule 29. Stipulations Regarding Discovery Procedure

Unless otherwise directed by the court, the parties may by written stipulation: (1) provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions; and (2) modify other procedures governing the timing of discovery, except that stipulations extending the time provided in C.R.C.P. Rules 33, 34, and 36 for responses to discovery may, if they would

interfere with any time set for completion of discovery, for hearing of a motion, or for trial, be made only with the approval of the court.

Rule 30. Depositions Upon Oral Examination

(a) When Depositions May Be Taken. (1) Subject to the provisions of C.R.C.P. Rules 26(b)(2)(A) and 26(d), a party may take the testimony of any person, including a party, by deposition upon oral examination without leave of court except as provided in paragraph (2) of this section. The attendance of witnesses may be compelled by subpoena as provided in C.R.C.P. 45.

(2) Leave of court must be obtained pursuant to C.R.C.P. Rules 16(b)(1) and 26(b) if:

(A) A proposed deposition, if taken, would result in more depositions than set forth in the Case Management Order;

(B) The person to be examined already has been deposed in the case;

(C) A party seeks to take a deposition before the time specified in C.R.C.P. 26(d) unless the notice contains a certification, with supporting facts, that the person to be examined is expected to leave the state and be unavailable for examination within the state if the person's deposition is not taken before the expiration of such time period; or

(D) The person to be examined is confined in prison.

(b) Notice of Examination: General Requirements; Method of Recording; Production of Documents and Things; Deposition of Organization; Deposition by Telephone.

(1) Consistent with C.R.C.P. 121, sec. 1-12, a party desiring to take the deposition of any person upon oral examination shall give reasonable notice in writing to every other party to the action. The notice shall state the time and place for taking the deposition and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the materials to be produced as set forth in the subpoena shall be attached to or included in the notice.

(2) The party taking the deposition shall state in the notice the method by which the testimony shall be recorded, which, unless the court otherwise orders, may be by sound, sound-and-visual, or stenographic means. Unless the court otherwise orders, the party taking the deposition shall bear the cost of the recording.

(3) Any party may provide for a transcription to be made from the recording of a deposition taken by non-stenographic means. With reasonable prior notice to the deponent and other parties, any party may designate another method of recording the testimony of the deponent in addition to the method specified by the person taking the deposition. Unless the court otherwise orders, each party designating an additional method of recording the testimony of a deponent shall bear the cost thereof.

(4) Unless otherwise agreed by the parties, a deposition shall be conducted before an officer appointed or designated pursuant to C.R.C.P. 28 and shall begin with a statement on the record by the officer that includes (a) the officer's name and business address; (b) the

date, time, and place of the deposition; (c) the name of the deponent; (d) the administration of the oath or affirmation to the deponent; and (e) an identification of all persons present. If the deposition is recorded other than stenographically, items (a) through (c) shall be repeated at the beginning of each unit of recorded tape or other recording medium. The appearance or demeanor of deponents or attorneys shall not be distorted by the use of camera or sound-recording techniques. At the conclusion of the deposition, the officer shall state on the record that the deposition is complete and shall set forth any stipulations made by counsel concerning the custody of the transcript or recording, the exhibits, or other pertinent matters.

(5) The notice to a party deponent may be accompanied by a request made in compliance with Rule 34 for the production of documents and tangible things at the taking of the deposition. The procedure of Rule 34 shall apply to the request.

(6) A party may in his notice name as the deponent a public or private corporation or a partnership or association or governmental agency and designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. The persons so designated shall testify as to matters known or reasonably available to the organization. This subsection (b)(6) does not preclude taking a deposition by any other procedure authorized in these rules.

(7) The parties may stipulate in writing or the court may upon motion order that a deposition be taken by telephone or other remote electronic means. For the purposes of this rule and C.R.C.P. Rules 28(a), 37(a)(1), and 37(b)(1), a deposition taken by telephone or other remote electronic means is taken at the place where the deponent is to answer questions propounded to the deponent. The stipulation or order shall include the manner of recording the proceeding.

(c) Examination and Cross-Examination; Record of Examination; Oath; Objections. Examination and cross-examination of witnesses may proceed as permitted at the trial under the provisions of the Colorado Rules of Evidence except CRE 103. The witness shall be put under oath or affirmation and the officer before whom the deposition is to be taken shall personally, or by someone acting under the officer's direction and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically or recorded by any other method authorized by subsection (b)(2) of this Rule.

All objections made at the time of the examination to the qualifications of the officer taking the deposition, to the manner of taking it, to the evidence presented, to the conduct of any party, or in any other respect to the proceedings shall be noted by the officer upon the record of the deposition. Evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, parties may serve written questions in a sealed envelope on the party taking the deposition and the party taking the deposition shall transmit them to the officer, who shall propound them to the witness and record the answers verbatim.

(d) Schedule and Duration; Motion to Terminate or Limit Examination. (1) Any objection during a deposition shall be stated concisely and in a non-argumentative and non-suggestive manner. An instruction not to answer may be made during a deposition only

when necessary to preserve a privilege, to enforce a limitation directed by the court, or to present a motion pursuant to subsection (d)(3) of this Rule.

(2) Unless otherwise authorized by the court or stipulated by the parties, a deposition is limited to one day of seven hours. By order, the court may limit the time permitted for the conduct of a deposition to less than seven hours, or may allow additional time if needed for a fair examination of the deponent and consistent with C.R.C.P. 26(b)(2), or if the deponent or another person impedes or delays the examination, or if other circumstances warrant. If the court finds such an impediment, delay, or other conduct that frustrates the fair examination of the deponent, it may impose upon the person responsible therefor an appropriate sanction, including the reasonable costs and attorney fees incurred by any parties as a result thereof.

(3) At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in C.R.C.P. 26(c). If the order made terminates the examination, it may be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of C.R.C.P. 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(e) Review by Witness; Changes; Signing. If requested by the deponent or a party before completion of the deposition, the deponent shall be notified by the officer that the transcript or recording is available. Within 35 days of receipt of such notification the deponent shall review the transcript or recording and, if the deponent makes changes in the form or substance of the deposition, shall sign a statement reciting such changes and the deponent's reasons for making them and send such statement to the officer. The officer shall indicate in the certificate prescribed by subsection (f)(1) of this rule whether any review was requested and, if so, shall append any changes made by the deponent.

(f) Certification and Filing by Officer; Exhibits; Copies; Notice of Filing. (1) The officer shall certify that the witness was duly sworn and that the deposition is a true record of the testimony given by the witness. This certificate shall be set forth in writing and accompany the record of the deposition. Unless otherwise ordered by the court, the officer shall securely seal the deposition in an envelope or package endorsed with the title of the action and marked "deposition of (here insert name of witness)" and shall promptly transmit it to the attorney who arranged for the transcript or recording. The receiving attorney shall store the deposition under conditions that will protect it against loss, destruction, tampering, or deterioration.

Documents and things produced for inspection during the examination of the witness shall, upon the request of a party, be marked for identification and annexed to and returned with the deposition and may be inspected and copied by any party, except that: if the person producing the materials desires to retain the originals, the person may

(A) offer copies to be marked for identification and annexed to the deposition and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or

(B) offer the originals to be marked for identification, after giving each party an opportunity to inspect and copy them, in which event the materials may then be used in the same manner as if annexed to the deposition. Any party may move for an order that the original be annexed to and returned with the deposition to the court, pending final disposition of the case.

(2) Unless otherwise ordered by the court or agreed by the parties, the officer shall retain stenographic notes of any deposition taken stenographically or a copy of the recording of any deposition taken by another method. Upon payment of reasonable charges therefor, the officer shall furnish a copy of the transcript or other recording of the deposition to any party or to the deponent.

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

COMMITTEE COMMENT

Revised C.R.C.P. 30 is patterned in part after Fed.R.Civ.P. 30 as amended in 1993 and now interrelates with the differential case management features of C.R.C.P. 16 and C.R.C.P. 26. Because of mandatory disclosure, substantially less discovery is needed.

A discovery schedule for the case is required by C.R.C.P. 16(b)(1)(IV). Under the requirements of that Rule, the parties must set forth in the Case Management Order the timing and number of depositions and the basis for the necessity of such discovery with attention to the presumptive limitation and standards set forth in C.R.C.P. 26(b)(2). There is also the requirement that counsel certify they have advised their clients of the estimated expenses and fees involved in the discovery. Discovery is thus tailored to the particular case. The parties in the first instance and ultimately the Court are responsible for setting reasonable limits and preventing abuse.

Language in C.R.C.P. 30(c) and C.R.C.P. 30(f)(1) differs slightly from the language of Fed.R.Civ.P. 30(c) and Fed.R.Civ.P. 30(f)(1) to facilitate the taking of telephone depositions by eliminating the requirement that the officer

recording the deposition be the person who administers the oath or affirmation.

Rule 31. Depositions Upon Written Questions

(a) Serving Questions; Notice. (1) A party may take the testimony of any person, including a party, by deposition upon written questions without leave of court except as provided in paragraph (2) of this section. The attendance of witnesses may be compelled by the use of subpoena as provided in C.R.C.P. 45.

(2) Leave of court must be obtained pursuant to C.R.C.P. Rules 16(B)(1) and 26(B), if:

(A) A proposed deposition, if taken, would result in more depositions than set forth in the Case Management Order;

(B) The person to be examined already has been deposed in the case;

(C) A party seeks to take a deposition before the time specified in C.R.C.P. 26(d); or

(D) The person to be examined is confined in prison.

(3) A party desiring to take a deposition upon written questions shall serve them upon every other party with a notice stating: (1) the name and address of the person who is to answer them, if known, and if the name is not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; and (2) the name or descriptive title and address of the officer before whom the deposition is to be taken. A deposition upon written questions may be taken of a public or private corporation, or a partnership, or association, or governmental agency in accordance with the provision of C.R.C.P. 30(b)(6).

(4) Within 21 days after the notice and written questions are served, a party may serve cross questions upon all other parties. Within 14 days after being served with cross questions, a party may serve redirect questions upon all other parties. Within 7 days after being served with redirect questions, a party may serve re-cross questions upon all other parties. The court may for cause shown enlarge or shorten the time.

(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) Notice of Filing. When the deposition is filed the party taking it shall promptly give notice thereof to all other parties.

COMMITTEE COMMENT

Revised C.R.C.P. 31 now interrelates with the differential case management features of C.R.C.P. 16 and C.R.C.P. 26. Because of mandatory disclosure, substantially less discovery is needed.

A discovery schedule for the case is required by C.R.C.P. 16(b)(1)(IV). Under the requirements of that Rule, the parties must set forth in the Case Management Order the timing and number of

depositions and the basis for the necessity of such discovery with attention to the presumptive limitations and standards set forth in C.R.C.P. 26(b)(2). There is also the requirement that counsel certify they have advised their clients of the estimated expenses and fees involved in the discovery. Discovery is thus tailored to the particular case. The parties in the first instance and ultimately the Court are responsible for setting reasonable limits and preventing abuse.

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) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness;

(2) The deposition of a party or of any one who at the time of taking the deposition was an officer, director, or managing agent of a public or private corporation, partnership, or association, or a governmental agency, which is a party, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf thereof may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) That the witness is dead; or

(B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(D) [There is No Colorado (D).]

(E) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(F) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

A deposition taken without leave of court pursuant to C.R.C.P. 30(a)(2)(C) shall not be used against a party who demonstrates that, when served with the notice, the party was unable through the exercise of diligence to obtain counsel to represent the party at the taking of the deposition.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him 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) In lieu of reading text from a deposition, parties are encouraged to use stipulated written summaries of deposition testimony at any hearing or trial, and to present the testimony at any hearing or trial in a logical order.

(b) Objections to Admissibility. Subject to the provisions of Rules 28(b) and subsection (d)(3) of this Rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(c) Effect of Taking or Using Depositions. A party does not make a person his own witness for any purpose by taking his 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 or by any other party.

(d) Effect of Errors and Irregularities in Depositions.

(1) **As to Notice.** All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

(2) **As to Disqualification of Officer.** Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(3) **As to Taking of Deposition.**

(A) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(B) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless seasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 7 days after service of the last questions authorized.

(4) **As to Completion and Return of Deposition.** Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with

reasonable promptness after such defect is, or with due diligence might have been ascertained.

COMMITTEE COMMENT

Revised C.R.C.P. 32 is patterned after Fed.R.Civ.P. 32 as amended in 1993 with several exceptions: (1) there is no State Rule 32(l)(D) [pertaining to use of depositions of experts whether or not unavailable]; (2) there is a difference in what constitutes "reasonable notice," which is instead contained in C.R.C.P. 121 section 1-12; and (3) there is no State Rule 32(e) [pertaining to offering of non-stenographic depositions].

Rule 33. Interrogatories to Parties

(a) Availability. Any party may serve upon any other party written interrogatories, not exceeding the number, including all discrete subparts, set forth in the Case Management Order, to be answered by the party served or, if the party served is a public or private corporation, or a partnership, or association, or governmental agency, by any officer or agent, who shall furnish such information as is available to the party. Leave of court must be obtained, consistent with the principles stated in C.R.C.P. Rules 16(b)(1) and 26(b) and subsection (e) of this Rule, to serve more interrogatories than the number set forth in the Case Management Order. Without leave of court or written stipulation, interrogatories may not be served before the time specified in C.R.C.P. 26(d).

(b) Answers and Objections. (1) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable.

(2) The answers are to be signed by the person making them, and the objections signed by the attorney making them.

(3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 35 days after the service of the interrogatories. A shorter or longer time may be directed by the court or, in the absence of such an order, agreed to in writing by the parties pursuant to C.R.C.P. 29.

(4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection will be deemed to be waived unless the party's failure to object is excused by the court for good cause shown.

(5) The party submitting the interrogatories may move for an order pursuant to C.R.C.P. 37(a) with respect to any objection to or other failure to answer an interrogatory.

(c) Scope; Use at Trial. Interrogatories may relate to any matters which can be inquired into pursuant to C.R.C.P. 26(b), and the answers may be used to the extent permitted by the Colorado Rules of Evidence.

An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the

application of law to fact, but the court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pretrial conference or other later time.

(d) Option to Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served, or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries.

(e) Pattern and Non-Pattern Interrogatories; Limitations. The pattern interrogatories set forth in the Appendix to Chapter 4, Form 20, are approved. Any pattern interrogatory and its subparts shall be counted as one interrogatory. Any subpart to a non-pattern interrogatory shall be considered as a separate interrogatory.

COMMITTEE COMMENT

Revised C.R.C.P. 33 now interrelates with the differential case management features of C.R.C.P. 16 and C.R.C.P. 26. Because of mandatory disclosure, substantially less discovery is needed.

A discovery schedule for the case is required by C.R.C.P. 16(b)(1)(IV). Under the requirements of that Rule, the parties must set forth in the Case Management Order the timing and number of interrogatories and the basis for the necessity of such discovery with attention to the presumptive limitation and standards set forth in C.R.C.P. 26(b)(2). There is also the requirement that counsel certify they have advised their clients of the estimated expenses and fees involved in the discovery. Discovery is thus tailored to the particular case. The parties in the first instance and ultimately the Court are responsible for setting reasonable limits and preventing abuse.

Rule 34. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

(a) Scope. Subject to the limitations contained in the Case Management Order, a party may serve on any other party a request:

(1) To produce and permit the party making the request, or someone acting on the party's behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of C.R.C.P. 26(b) and which are in the possession, custody, or control of the party upon whom the request is served; or

(2) To permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of C.R.C.P. 26(b).

(b) Procedure. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within 35 days after the service of the request. A shorter or longer time may be directed by the court or agreed to in writing by the parties pursuant to C.R.C.P. 29. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified. The party submitting the request may move for an order pursuant to C.R.C.P. 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

(c) Persons Not Parties. This rule does not preclude an independent action against a person not a party for production of documents and things and permission to enter upon land.

COMMITTEE COMMENT

Revised C.R.C.P. 34 now interrelates with the differential case management features of C.R.C.P. 16 and C.R.C.P. 26. Because of mandatory disclosure, substantially less discovery is needed.

A discovery schedule for the case is required by C.R.C.P. 16(b)(1)(IV). Under the requirements of that Rule, the parties must set forth in the Case Management Order the timing and number of requests for production and the basis for the necessity of such discovery with attention to the presumptive limitation and standards set forth in C.R.C.P. 26(b)(2). There is also the requirement that counsel certify they have advised their clients of the estimated expenses and fees involved in the discovery. Discovery is thus tailored to the particular case. The parties in the first instance and ultimately the Court are responsible for setting reasonable limits and preventing abuse.

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 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 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 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 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) This section (b) applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This section (b) does not preclude discovery of a report of an examiner in accordance with the provisions of any other Rule.

Rule 36. Requests for Admission

(a) Request for Admission. Subject to the limitations contained in the Case Management Order, a party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of C.R.C.P. 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Leave of court must be obtained, consistent with the principles stated in C.R.C.P. Rules 16(b)(1) and 26(b), to serve more requests for admission than the number set forth in the Case Management Order. Without leave of court or written stipulation, requests for admission may not be served before the time specified in C.R.C.P. 26(d).

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 35 days after service of the request, or within such shorter or longer time as the court may allow or as the parties may agree to in writing pursuant to C.R.C.P. 29, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by

the party's attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who considers that a matter of which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the request; the party may, subject to the provisions of C.R.C.P. 37(c), deny the matter or set forth reasons why the party cannot admit or deny it.

The party who has requested the admissions may move to determine the sufficiency of the answer or objections. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. The court may, in lieu of these orders, determine that final disposition of the request be made at a pretrial conference or at a designated time prior to trial. The provisions of C.R.C.P. 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(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 in maintaining his 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 for any other purpose nor may it be used against him in any other proceeding.

COMMITTEE COMMENT

Revised C.R.C.P. 36 now interrelates with the differential case management features of C.R.C.P. 16 and C.R.C.P. 26. Because of mandatory disclosure, substantially less discovery is needed.

A discovery schedule for the case is required by C.R.C.P. 16(b)(1)(IV). Under the requirements of that Rule, the parties must set forth in the Case Management Order the timing and number of requests for admission and the basis for the necessity of such discovery with attention to the presumptive limitation and standards set forth in C.R.C.P. 26(b)(2). There is also the requirement that counsel certify they have advised their clients of the estimated expenses and fees involved in the discovery. Discovery is thus tailored to the particular case. The parties in the first instance and ultimately the Court are responsible for setting reasonable limits and preventing abuse.

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

(a) Motion for Order Compelling Disclosure or Discovery. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling disclosure or discovery as follows:

(1) **Appropriate Court.** An application for an order to a party or to a person who is not a party shall be made to the court in which the action is pending.

(2) **Motion.** (A) If a party fails to make a disclosure required by C.R.C.P. 26(a), any other party may move to compel disclosure and for appropriate sanctions. The motion shall be accompanied by a certification that the movant in good faith has conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

(B) If a deponent fails to answer a question propounded or submitted pursuant to C.R.C.P. Rules 30 or 31, or a corporation or other entity fails to make a designation pursuant to C.R.C.P. Rules 30(b)(6) or 31(a), or a party fails to answer an interrogatory submitted pursuant to C.R.C.P. 33, or if a party, in response to a request for inspection submitted pursuant to C.R.C.P. 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion shall be accompanied by a certification that the moving party in good faith has conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

(3) **Evasive or Incomplete Disclosure, Answer, or Response.** For purposes of this subsection an evasive or incomplete disclosure, answer, or response shall be deemed a failure to disclose, answer, or respond.

(4) **Expenses and Sanctions.** (A) If a motion is granted or if the disclosure or requested discovery is provided after the motion was filed, the court may, after affording an opportunity to be heard, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in making the motion, including attorney fees, unless the court finds that the motion was filed without the movant's first making a good faith effort to obtain the disclosure or discovery without court action, or that the opposing party's nondisclosure, response, or objection was substantially justified or that other circumstances make an award of expenses unjust.

(B) If a motion is denied, the court may make such protective order as it could have made on a motion filed pursuant to C.R.C.P. 26(c) and may, after affording an opportunity to be heard, require the moving party or the attorney filing the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the

motion was substantially justified or that other circumstances make an award of expenses unjust.

(C) If the motion is granted in part and denied in part, the court may make such protective order as it could have made on a motion filed pursuant to C.R.C.P. 26(c) and may, after affording an opportunity to be heard, apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

(b) Failure to Comply with Order.

(1) **Non-Party Deponents -- Sanctions by Court.** If a deponent fails to be sworn or to answer a question after being directed to do so by the court in which the action is pending or from which the subpoena is issued, the failure may be considered a contempt of court.

(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:

COMMITTEE COMMENT

Subsection (b)(1) was modified to reflect that orders to deponents under subsection (a)(1), when the depositions are taking place within this state, are sought in and issued by the court where the action is pending or from which the subpoena is issued pursuant to Section 13-90-111, C.R.S., and it is that court which will enforce its orders. Deponents appearing outside the state are beyond the jurisdictional limits of the Colorado courts. For out-of-state depositions, any problems should be addressed by the court of the jurisdiction where the deponent has appeared for the deposition under the laws of that jurisdiction.

(A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;

(C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

(D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;

(E) Where a party has failed to comply with an order under Rule 35(a) requiring him 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 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 him, 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) Failure to Disclose; False or Misleading Disclosure; Refusal to Admit. (1) A party that without substantial justification fails to disclose information required by C.R.C.P. Rules 26(a) or 26(e) shall not, unless such failure is harmless, be permitted to present any evidence not so disclosed at trial or on a motion made pursuant to C.R.C.P. 56. In addition to or in lieu of this sanction, the court, on motion after affording an opportunity to be heard, may impose other appropriate sanctions, which, in addition to requiring payment of reasonable expenses including attorney fees caused by the failure, may include any of the actions authorized pursuant to subsections (b)(2)(A), (b)(2)(B), and (b)(2)(C) of this Rule.

(2) If a party fails to admit the genuineness of any document or the truth of any matter as requested pursuant to C.R.C.P. 36, and if the party requesting the admissions thereafter proves the genuineness of the document or the truth of the matter, the requesting party may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that

(A) the request was held objectionable pursuant to C.R.C.P. 36(a), or

(B) the admission sought was of no substantial importance, or

(C) the party failing to admit had reasonable ground to believe that the party might prevail on the matter, or

(D) there was other good reason for the failure to admit.

(d) Failure of Party to Attend at Own Deposition or Serve Answers to Interrogatories or Respond to Request for Inspection. If a party or an officer, director, or managing agent of a party or a person designated pursuant to C.R.C.P. Rules 30(b)(6) or 31(a) to testify on behalf of a party fails (1) to appear before the officer who is to take the deposition, after being served with a proper notice; or (2) to serve answers or objections to interrogatories submitted pursuant to C.R.C.P. 33, after proper service of the interrogatories; or (3) to serve a written response to a request for inspection submitted pursuant to C.R.C.P. 34, after proper service of the request, the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized by subparagraphs (A), (B), and (C) of subsection (b)(2) of this Rule. Any motion specifying a failure under clauses (2) or (3) of this subsection shall be accompanied by a certification that the movant in good faith has conferred or attempted to confer with the party failing to answer or respond in an effort to obtain such answer or response without court action. In lieu of any order or in addition thereto, the court shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney 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.

The failure to act described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has previously filed a motion for a protective order as provided by C.R.C.P. 26(c).

COMMITTEE COMMENT

Revised C.R.C.P. 37 is patterned substantially after Fed.R.Civ.P. 37 as amended in 1993 and has the same numbering. There are slight differences: (1) C.R.C.P. 37(4)(a) and (b) make sanctioning discretionary rather than mandatory; and (2) there is no State Rule 37(e) [pertaining to sanctions for failure to participate in framing of a discovery plan]. As with the other disclosure/discovery rules, revised C.R.C.P. 37 forms a part of a comprehensive case management system. See Committee Comments to C.R.C.P. 16, 26, 30, 31, 33, 34, and 36.

CHAPTER 5

Trials

CHAPTER 5

TRIALS

Rule 38. Right to Trial by Jury

(a) Exercise of Right. Upon the filing of a demand and the simultaneous payment of the requisite jury fee by any party in actions wherein a trial by jury is provided by constitution or by statute, including actions for the recovery of specific real or personal property, with or without damages, or for money claimed as due on contract, or as damages for breach of contract, or for injuries to person or property, all issues of fact shall be tried by a jury. The jury fee is not refundable; however, a demanding party may waive that party's demand for trial by jury pursuant to section (e) of this rule.

(b) Demand. Any party may demand a trial by jury of any issue triable by a jury by filing and serving upon all other parties, pursuant to Rule 5(d), a demand therefor at any time after the commencement of the action but not later than 14 days after the service of the last pleading directed to such issue, except that in actions subject to mandatory arbitration under Rule 109.1 the demand for trial by jury shall be filed and served not later than 14 days following a demand for trial de novo. A demand for trial by jury may be endorsed upon a pleading. The demanding party shall pay the requisite jury fee upon the filing of the demand.

(c) Jury Fees. When a party to an action has exercised the right to demand a trial by jury, every other party to such action shall also pay the requisite jury fee unless such other party, pursuant to Rule 5(d), files and serves a notice of waiver of the right to trial by jury within 14 days after service of the demand.

(d) Specification of Issues. A demand may specify the issues to be tried to the jury; in the absence of such specification, the party filing the demand shall be deemed to have demanded trial by jury of all issues so triable. If a party demands trial by jury on fewer than all of the issues so triable, any other party, within 14 days after service of the demand, may file and serve a demand for trial by jury of any other issues so triable.

(e) Waiver; Withdrawal. The failure of a party to file and serve a demand for trial by jury and simultaneously pay the requisite jury fee as required by this Rule constitutes a waiver of that party's right to trial by jury. A demand for trial by jury made pursuant to this rule may not subsequently be withdrawn in the absence of the written consent of every party who has demanded a trial by jury and paid the requisite jury fee and of every party who has failed to waive the right to trial by jury and paid the requisite jury fee.

Rule 39. Trial by Jury or by the Court

(a) By Jury. When trial by jury has been demanded and the requisite jury fee has been paid pursuant to Rule 38, the action shall be designated upon the register of actions as a jury action. The trial shall be by jury of all issues so demanded unless (1) all parties who have

demanded a trial by jury and paid the requisite jury fee and all parties who have failed to waive the right to trial by jury and paid the requisite jury fee have, in writing, waived their rights to trial by jury, or (2) the court upon motion or on its own initiative finds that a right to trial by jury of some or all of those issues does not exist, or (3) all parties demanding trial by jury fail to appear at trial.

(b) By the Court. Issues not demanded for trial by jury as provided in Rule 38 shall be tried by the court.

(c) Advisory Jury and Trial by Consent. In all actions not triable by a jury the court upon motion or on its own initiative may try any issue with an advisory jury, or, except in actions against the State of Colorado when a statute provides for trial without a jury, the court, with the consent of both parties, may order a trial with a jury.

Rule 40. Assignment of Cases for Trial

Subject to the directives of the Chief Justice of the Colorado Supreme Court, trial courts shall provide by rule for the placing of actions upon the trial calendar in such manner as they deem expedient. Precedence shall be given to actions entitled thereto.

Rule 41. Dismissal of Actions

(a) Voluntary Dismissal: Effect Thereof.

(1) **By Plaintiff; By Stipulation.** Subject to the provisions of Rule 23(e), of Rule 66, and of any statute, an action may be dismissed by the plaintiff without order of court upon payment of costs: (A) By filing a notice of dismissal at any time before filing or service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs; or (B) by filing a stipulation of dismissal signed by all parties who have appeared in the action or by their attorneys. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once previously dismissed in any court an action based on or including the same claim.

(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 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. After the plaintiff, in an action tried by the court without a jury, has completed the presentation of his evidence, the defendant, without waiving his 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(a). 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) **By the Court.** Actions not prosecuted or brought to trial with due diligence may be dismissed by the court with prejudice after reasonable notice by the court and in accordance with Rule 121, section 1-10.

(3) All motions for dismissal for failure to prosecute shall be presented in accordance with Rule 121, section 1-10 and shall specify whether the movant requests dismissal with or without prejudice. All orders dismissing for failure to prosecute shall specify whether the dismissal is with or without prejudice. Motions or orders that do not so specify shall be deemed motions for dismissal without prejudice or orders for dismissal without prejudice as appropriate.

(c) Dismissal of Counterclaim, Cross Claim, or Third-Party Claim. The provisions of this Rule apply to the dismissal of any counterclaim, cross claim, or third-party claim. A voluntary dismissal by the claimant alone pursuant to subsection (a)(1) of this Rule shall be made before a responsive pleading is filed or served or, if there is none, before the introduction of evidence at the trial or hearing.

(d) Costs of Previously Dismissed Action. If a plaintiff who has once dismissed an action in any court commences an action based upon or including the same claim against the same defendant, the court may make such order for the payment of costs of the action previously dismissed as it may deem proper and may stay the proceedings in the action until the plaintiff has complied with the order.

Rule 42. Consolidation; Separate Trials

(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) Separate Trials. The court in furtherance of convenience, or to avoid prejudice, or when separate trials will be conducive to expedition or economy may order a separate trial of any separate issue or of any number of claims, cross claims, counterclaims, third-party claims, or issues.

(c) Court Sessions Public; When Closed. All sessions of court shall be public, except that when it appears to the court that the action will be of such character as to injure public morals, or when orderly procedure requires it, it shall be its duty to exclude all persons not officers of the court or connected with such case.

Rule 42.1. Consolidated Multidistrict Litigation

(a) Definitions.

(1) "Panel" means the Panel on Consolidated Multidistrict Litigation. The Panel shall consist of not less than three nor more than seven district judges designated from time to time by the Chief Justice, no two of whom shall be from the same judicial district. One of the judges shall be appointed as Chairman by the Chief Justice. The Panel may sit in departments of three or more, as designated by the Chairman of the Panel. The concurrence of a majority of the members sitting in department shall be necessary to any action by the Panel, except that the chair may approve stipulations and recommend consolidation or order dismissal consistent with those stipulations, may rule on motions of a procedural nature, and may deny consolidation when it appears from the face of the motion that the panel does not have jurisdiction to recommend consolidation.

(2) "Clerk" means the Clerk of the Panel. The Clerk of the Colorado Supreme Court shall be the Clerk of the Panel.

(b) Transfer. When actions involving a common question of law or fact are pending in different judicial districts, such actions may be transferred to any judge for hearing or trial of any or all of the matters in issue in any action, provided however, (1) any jury trial shall be held in the place prescribed by Rule 98 C.R.C.P.; and (2) such actions shall be consolidated only as permitted by Rule 42 C.R.C.P.

(c) Initiation of Proceedings. Proceedings for the transfer of an action under this rule may be initiated by:

(1) The Panel upon its own initiative or upon the request of any court; or

(2) Upon a motion filed with the Panel by a party in any action in which transfer under this rule may be appropriate, which motion shall not be entertained unless filed more than 91 days (13 weeks) next preceding any trial date set in the affected actions, unless a showing of good cause is made. A copy of such motion shall be filed in the district court in which the moving party's action is pending.

(d) Order to Show Cause; Hearing; Response. When the transfer of multidistrict litigation is being considered, an order shall be entered by the Panel directing the parties in each action to show cause why the action or actions should not be transferred. A hearing shall be set at the time the show cause order is entered. Any party may file a response to the show cause order and an accompanying brief within 14 days after the order is entered, unless otherwise provided in the order. Within 7 days of receipt of a party's response or brief, any party may file a reply brief limited to new matters.

(1) Except by permission of the Panel, briefs shall not exceed five (5) pages, exclusive of appendices. An original and seven (7) copies of each brief shall be filed with the Clerk of the Panel.

(2) Each side shall be allowed fifteen (15) minutes of oral argument at the hearing, unless extended by the Panel.

(e) Pending Motion or Order to Show Cause; No Effect. The pendency of a motion or order to show cause before the Panel concerning the transfer of an action pursuant to this rule shall not affect or suspend proceedings and orders in the district court and does not limit

the jurisdiction of that court.

(f) Orders of Panel. The Panel may enter such orders as are appropriate including but not limited to staying proceedings in all actions until a determination is made whether the actions should be transferred under the rule and setting any matter for hearing.

(g) Standards Governing Transfer. Transfer of civil actions sharing a common question of law or fact is appropriate if one judge hearing all of the actions will promote the ends of justice and the just and efficient conduct of such actions. The factors to be considered shall include, but shall not be limited to, the following: (1) whether the common question of fact or law is predominating and significant to the litigation; (2) the convenience of the parties, witnesses and counsel; (3) the relative development of the action and the work product of counsel; (4) the efficient utilization of judicial facilities and manpower; (5) the calendar of the courts; (6) the disadvantages of duplicative and inconsistent rulings, orders or judgments; and (7) the likelihood of settlement of the actions without further litigation should transfer be denied.

(h) Certification to Chief Justice. Upon the determination by the Panel that the actions should be transferred under this rule, the Panel shall certify the actions to the Chief Justice and recommend the assignment of a specific judge to hear the actions.

(i) Appellate Review; Assignment of Judge. No proceedings for review of any certification order or other order entered by the Panel shall be permitted except as permitted by Rule 21 C.A.R. If no original proceedings are commenced in the Supreme Court or a show cause order is not issued by the Supreme Court within 21 days after entry of the certification order by the Panel, the Chief Justice shall assign the actions to a judge.

(j) Other Cases; Transfer by Clerk. Upon learning of the pendency of a civil action apparently sharing common questions of law or fact with actions previously transferred under this rule, an order may be entered by the Clerk transferring the action to the assigned judge. A copy of the order shall be served on each party to the litigation. The order shall not become final until 14 days after entry thereof. Any party opposing the transfer shall file a notice of opposition with the Clerk within 14 days from the date the order is entered. The notice of opposition shall be supported by a brief. Any party shall have 14 days to file an answer brief. The filing of a notice of opposition and brief shall suspend the finality of the Clerk's order pending action by the Panel.

(k) Procedure After Transfer.

(1) Upon receipt of an order from the Chief Justice assigning the actions to a judge, the clerk of the transferor court shall submit to the clerk of the court of the assigned judge copies of all papers contained in the original file and a certified copy of the register of actions.

(2) Original pleadings shall thereafter be filed with the clerk of the transferee court and copies filed with the clerk of the transferor court.

(l) Adoption of Rules. Subject to approval by the Colorado Supreme Court in accordance with Rule 121 C.R.C.P., the Panel may adopt rules of procedures on Consolidated Multidistrict Litigation consistent with this Rule.

Rule 43. Evidence

(a) Form and Admissibility. In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these Rules, the Colorado Rules of Evidence, or any statute of this state or of the United States (except the Federal Rules of Evidence).

(b) to (d) Repealed.

(e) Evidence on Motions. When a motion is based on facts not appearing of record, the court may hear the matter on affidavits presented by the respective parties, or the court may direct that the matter be heard wholly or partly on oral testimony or depositions. This shall include applications to grant or dissolve an injunction and for the appointment or discharge of a receiver.

(f) to (h) Repealed.

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

(A) The reason(s) for allowing such testimony.

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

(C) Copies of all documents or reports which will be used or referred to in such testimony.

(2) Response. If any party objects to absentee testimony, said party shall file a written response within 3 days following service of the motion unless the opening of the proceeding occurs first, in which case the objection shall be made orally in open court at the commencement of the proceeding or as soon as practicable thereafter. If no response is filed or objection is made, the motion may be deemed confessed.

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

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

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

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

(D) The availability of the witness to appear personally in court.

(E) The relative importance of the issue or issues for which the witness is offered to testify.

(F) If credibility of the witness is an issue.

(G) Whether the case is to be tried to the court or to a jury.

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

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

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

Rule 44. Proof of Official Record

(a) Authentication.

(1) **Domestic.** An official record kept within the United States, or any state, district, or commonwealth, or within a territory subject to the administrative or judicial jurisdiction of the United States, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by the officer's deputy, and accompanied by a certificate that such officer has the custody. The certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the officer's office.

(2) **Foreign.** A foreign official record, or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof; or a copy thereof, attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position (A) of the attesting person, or (B) of any foreign official whose certificate of genuineness of signature and official position relates to the attestation or is in a chain of certificates of genuiness of signature and official position relating to the attestation. A final certification may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of the documents, the court may, for good cause shown, (A) admit an attested copy without final certification or (B) permit the foreign official record to be evidenced by an attested summary with or without a final certification. The final certification is unnecessary if the record and the attestation are certified as provided in a treaty or convention to which the United States and the foreign country in which the official record is located are parties.

(b) Lack of Record. A written statement that after diligent search no record or entry of a specified tenor is found to exist in the records designated by the statement, authenticated as provided in subsection (a)(1) of this Rule in the case of a domestic record, or complying with the requirements of subsection (a)(2) of this Rule for a summary in the case of a foreign record, is admissible as evidence that the records contain no such record or entry.

(c) Other Proof. This Rule does not prevent the proof of official records or of entry or lack of entry therein by any method authorized by law.

(d) Seal Dispensed With. In the event any office or officer, authenticating any documents under the provisions of this Rule, has no official seal, then authentication by seal is dispensed with.

(e) Statutes and Laws of Other States and Countries. A printed copy of a statute, or other written law, of another state, or of a territory, or of a foreign country, or a printed copy of a proclamation, edict, decree, or ordinance by the executive power thereof, contained in

a book or publication purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the judicial tribunals thereof, is presumptive evidence of the statute, law, proclamation, edict, decree, or ordinance. The unwritten or common law of another state, or of a territory, or of a foreign country, may be proved as a fact by oral evidence. The books of reports of cases adjudged in the courts thereof must also be admitted as presumptive evidence of the unwritten or common law thereof. The law of such state or territory or foreign country is to be determined by the court or master and included in the findings of the court or master or instructions to the jury, as the case may be. Such finding or instruction is subject to review. In determining such law, neither the trial court nor the appellate court shall be limited to the evidence produced on the trial by the parties, but may consult any of the written authorities above named in this section (e), with the same force and effect as if the same had been admitted in evidence.

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 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) For Attendance of Witnesses; Form; Issue. Subpoenas may be issued under Rule 45 only to compel attendance of witnesses, with or without documentary evidence, at a deposition, hearing or trial. Every subpoena shall state the name of the court, and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified.

(b) For Production of Documentary Evidence. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may: (1) Quash or modify the subpoena if it is unreasonable and oppressive; or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) Service. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to such person the fees for 1 day's attendance and the mileage allowed by law. Service is also valid if the person named in the subpoena has signed a written admission or waiver of personal service. When the subpoena is issued on behalf of the state of Colorado, or an officer or agency thereof, fees and mileage need not be tendered. Proof of service shall be made as in Rule 4(h). Unless otherwise ordered by the court for good cause shown, such subpoena shall be served no later than forty-eight (48) hours before the time for appearance set out in said subpoena. The party

issuing or causing the issuance of the subpoena pursuant to this rule, except in post-judgment proceedings, shall serve a copy of the subpoena (including a complete list of documents and things requested to be provided pursuant to the subpoena) upon all parties of record, including pro se parties, in the manner prescribed by C.R.C.P. 5(b). Service on the other parties shall be made promptly after the service of the subpoena upon the person named therein. Original subpoenas and returns of service of such subpoenas need not be filed with the court.

(d) Subpoena for Taking Depositions; Place of Examination.

(1) A Deposition subpoena, upon notice to all parties to the action, may require the production of documentary evidence which is within the scope of discovery permitted by Rule 26. Any party, the person to whom a deposition subpoena is directed, or any other person claiming an interest in the documents affected, may move for a protective order under Rule 26, in addition to any other remedy available under Rule 45. The person to whom the subpoena is directed may, within 14 days after the service thereof or on or before the time specified in the subpoena for compliance if such time is less than 14 days after service, serve upon the attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials. If objection is made, the party serving the subpoena is not entitled to inspect and copy the materials except pursuant to an order of the court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(2) A resident of this state may be required by subpoena to attend an examination upon deposition only in the county wherein he resides or is employed or transacts his business in person, or at such other convenient place as is fixed by an order of court. A nonresident of this state may be required by subpoena to attend only within forty miles from the place of service or in the county wherein he resides or is employed or transacts his business in person or at such other convenient place as is fixed by an order of court.

(e) Subpoena for Deposition, Hearing or Trial. Subpoenas for attendance at a deposition, hearing or trial shall be issued either by the clerk of the court in which the case is docketed, or by one of counsel whose appearance has been entered in the particular case in which the subpoena is sought. A subpoena requiring the attendance of a witness at a deposition, hearing or trial may be served any place within the state.

(f) Subpoena in Aid of Execution or Proceedings Subsequent to Judgment. Every subpoena or subpoena to produce issued in accordance with post-judgment proceedings of C.R.C.P. 69 shall comply with the provisions for service, attendance, production of documentary evidence and depositions required by this Rule 45. Written interrogatories pursuant to C.R.C.P. 69 shall be personally served on the judgment debtor in accordance with the requirements of, and in the manner provided for service of a subpoena under this Rule 45.

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 desires the court to take or his objection to the action of the court and his 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.

Rule 47. Jurors

(a) Orientation and Examination of Jurors. An orientation and examination shall be conducted to inform prospective jurors about their duties and service and to obtain information about prospective jurors to facilitate an intelligent exercise of challenges for cause and peremptory challenges.

(1) The jury commissioner is authorized to examine and, when appropriate, excuse prospective jurors who do not satisfy the statutory qualifications for jury service, or who are entitled to a postponement, or as otherwise authorized by appropriate court order.

(2) When prospective jurors have reported to the courtroom, the judge shall explain to them in plain and clear language:

(I) The grounds for challenge for cause;

(II) Each juror's duty to volunteer information that would constitute a disqualification or give rise to a challenge for cause;

(III) The identities of the parties and their counsel;

(IV) The nature of the case, utilizing the parties' CJI(3d) Instruction 2:1 or, alternatively, a joint statement of factual information intended to provide a relevant context for the prospective jurors to respond to questions asked of them. Alternatively, at the request of counsel and in the discretion of the judge, counsel may present such information through brief non-argumentative statements.

(V) General legal principles applicable to the case, including burdens of proof, definitions of preponderance and other pertinent evidentiary standards and other matters that jurors will be required to consider and apply in deciding the issues.

(3) The judge shall ask prospective jurors questions concerning their qualifications to serve as jurors. The parties or their counsel shall be permitted to ask the prospective jurors additional questions. In the discretion of the judge, juror questionnaires, posterboards and other methods may be used. The judge may limit the time available to the parties or their counsel for juror examination based on the needs of the case. Any party may request additional time for juror examination in the Trial Management Order, at the commencement of the trial, or during juror examination based on developments during such examination. Any such request shall include the reasons for needing additional juror examination time. Denial of a request for additional time shall be based on a specific finding of good cause reflecting the nature of the particular case and other factors that the judge determines are relevant to the particular case and are appropriate to properly effectuate the purposes of juror examination set forth in section (a) of this Rule. The court may limit or terminate repetitious, irrelevant, unreasonably lengthy, abusive, or otherwise improper examination.

(4) Jurors shall not be required to disclose personal locating information, such as address

or place of business in open court and such information shall not be maintained in files open to the public. The trial judge shall assure that parties and counsel have access to appropriate and necessary locating information.

(5) Once the jury is impaneled, the judge will again explain in more detail the general principles of law applicable to civil cases, the procedural guidelines regarding conduct by jurors during the trial, case specific legal principles and definitions of technical or special terms expected to be used during the presentation of the case. Jurors shall be told that they may not discuss the case with anyone until the trial is over with one exception: jurors may discuss the evidence among themselves in the jury room when all jurors are present. Jurors shall also be told that they must avoid discussing any potential outcome of the case and must avoid reaching any conclusion until they have heard all the evidence, final instructions by the court and closing arguments by counsel. The trial court shall have the discretion to prohibit or limit pre-deliberation discussions of the evidence in a particular trial based on a specific finding of good cause reflecting the particular circumstances of the case.

(b) Alternate Jurors. The court may direct that one or two jurors in addition to the regular panel be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. An alternate juror who does not replace a principal juror shall not be discharged until the jury renders its verdict or until such time as determined by the court. If the court and the parties agree, alternate jurors may deliberate and participate fully with the principal jurors in considering and returning a verdict. If one or two alternate jurors are called each side is entitled to one peremptory challenge in addition to those otherwise allowed. The additional peremptory challenge may be exercised as to any prospective juror.

(c) Challenge to Array. Any party may challenge the array of jurors by motion setting forth particularly the causes of challenge; and the party opposing the challenge may join issue on the motion, and the issue shall be tried and decided by the court.

(d) Challenge to Individual Jurors. A challenge to an individual juror may be for cause or peremptory.

(e) Challenges for Cause. Challenges for cause may be taken on one or more of the following grounds:

(1) A want of any of the qualifications prescribed by the statute to render a person competent as a juror;

(2) Consanguinity or affinity within the third degree to any party;

(3) Standing in the relation of guardian and ward, master and servant, employer and clerk, or principal and agent to either party, or being a member of the family of any party; or a partner in business with any party or being security on any bond or obligation for any party;

(4) Having served as a juror or been a witness on a previous trial between the same parties for the same cause of action;

(5) Interest on the part of the juror in the event of the action, or in the main question involved in the action, except the interest of the juror as a member, or citizen of a municipal corporation;

(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.

(f) Order and Determination of Challenges for Cause. The plaintiff first, and afterwards the defendant, shall complete challenges for cause. Such challenges shall be tried by the court, and the juror challenged, and any other person, may be examined as a witness.

(g) Order of Selecting Jury. The clerk shall draw by lot and call the number of jurors that are to try the cause plus such an additional number as will allow for all peremptory challenges permitted. After each challenge for cause sustained, another juror shall be called to fill the vacancy and may be challenged for cause. When the challenges for cause are completed, the clerk shall make a list of jurors remaining, in the order called, and each side, beginning with plaintiff, shall indicate thereon its peremptory challenge to one juror at a time in regular turn until all peremptory challenges are exhausted or waived. The clerk shall then swear the remaining jurors, or so many of them in the order listed as will make up the number fixed to try the cause, and these shall constitute the jury.

(h) Peremptory Challenges. Each side shall be entitled to four peremptory challenges, and if there is more than one party to a side they must join in such challenges. Additional peremptory challenges in such number as the court may see fit may be allowed to parties appearing in the action either under Rule 14 or Rule 24 if the trial court in its discretion determines that the ends of justice so require.

(i) Oath of Jurors. As soon as the jury is completed, an oath or affirmation shall be administered to the jurors in substance:

That you and each of you will well and truly try the matter at issue between _____, the plaintiff, and _____, the defendant, and a true verdict render, according to the evidence.

(j) When Juror Discharged. If, before verdict, a juror becomes unable or disqualified to perform his 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) Examination of Premises by Jury. If in the opinion of the court it is proper for the jury to see or examine any property or place, it may order the jury to be conducted thereto in a body by a court officer. A guide may be appointed. The court shall, in the presence of the parties, instruct the officer and guide as to their duties. While the jury is thus absent, no person shall speak to it on any subject connected with the trial excepting only the guide and officer in compliance with such instructions. The parties and their attorneys may be present.

(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 ability, keep the jury together, separate from other persons. He shall not suffer any communication to be made to any juror or make any himself unless by order of the court except to ask it if it has agreed upon a verdict; and he shall not, before

the verdict is rendered, communicate with any person the state of its 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) Items Taken to Deliberation. Upon retiring, the jurors shall take the jury instructions, their juror notebooks and notes they personally made, if any, and to the extent feasible, those exhibits that have been admitted as evidence.

(n) Additional Instructions. After the jury has retired for deliberation, if it desires additional instructions, it may request the same from the court; any additional instructions shall be given it in court in the presence of or after notice to the parties.

(o) New Trial if No Verdict. When a jury is discharged or prevented from giving a verdict for any reason, the action shall be tried anew.

(p) When Sealed Verdict. While the jury is absent the court may adjourn from time to time, in respect to other business, but it shall be nevertheless deemed open for every purpose connected with the cause submitted to the jury, until a verdict is rendered or the jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of court, in case of an agreement during a recess or adjournment for the day.

(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 records the names of the jurors. Upon a request of any party the jury may be polled.

(r) Correction of Verdict. If the verdict is informal or insufficient in any particular, the jury, under the advice of the court, may correct it or may be again sent out.

(s) Verdict Recorded, Disagreement. The verdict, if agreed upon by all jurors, shall be received and recorded and the jury discharged. If all the jurors do not concur in the verdict, the jury may be again sent out, or may be discharged.

(t) Juror Notebooks. Juror notebooks shall be available during trial and deliberation to aid jurors in the performance of their duties.

(u) Juror Questions. Jurors shall be allowed to submit written questions to the court for the court to ask of witnesses during trial, in compliance with procedure established by the trial court. The trial court shall have the discretion to prohibit or limit questions in a particular trial based on a specific finding of good cause reflecting the particular circumstances of the case.

COMMENT

The amendments to this rule add language to require orientation of the prospective jurors. This case-specific orientation would be in addition to any general orientation the prospective jurors may have received. As set forth in the standardized outline that has been developed for use in the orientation,

examination and selection processes, the imparted information and instructions should be clear and as neutral as possible. The contents of any factual orientation information should be reviewed by the judge with counsel at a pre-trial conference to enable consensus concerning the information to be provided. It is recommended that the judge read a stipulated statement of what the case is about. If counsel cannot agree about the content of such a statement, the Judge may develop a preliminary statement of the case in the judge's own discretion. Alternatively, if both counsel desire to make brief, non-argumentative statements to the prospective jurors on what the case is about, the court should have discretion to permit such statements.

As part of the case-specific orientation, certain preliminary instructions should be used to help prospective jurors to understand the claims and defenses of the parties in the civil case. At a minimum, these instructions should address burden of proof, credibility, objections by counsel, bench conferences and whether jurors will be permitted to take notes and ask questions. In complex or technical cases, definitions of terms and other information that would help orient the jury to the case should be given. The trial judge, rather than counsel, should give these instructions as part of the before-examination orientation.

Provisions of the rules pertaining to examination of prospective jurors have been reorganized and clarified to emphasize certain objections. Specific authority is conferred on the jury commissioner to allow service "postponements" as contemplated by C.R.S. § 13-71-116 and to examine and excuse prospective jurors who do not satisfy statutory qualification requirements of C.R.S. § 13-71-105.

The court's role has been better defined. Because of the court's neutral role in the case, the trial judge should conduct the initial juror examination by asking standard questions and also those which relate to the specific case, but may be of a sensitive nature. A uniform outline of orientation, juror examination and juror selection procedures has been developed by the committee for both civil and criminal cases. Use of such outline would assure that all important information is covered, time is saved and that cases are handled uniformly throughout the state.

Counsel and pro se litigants would continue to have a part in the juror examination process by being allowed to question prospective jurors on relevant matters not covered by the trial judge. The judge, however, would continue to have authority to limit such examinations to avoid repetition, irrelevant or improper inquiries and wasting of time.

In addition to the standardized outline of orientation, jury examination and jury selection, posterboards and questionnaires have been developed to enhance the process of acquiring information from prospective jurors. When and how posterboards and questionnaires are used in discretionary with the trial judge. Posterboard questions provide a method to obtain information from prospective jurors in a fast, neutral and flexible way. Such method gives counsel time to observe panelists and make notes, which is not always possible when the attorney is engrossed in asking questions directly. Questionnaires, while not normally used in routine cases, can be valuable in those

cases involving high publicity and/or complex issues. Where used, questionnaires not only can obtain autobiographical information, but can also seek case-specific information to identify potential prejudice on sensitive issues.

Juror notebooks should be used in trials as an aid to jurors in the performance of their duties. The court should supply three-ring binders which can be retrieved and repeatedly reused. The court and counsel should provide the materials to be placed in the juror notebooks. The timing and placement of particular materials in the notebooks will be at the court's discretion. Juror notebooks should not be taken from the courtroom or jury room. They should be returned at the end of the trial so that notes can be destroyed and other materials replaced, recycled and/or reused. Sections should be tabbed with particular sections deleted or left empty as appropriate.

Juror notebooks should contain the following:

(1) Orientation materials;

(2) Preliminary jury instructions;

(3) A copy of the final instructions given by the court;

(4) Items ordered by the court; and

(5) Blank paper for juror notes (together with a copy of CJI(3D) 1:7).

Rule 48. Number of Jurors

The jury shall consist of six persons, unless the parties agree to a smaller number, not less than three. The parties may stipulate at any time before the verdict is returned that a verdict or a finding of a stated majority of the jurors shall be taken as the verdict or finding of the jury.

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 right to a trial by jury of the issue so omitted unless before the jury retires he 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) General Verdict Accompanied by Answer to Interrogatories. The court may submit to the jury, together with appropriate forms for a general verdict, written interrogatories upon one or more issues of fact, the decision of which is necessary to a verdict. The court shall give such explanation or instruction as may be necessary to enable

the jury both to make answers to the interrogatories and to render a general verdict, and the court shall direct the jury both to make written answers and to render a general verdict. When the general verdict and the answers are harmonious, the appropriate judgment upon the verdict and answers shall be entered pursuant to Rule 58. When the answers are consistent with each other but one or more is inconsistent with the general verdict, judgment may be entered pursuant to Rule 58 in accordance with the answers, notwithstanding the general verdict, or the court may return the jury for further consideration of its answers and verdict or may order a new trial. When the answers are inconsistent with each other or one or more is likewise inconsistent with the general verdict, judgment shall not be entered, but the court shall return the jury for further consideration of its answers and verdict or shall order a new trial.

Rule 50. Motion for Directed Verdict

A party may move for a directed verdict at the close of the evidence offered by an opponent or at the close of all the evidence. A party who moves for a directed verdict at the close of the evidence offered by an opponent may offer evidence in the event that the motion is not granted, without having reserved the right so to do and to the same extent as if the motion had not been made. A motion for a directed verdict which is not granted is not a waiver of trial by jury even though all parties to the action have moved for directed verdicts. A motion for a directed verdict shall state the specific grounds therefor. The order of the court granting a motion for a directed verdict is effective without any assent of the jury.

Rule 51. Instructions to Jury

The parties shall tender jury instructions pursuant to C.R.C.P. 16(g). All instructions shall be submitted to the parties, who shall make all objections thereto before they are given to the jury. Only the grounds so specified shall be considered on motion for a new trial or on appeal or certiorari. Before argument, the court shall read its instructions to the jury but shall not comment upon the evidence. Such instructions shall be taken by the jury when it retires. All instructions offered by the parties, or given by the court, shall be filed with the clerk and, with the endorsement thereon indicating the action of the court, shall be taken as part of the record of the cause.

Rule 51.1. Colorado Jury Instructions

(1) In instructing the jury in a civil case, the court shall use such instructions as are contained in Colorado Jury Instruction (CJI) as are applicable to the evidence and the prevailing law.

(2) In cases in which there are no CJI instructions on the subject, or in which the factual situation or changes in the law warrant a departure from the CJI instructions, the court shall instruct the jury as to the prevailing law applicable to the evidence in a manner which is clear, unambiguous, impartial and free from argument, using CJI instructions as models as

to the form so far as possible.

Rule 52. Findings by the Court

In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Neither requests for findings nor objections to findings rendered are necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in Rule 41(b).

Rule 53. Masters

(a) Appointment and Compensation. The court in which any action is pending may appoint a master therein. As used in these rules the word "master" includes a referee, an auditor, and an examiner. The compensation to be allowed to a master shall be fixed by the court, and may be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain the master's report as security for the master's compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) Reference. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it.

(c) Powers. The order of reference to the master may specify or limit the master's powers and may direct the master to report only upon particular issues, or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order. The master may require the production before the master of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. The master may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath

and may himself (or herself) examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence received, offered, and excluded in the same manner and subject to the same limitations as a court sitting without a jury.

(d) Proceedings.

(1) **Meetings.** When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 21 days after the date of the order of reference and shall notify the parties or their attorneys. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make his or her report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in the master's discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(2) **Witnesses.** The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 107.

(3) **Statement of Accounts.** When matters of accounting are in issue before the master, the master may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as the master directs.

(e) Report.

(1) **Contents and Filing.** The master shall prepare a report upon the matters submitted to the master by the order of reference and, if required to make findings of fact and conclusions of law, shall set them forth in the report. The master shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. Unless otherwise directed by the order of reference, the master shall serve a copy of the report on each party.

(2) **In Nonjury Actions.** In an action to be tried without a jury the court shall accept the master's finding of fact unless clearly erroneous. Within 14 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion. The court, after hearing, may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) **In Jury Action.** In an action to be tried by a jury the master shall not be directed to report the evidence. The master's findings upon the issues submitted to the master are

admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) **Stipulation as to Findings.** The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(5) **Draft Report.** Before filing the master's report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

CHAPTER 6

Judgment

CHAPTER 6

JUDGMENT

Rule 54. Judgments; Costs

(a) Definition; Form. "Judgment" as used in these rules includes a decree and order to or from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment Upon Multiple Claims or Involving Multiple Parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims, or parties and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(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 pleadings.

COMMITTEE COMMENT

The amendment to C.R.C.P. 54(c) is to eliminate what has been perceived as a possible conflict between that section and the recent change to C.R.C.P. 8(a) which prohibits statement of amount in that **ad damnum.** The amendment simply strikes the words "or exceed in amount" to make the section consistent with C.R.C.P. 8(a). Relief sought in the prayer is now described rather than stated as an amount. It is, therefore, not necessary to have an amount limitation in C.R.C.P. 54(c).

(d) Costs. Except when express provision therefor is made either in a statute of this state or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; but costs against the state of Colorado, its officers or agencies, shall be imposed only to the extent permitted by law.

(e) Against Partnership. Any judgment obtained against a partnership or unincorporated association shall bind only the joint property of the partners or associates, and the separate

property of the parties personally served.

(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 estate.

(g) Against Unknown Defendants. The judgment in an action in rem shall apply to and conclude the unknown defendants whose interests are described in the complaint.

(h) Revival of Judgments. A judgment may be revived against any one or more judgment debtors whether they are jointly or severally liable under the judgment. To revive a judgment a motion shall be filed alleging the date of the judgment and the amount thereof which remains unsatisfied. Thereupon the clerk shall issue a notice requiring the judgment debtor to show cause within 14 days after service thereof why the judgment should not be revived. The notice shall be served on the judgment debtor in conformity with Rule 4. If the judgment debtor answer, any issue so presented shall be tried and determined by the court. A revived judgment must be entered within twenty years after the entry of the judgment which it revives, and may be enforced and made a lien in the same manner and for like period as an original judgment. If a judgment is revived before the expiration of any lien created by the original judgment, the filing of the transcript of the entry of revivor in the register of actions with the clerk and recorder of the appropriate county before the expiration of such lien shall continue that lien for the same period from the entry of the revived judgment as is provided for original judgments. Revived judgments may themselves be revived in the manner herein provided.

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 default.

(b) Judgment. A party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, guardian ad litem, conservator, or such other representative who has appeared in the action. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 7 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper. However, before judgment is entered, the court shall be satisfied that the venue of the action is proper under Rule 98.

(c) Setting Aside Default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) Plaintiffs, Counterclaimants, Cross Claimants. The provisions of this Rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(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 claim or right to relief by evidence satisfactory to the court.

(f) Judgment on Substituted Service. In actions where the service of summons was by publication, mail, or personal service out of the state, the plaintiff, upon expiration of the time allowed for answer, may upon proof of service and of the failure to plead or otherwise defend, apply for judgment. The court shall thereupon require proof to be made of the claim and may render judgment subject to the limitations of Rule 54(c).

Rule 56. Summary Judgment and Rulings on Questions of Law

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, after the expiration of 21 days from the commencement of the action or after filing of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the claiming party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, move with or without supporting affidavits for a summary judgment in the defending party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. Unless otherwise ordered by the court, any motion for summary judgment shall be filed no later than 91 days (13 weeks) prior to trial. A cross-motion for summary judgment shall be filed no later than 70 days (10 weeks) prior to trial. The motion may be determined without oral argument. The opposing party may file and serve opposing affidavits within the time allowed for the responsive brief, unless the court orders some lesser or greater time. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this Rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be

conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or by further affidavits. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of the opposing party's pleadings, but the opposing party's response by affidavits or otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If there is no response, summary judgment, if appropriate, shall be entered.

(f) When Affidavits are Unavailable. Should it appear from the affidavits of a party opposing the motion that the opposing party cannot for reasons stated present by affidavit facts essential to justify its opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

(h) Determination of a Question of Law. At any time after the last required pleading, with or without supporting affidavits, a party may move for determination of a question of law. If there is no genuine issue of any material fact necessary for the determination of the question of law, the court may enter an order deciding the question.

Rule 57. Declaratory Judgments

(a) Power to Declare Rights, etc.; Force of Declaration. District and superior courts within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceedings shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

(b) Who May Obtain Declaration of Rights. Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

(c) Contract Construed Before Breach. A contract may be construed either before or

after there has been a breach thereof.

(d) For What Purposes Interested Person May Have Rights Declared. Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect thereto:

(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or other; or

(2) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

(e) Not a Limitation. The enumeration in sections (b), (c), and (d) of this Rule does not limit or restrict the exercise of the general powers conferred in section (a) of this Rule, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

(f) When Court May Refuse to Declare Right. The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

(g) Review. All orders, judgments, and decrees under this Rule may be reviewed as other orders, judgments, and decrees.

(h) Further Relief. Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application is deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

(i) Issues of Fact. When a proceeding under this Rule involves the determination of an issue of fact, such issues may be tried and determined in the same manner as issues of facts are tried and determined in other actions in the court in which the proceeding is pending.

(j) Parties; Municipal Ordinances. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state shall also be served with a copy of the proceeding and is entitled to be heard.

(k) Rule is Remedial; Purpose. This Rule is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and is to be liberally construed and administered.

(l) Interpretation and Construction. This Rule shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgment and decrees.

(m) Trial by Jury; Remedies; Speedy Hearing. Trial by jury may be demanded under the circumstances and in the manner provided in Rules 38 and 39. The existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

Rule 58. Entry of Judgment

(a) Entry. Subject to the provisions of C.R.C.P. 54(b), upon a general or special verdict of a jury, or upon a decision by the court, the court shall promptly prepare, date, and sign a written judgment and the clerk shall enter it on the register of actions as provided in C.R.C.P. 79(a). The term "judgment" includes an appealable decree or order as set forth in C.R.C.P. 54(a). The effective date of entry of judgment shall be the actual date of the signing of the written judgment. The notation in the register of actions shall show the effective date of the judgment. Entry of the judgment shall not be delayed for the taxing of costs. Whenever the court signs a judgment and a party is not present when it is signed, a copy of the signed judgment shall be immediately mailed or e-served by the court, pursuant to C.R.C.P. 5, to each absent party who has previously appeared.

(b) Satisfaction. Satisfaction in whole or in part of a money judgment may be entered in the judgment record (Rule 79(d)) upon an execution returned satisfied in whole or in part, or upon the filing of a satisfaction with the clerk, signed by the judgment creditor's attorney of record unless a revocation of authority is previously filed, or by the signing of such satisfaction by the judgment creditor, attested by the clerk, or notary public, or by the signing of the judgment record (Rule 79(d)) by one herein authorized to execute satisfaction. Whenever a judgment shall be so satisfied in fact otherwise than upon execution, it shall be the duty of the judgment creditor or the judgment creditor's attorney to give such satisfaction, and upon motion the court may compel it or may order the entry of such satisfaction to be made without it.

Rule 59. Motions for Post-Trial Relief

(a) Post-Trial Motions. Within 14 days of entry of judgment as provided in C.R.C.P. 58 or such greater time as the court may allow, a party may move for post-trial relief including:

(1) A new trial of all or part of the issues;
(2) Judgment notwithstanding the verdict;
(3) Amendment of findings; or
(4) Amendment of judgment.

Motions for post-trial relief may be combined or asserted in the alternative. The motion shall state the ground asserted and the relief sought.

(b) No Post-Trial Motion Required. Filing of a motion for post-trial relief shall not be a condition precedent to appeal or cross-appeal, nor shall filing of such motion limit the issues that may be raised on appeal.

(c) On Initiative of Court. Within the time allowed the parties and upon any ground available to a party, the court on its own initiative, may:

(1) Order a new trial of all or part of the issues;

(2) Order judgment notwithstanding the verdict;

(3) Order an amendment of its findings; or

(4) Order an amendment of its judgment.

The court's order shall specify the grounds for such action.

(d) Grounds for New Trial. Subject to provisions of Rule 61, a new trial may be granted for any of the following causes:

(1) Any irregularity in the proceedings by which any party was prevented from having a fair trial;

(2) Misconduct of the jury;

(3) Accident or surprise, which ordinary prudence could not have guarded against;

(4) Newly discovered evidence, material for the party making the application which that party could not, with reasonable diligence, have discovered and produced at the trial;

(5) Excessive or inadequate damages; or

(6) Error in law.

When application is made under grounds (1), (2), (3), or (4), it shall be supported by affidavit filed with the motion. The opposing party shall have 21 days after service of an affidavit within which to file opposing affidavits, which period may be extended by the court or by written stipulation between the parties. The court may permit reply affidavits.

(e) Grounds for Judgment Notwithstanding Verdict. A judgment notwithstanding verdict may be granted for either of the following grounds:

(1) Insufficiency of evidence as a matter of law; or

(2) No genuine issue as to any material fact and the moving party being entitled to judgment as a matter of law.

A motion for directed verdict shall not be a prerequisite to any form of post-trial relief, including judgment notwithstanding verdict.

(f) Scope of Relief in Trials to Court. On motion for post-trial relief in an action tried without a jury, the court may, if a ground exists, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct entry of a new judgment.

(g) Scope of Relief in Trials to a Jury. On motion for post-trial relief in a jury trial, the court may, if a ground exists, order a new trial or direct entry of judgment. If no verdict was returned, the court may, if a ground exists, direct entry of judgment or order a new trial.

(h) Effect of Granting New Trial. The granting of a new trial shall not be an appealable order, but a party by participating in the new trial shall not be deemed to have waived any objection to the granting of the new trial, and the validity of the order granting new trial may be raised by appeal after final judgment has been entered in the case.

(i) Effect of Granting Judgment Notwithstanding Verdict, Amendment of Findings or Amendment of Judgment. Subject to C.R.C.P. 54(b), granting of judgment notwithstanding the verdict, amendment of findings or amendment of judgment shall be an appealable order.

(j) Time for Determination of Post-Trial Motions. The court shall determine any post-trial motion within 63 days (9 weeks) of the date of the filing of the motion. Where there are multiple motions for post-trial relief, the time for determination shall commence on the date of filing of the last of such motions. Any post-trial motion that has not been decided within the 63-day determination period shall, without further action by the court, be deemed denied for all purposes including Rule 4(a) of the Colorado Appellate Rules and time for appeal shall commence as of that date.

(k) When Judgment Becomes Final. For purposes of this Rule 59, judgment shall be final and time for filing of notice of appeal shall commence as set forth in Rule 4(a) of the Colorado Appellate Rules.

Rule 60. Relief from Judgment or Order

(a) Clerical Mistakes. Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal such mistakes may be so corrected before the case is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(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 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 six months 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 legal representatives, at any time within six months 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 61. Harmless Error

No error in either the admission or the exclusion of evidence and no error or defect in any

ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 62. Stay of Proceedings to Enforce a Judgment

(a) Automatic Stay; Exceptions; Injunctions; Receiverships. Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 14 days after its entry; provided that an interlocutory or final judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. Unless otherwise ordered by the court, the provisions of section (c) of this Rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal.

(b) Discretionary stay. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of, or any proceedings to enforce, a judgment: (1) pending the disposition of a motion for post-trial relief made pursuant to C.R.C.P. 59; (2) pending a motion for relief from a judgment or order made pursuant to C.R.C.P. 60; (3) during the time permitted for filing of a notice of appeal; or (4) during the pendency of a motion for approval of a supersedeas bond.

COMMITTEE COMMENT

The 1988 amendment to C.R.C.P. 62(b) is a change to make that section fully consistent with the changes made to C.R.C.P. 59. The post-trial relief features of C.R.C.P. 50 and 52(b) were brought into C.R.C.P. 59. As a result, those Rules (50) and (52) no longer bear on post-trial relief and need not be referenced in C.R.C.P. 62.

(c) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the trial court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) Stay upon Appeal. When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay from the trial court subject to the exceptions contained in section (a) of this Rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

(e) Stay in Favor of the State of Colorado or Municipalities Thereof. When an appeal is taken by the State of Colorado, or by any county or municipal corporation of this state, or of any officer or agency thereof acting in official capacity and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant unless otherwise ordered by the court.

(f) [There is no section (f).]

(g) Power of Appellate Court Not Limited. The provisions in this Rule do not limit any power of the appellate courts or of a justice or judge thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered. (See Rule 8, Colorado Appellate Rules.)

(h) Stay of Judgment as to Multiple Claims or Multiple Parties. When a court has ordered a final judgment under the conditions stated in Rule 54 (b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

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 cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

Rule 64.

[Note: There is no Colorado rule under this heading. The number is here retained to preserve correspondence between federal and state numbering system rules 1 to 97.]

CHAPTER 7

Injunctions, Receivers, Deposits in Court, Offer of Judgment

CHAPTER 7

INJUNCTIONS, RECEIVERS, DEPOSITS IN COURT, OFFER OF JUDGMENT

Rule 65. Injunction

(a) Preliminary Injunction.

(1) **Notice.** No preliminary injunction shall be issued without notice to the adverse party.

(2) **Consolidation of Hearing with Trial on Merits.** Before or after the commencement of the hearing on an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon a trial on the merits becomes part of the record on the trial and need not be repeated upon the trial, this subsection (a)(2) shall be so construed and applied as to save the parties any rights they may have to trial by jury.

(b) Temporary Restraining Order; Notice; Hearing; Duration. A temporary retraining order may be granted without written or oral notice to the adverse party or his 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 attorney can be heard in opposition, and (2) 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 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 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) Security. No restraining order or preliminary injunction shall issue except upon the

giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the state or of any county or municipal corporation of this state or of any officer or agency thereof acting in official capacity. If at any time it shall appear to the court that security given under this Rule has become impaired or is insufficient, the court may vacate the restraining order or preliminary injunction unless within such time as the court may fix the security be made sufficient.

(d) Form and Scope of Injunction or Restraining Order. Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) [There is no section (e).]

(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 may have been ousted or deprived of possession by fraud, force, or violence, or from which he 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) When Relief Granted. Relief under this Rule may also be granted on the motion of any party at any time after an action is commenced and before or in connection with final judgment.

(h) When Inapplicable. This Rule shall not apply to suits for dissolution of marriage, legal separation, maintenance, child support, or custody of minors. In such suits, the court may make prohibitive or mandatory orders, without notice or bond, as may be just.

(i) State Court's Jurisdiction When Suit Commenced in Federal Court; Stay of Proceedings; Notice; Appeal. Whenever a suit praying for an interlocutory injunction shall have been begun in a federal district court to restrain any official or officials of this state from enforcing or administering any statute or administrative order of this state, or to set aside such statute or administrative order, any defendant in such suit or the attorney general of the state may bring a suit to enforce such statute or order in the district court of the state at any time before the hearing on the application for an interlocutory injunction in the suit in the federal court; and the district courts of this state may entertain such suits and the state appellate courts may entertain appeals from judgments therein. When such suit is brought, the district court shall grant a stay of proceedings by any state officer or officers under such statute or order pending the determination of such suit in the courts of this state. Upon the bringing of such suit, the district court shall at once cause a notice thereof together with a copy of the stay order by it granted, to be sent to the federal district court in which the action was originally begun. An appeal may be taken within 14 days after the termination of the suit in the state district court to the appropriate state appellate court and such appeal shall be in

every way expedited and set for an early hearing.

Rule 65.1. Security: Proceedings Against Sureties

Whenever these Rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits himself to the jurisdiction of the court and irrevocably appoints the clerk of the court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court, who shall forthwith mail copies to the sureties if their addresses are known.

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 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) By or after judgment, to dispose of the property according to the judgment, or to preserve it during appellate proceedings; or

(3) In other cases where proper and in accordance with the established principles of equity.

(b) Oath and Bond; Suit on Bond. Before entering upon his 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 will faithfully discharge his duties and will pay over and account for all money and property which may come into his 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) Dismissal of Receivership Action. An action in which a receiver has been appointed shall not be dismissed except by order of the court.

(d) Sole Claim for Relief; Service of Process; Notice.

(1) The appointment of a receiver may be the sole claim for relief in an action. The action shall be commenced by filing a complaint, or by service of a summons and a complaint, as provided in C.R.C.P. 3(a).

(2) If the receivership is requested in connection with a mortgage, trust deed or other lien on real property, the current owner of the property, as shown by the records of the clerk and

recorder, and any other person then collecting the rents and profits as a result of that person's lien on the rents or profits, shall be named as defendants.

(3) If a receiver is appointed by the court *ex parte*, copies of the summons, complaint, and order appointing the receiver shall be served on the defendants without delay, as provided in C.R.C.P. 4 or as directed by the court. The court, in its order for appointment of the receiver, shall direct the receiver to provide written notice of the action to any persons in possession of the property or otherwise affected by the order.

Rule 67. Deposit in Court

(a) By Party. In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, to be held by the clerk of the court subject to withdrawal in whole or in part at any time thereafter upon order of the court.

(b) By Trustee. When it is admitted by the pleadings or examination of a party that he has in his possession or under his control any money or other things capable of delivery which, being the subject of litigation, is held by him 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 68. Offer of Judgment

Repealed July 12, 1990, effective, nunc pro tunc, July 1, 1990.

CHAPTER 8

Execution and Supplemental Proceedings; Judgment for Specific Acts; Vesting Title; Proceedings in Behalf of and Against Persons Not Parties

CHAPTER 8

EXECUTION AND SUPPLEMENTAL PROCEEDINGS; JUDGMENT FOR SPECIFIC ACTS; VESTING TITLE; PROCEEDINGS IN BEHALF OF AND AGAINST PERSONS NOT PARTIES

Rule 69. Execution and Proceedings Subsequent to Judgment

(a) In General. Except as provided in C.R.C.P. 103 or an order of court directing otherwise, process to enforce a final money judgment shall be by writ of execution.

(b) Proceedings for Costs. Costs finally awarded by order of court may be enforced in the same manner as any final money judgment. Costs awarded by an appellate court may be enforced in the same manner upon application by filing a remittitur or other order of the appellate court with the clerk of the trial court showing the award of costs.

(c) Debtor of Judgment Debtor; Debtor May Pay Sheriff. After issuance of a writ of execution against property, the judgment debtor or any person indebted to the judgment debtor may pay to the sheriff to whom the writ of execution is directed the amount necessary to satisfy the execution. The sheriff's receipt for the amount shall be a discharge for the amount so paid.

(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 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 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 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 interrogatories; a copy of the motion, written interrogatories and a certified order of court shall be served upon 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) Subpoena for Appearance of Debtor of Judgment Debtor. At any time after entry of a final money judgment, upon proof to the satisfaction of the court, that any person has property of, or is indebted to a judgment debtor in any amount exceeding Five Hundred Dollars not exempt from execution, the court may issue a subpoena or subpoena to produce to such person to appear before the court, master or referee at a specified time and answer concerning the same. Service shall be made in accordance with C.R.C.P. 45, and the court may make reasonable orders for mileage and expenses.

(g) Order to Apply Property on Judgment; Contempt. The court, master, or referee may order any party or other person over whom the court has jurisdiction, to apply any property other than real property, not exempt from execution, whether in the possession of such party or other person, or owed the judgment debtor, towards satisfaction of the judgment. Any party or person who disobeys an order made under the provisions of this Rule may be punished for contempt. Nothing in this rule shall be construed to prevent an action in the nature of a creditor's bill.

(h) Witnesses. Witnesses may be subpoenaed to appear and testify in accordance with C.R.C.P. 45.

(i) Depositions. After entry of a final money judgment, the judgment creditor, upon order of court which may be obtained ex parte, may take the deposition of any person including the judgment debtor, in the manner provided in these Rules.

Rule 70. Judgment for Specific Acts; Vesting Title

If a judgment directs a party to execute a conveyance of land or to deliver deeds or other documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt. If real or personal property is within the district, the court in lieu of directing a conveyance thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a conveyance executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution or assistance upon application to the clerk.

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

Rule 71-A. Condemnation of Property

No Colorado Rule

Rules 72 to 76.

[Note: There are at present no Colorado Rules 72 to 76.]

CHAPTER 9

Court Administration

CHAPTER 9

COURT ADMINISTRATION

Rule 77. Courts and Clerks

(a) Courts Always Open. Courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning process, and of making and directing all interlocutory motions, orders, and rules. Each term shall be deemed open and continuous until the commencement of the next succeeding term.

(b) Proceedings in Court and Chambers. All trials upon the merits shall be conducted in open court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted in open court or by a judge in chambers, without the attendance of the clerk or other court officials and at any place within the state; but no hearing, other than on ex parte, shall be conducted outside the judicial district in which the action is pending without the consent of all parties affected thereby who are not in default.

(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 action may be suspended or altered or rescinded by the court upon cause shown.

(d) Orders in Any County. Any ex parte order in any pending action may be entered by the court, or by any judge thereof in any county of the district, irrespective of the county in which said action is pending.

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 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 79. Records

(a) Register of Actions. The clerk shall keep a record known as the register of actions and shall enter therein those items set forth below. The register of actions may be in any of

the following forms or styles:

(1) A page, sheet, or printed form in a book, case jacket, or separate file.

(2) A microfilm roll, film jacket, or microfiche card.

(3) Computer magnetic tape or magnetic disc storage, where the register of actions items appear on the terminal screen, or on a paper print-out of the screen display.

(4) Any other form or style prescribed by supreme court directive. A register of actions shall be prepared for each case or matter filed. The file number of each case or matter shall be noted on every page, film, or computer record whereon the first and all subsequent entries of actions are made. All papers filed with the clerk, all process issued and return made thereon, all costs, appearances, orders, verdicts, and judgments shall be noted chronologically in the register of actions. These notations shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The notation of an order, or of the entry of judgment, shall show the date the order or judgment was ordered in open court, in chambers, or under the provisions of Rule 55 regarding default. When trial by jury has been demanded or ordered, the clerk shall enter the word jury on the page, film, or computer record assigned to that case.

(b) Copies of Civil Judgments and Orders. (Repealed effective September 4, 1974.)

(c) Indices; Calendars. The clerk shall keep suitable indices of all records as directed by the court. The clerk shall also keep, as directed by the court, calendars of all hearings and all cases ready for trial, which shall distinguish trials to a jury from trials to the court. Indices and calendars may be in any of the following forms or styles:

(1) A page or sheet in a book or separate file.

(2) A mechanical or hand-operated index machine or card file.

(3) Computer magnetic tape or magnetic disc storage, where the information appears on the terminal screen, or on a print-out of the screen display.

(4) Microfilm copies of 1, 2, and 3 above.

(5) Any other form or style prescribed by supreme court directive.

(d) Judgment Record. The clerk shall keep a judgment record in which a notation shall be made of every money judgment. The judgment record may be in any of the following forms or styles:

(1) A page, sheet, or printed form in a book, case jacket, or separate file.

(2) Computer magnetic tape or magnetic disc storage, where the judgment and subsequent transactions appear on the terminal screen, or on a paper print-out of the screen display.

(3) A microfilm copy of 1 and 2 above.

(4) Any other form or style prescribed by supreme court directive.

(e) Retention and Disposition of Records. The clerk shall retain and dispose of all court records, including those created under Rule 79(b) prior to its repeal, in accordance with instructions provided in the manual entitled, Colorado Judicial Department, Records Management.

Rule 80. Reporter; Stenographic Report or Transcript as Evidence

(a) Reporter. Unless the parties stipulate to the contrary, a district court or superior court shall, and any other court or referee or master in its discretion may, direct that evidence be taken stenographically and appoint a reporter for that purpose. His fee shall be fixed by the court subject to limitations imposed by law, and shall be paid in the manner provided by law; and if taxed to litigant may be taxed ultimately as costs in the discretion of the court. The cost of a transcript shall be paid in the first instance by the party ordering same.

(b) Official Reporters. Each court of record may designate one or more official court reporters.

(c) Stenographic Report or Transcript as Evidence. Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

(d) Reporter's Notes: Custody, Use, Ownership, Retention. All reporter's notes shall be the property of the state. Reporter's notes shall be retained by the court for no less than twenty-one years after the creation of the notes, or such other period as may be prescribed by supreme court directive or by instructions in the manual entitled, Colorado Judicial Department, Records Management. During the period of retention, reporter's notes shall be made available to the reporter of record, or to any other reporter or person the court may designate. During the trial or the taking of other matters on the record, the notes shall be considered the property of the state, even though in the custody of the reporter. After the trial and appeal period, the reporter shall list, date, and index all notes and shall properly pack them for storage. The state shall provide the storage containers and space.

CHAPTER 10

General Provisions

CHAPTER 10

GENERAL PROVISIONS

Rule 81. Applicability in General

(a) Special Statutory Proceedings. These rules do not govern procedure and practice in any special statutory proceeding insofar as they are inconsistent or in conflict with the procedure and practice provided by the applicable statute. Where the applicable statute provides for procedure under a former Code of Civil Procedure, such procedure shall be in accordance with these rules.

(b) Dissolution of Marriage and Legal Separation. These rules shall not govern procedure and practice in actions in dissolution of marriage and legal separation insofar as they may be inconsistent or in conflict with the procedure and practice provided by the applicable statutes.

(c) Appeals from County to District Court. These rules do not supersede the provisions of the statutes of this state now or hereafter in effect relating to appeals from final judgments and decrees of the county court to the district court.

Rule 82. Jurisdiction Unaffected

These rules shall not be construed to extend or limit the jurisdiction of any court.

Rule 83. Rules by Courts

Repealed April 1, 1982, effective July 1, 1982.

Rule 84. Forms

The forms contained in the Appendix to chapters 1 to 17 are sufficient under the rules and are intended to indicate the simplicity and brevity of statement which the rules contemplate.

Rule 85. Title

Repealed December 5, 1996, effective January 1, 1997.

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 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 87. Application of Following Water Rules

Rules 88 through 91 shall govern proceedings under article 92 of title 37, C.R.S. 1973.

Rule 88. Judgments and Decrees

(a) Record and Indices. The water clerk shall prepare and maintain books of all judgments and decrees in the sequence of their entry by the court, or shall keep microfilm or magnetic tape copies of the same. The water clerk shall prepare and maintain suitable indices of the judgments and decrees.

(b) Entry and Finality of Judgment. Immediately following the issuance of a judgment and decree the water clerk shall make an entry of record concerning the same, and the judgment and decree shall then be deemed final.

(c) Notice. A copy of such judgment and decree or notice thereof shall be given promptly to applicants and to any protestors and objectors, or their attorneys.

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 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

Following the announcement on March 24, 1971, of **United States v. District Court in and for the County of Eagle,** 401 U.S. 520, 91 S. Ct. 998, 28 L. Ed. 2d 278 (1971), and **United States v. District Court in and for Water Division Number 5,** 401 U.S. 527, 91 S. Ct. 1003, 28 L. Ed. 2d 284 (1971). The Colorado Supreme Court appointed a water advisory committee for study and recommendations as to the necessity and possible content of rules of court as a result of the two United States Supreme Court opinions. An attempt was made to have the membership of this committee representative of the different interests that might be affected by proceedings conducted in the light of these opinions and **United States v. District Court,** 169 Colo. 555, 458 P.2d 760 (1969), which was affirmed by the first mentioned United States Supreme Court opinion. After conferences and study the committee established tentative guidelines and recommended that a 5-man briefing and drafting committee be appointed for performance under the guidelines. Accordingly, a briefing and drafting committee was appointed, consisting of the following attorneys: Kenneth Balcomb, Glenwood Springs, Colorado; Charles J. Beise, Denver, Colorado; Kenneth L. Broadhurst, Denver, Colorado; Gene Alan Erl, Washington, D.C.; and Donald H. Hamburg, Denver, Colorado, with Mr. Beise acting as chairman. Early in the work of the briefing and drafting committee, Messrs. Beise and Balcomb prepared a memorandum which is set forth later herein.

After the briefing and drafting committee completed its work, it submitted proposed rules to the entire water advisory committee which, after some revision, unanimously approved them and recommended their adoption by the Colorado Supreme Court. The seven water judges of the state (Fred Calhoun, Donald A. Carpenter, Richard E. Conour, C. H. Darrow, William S. Eakes, William L. Gobin and Don Lorenz) then studied and conferred with respect to the proposed rules. After some revision, the water judges recommended their adoption. Accordingly, the proposed rules were adopted substantially as recommended on August 12, 1971, as Rules 86 through 91, C.R.C.P.

While the Colorado Supreme Court does not comment nor pass upon the contents of the memorandum prepared by Messrs. Beise and Balcomb, it believes that the bench and bar will find value in it and, therefore, sets it forth in its entirety:

By and large the Colorado Rules of Civil Procedure are to apply in conformity with section 37-92-304(3), C.R.S. 1973, unless varied by the proposed rules.

Experience gained from the use of forms presently furnished indicated an insufficiency of information therein, requiring in many cases, statements of opposition and protests when, with additional information, the same would be unnecessary.

Recommendations regarding the duties of the water clerk in the treatment of files, decrees, and judgments are made for the sake of simplicity, uniformity, and permanency.

The proposed rule relating to publication of a claim of right on the part of any claimant to antedate in priority previous orders, decrees, and judgments of courts establishing priorities gave the committee the greatest trouble, but the committee is satisfied that the

requirements of due process are met by the proposed rule.

Due process relates to the right to be heard, and this right is subject to reasonable limitations.

The type or kind of notice to be given to and the method of service thereof on other parties possibly affected by water adjudication proceedings has varied in Colorado as changes in water law have occurred. In the original statutes of 1879 and 1881, personal service in addition to publication and posting was required where possible, with mailing of notice where not possible.

In 1905 special supplementary adjudication proceedings became possible. Original adjudication proceedings in a water district still required the 1879-1881 service treatment,[1] but after 1905 the supplementary proceedings required only such notice as was required by the court. As a matter of practice this was generally confined to publication and posting. Countless decrees were entered in such special proceedings. All priorities so established and fixed are recognized in the present system of administration.

The 1943 law abolished special proceedings, and substituted general supplementary proceedings. It required by way of notice publication plus the mailing of the notice to those persons who had not theretofore adjudicated their claims according to the records of the state engineer and to all users who within the preceding calendar year had diverted water according to a list furnished by the water commissioner or division engineer.

The incompleteness and insufficiency of these lists as a means of reaching claimants of water rights is well recognized. Factually, it is impossible to reach all claimants by any means other than publication.

The salient feature of the previous statutory notice provisions to be noted here is that the requisite statutory publication, posting and mailing was confined to the district boundaries, and did not extend to the division of which the district was a part, even though the priority or priorities awarded related to and affected rights in the entire division.

In 1887 the legislature required the division engineers to treat priorities awarded in the districts on a division-wide basis. The claim was made in **O'Neil v. Northern Colorado Irrigation District,** 56 Colo. 545, 139 P. 536 (1914), that if retrospective effect was given this statute allowing curtailment of plaintiffs' priority awarded subsequent to 1887 in favor of defendants' priority entered before 1887 without notice to the plaintiff but in another water district within the division, it resulted in a taking of plaintiffs' property without due process of law. The challenge was made more than four years after entry of defendants' decree. The Court held the four year statute effectively barred the suit irrespective of the 1887 statute. This result was affirmed by the Supreme Court of the United States in an opinion by Mr. Justice Holmes, 242 U.S. 20, 37 S. Ct. 7, 61 L. Ed. 123 (1916).

We are not unmindful of the service of process requirement of due process in other types of litigation (condemnation) and have considered other cases very kindly furnished by interested members of and advisors to the committee as a whole.

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[1] **Nichols v. McIntosh,** 19 Colo. 22, 27 (1893).

Neither are we unmindful of Rule 4 of our Rules of Civil Procedure which by the statute and the rule here under consideration would have no application to notice requirements in water courts. We believe **O'Neil** followed by **Eagle County**[2] and **Darrow**[3] control.

Mr. Justice Holmes in **O'Neil** held that due process requirements were met when a party, though not entitled to be heard in the first instance, was allowed by statute a reasonable time thereafter to be heard. This was predicated on the fact that a decree regarding water priorities was a public fact. The fact that rights might be lost by inaction on the part of a claimant was likewise considered immaterial by Mr. Justice Holmes because the rule of limitation applied to him was likewise consistently applied by Colorado Courts to all similar situations. Plaintiff in **O'Neil** could not have been misled by contradictory rulings regarding applications of the rule.

Eagle County, of course, holds that the McCarren Amendment allows joinder the United States in adjudication proceedings under the 1943 Act. **Darrow** goes even farther and says such joinder can effectively be made under other but dissimilar state adjudicatory procedures. The key is the presence of a state statute providing the procedure for adjudication. The procedural steps themselves are a matter of state concern and need only be equally and fairly applied.[4]

The Supreme Court of Colorado in its review in **Eagle County** held the trial court had the power to require the giving of whatever additional notice of the claim of right to antedate previous decrees it deemed necessary.

The 1969 Act gives notice by requiring publication of the resume in one or more newspapers within the division as will give general circulation to water claimants in each county in the division. We do not believe this requires publication in every county which has a newspaper, but rather requires publication in a newspaper of general circulation in such county even if published elsewhere in the division. Thus publication in but one newspaper in the division might be found by the water court to be sufficient general circulation to meet due process requirements. Under this 1969 Act a well owner seeking his actual date of priority without prejudice because of his failure to participate in earlier adjudications antedates prior decrees. The

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[2] 169 Colo. 555, 458 P.2d 760, 401 U.S. 520, 28 L. Ed. 2d 278, 91 S. Ct. 998 (1971).

[3] #24821, 401 U.S. 527, 28 L. Ed.2d 284, 91 S. Ct. 1003 (1971).

[4] **Ft. Lyon Canal Co. v. Arkansas Sugar Beet & Irrigated Land Co.,** 39 Colo. 332, 34 P. 278 (1907). At page 344 thereof the court said:

> All persons are bound to take notice of a public law. The irrigation statutes are public, and apply to all persons taking water from the same source. The waters of the state belong to the public, and, as we said, in substance, in the original opinion, the state in its sovereign capacity had the right to provide a reasonable method whereby such rights might be adjudicated and settled, and to require claimants of such rights to present them in a prescribed manner, within a prescribed time, and unless the law in this respect was obeyed, that all claims not thus presented should be barred. That is what the statutes on the subject of the use of water for irrigation have provided. All persons are bound to take notice of these provisions.

only notice required is publication. Personal service is not required. The proposed rule is consistent with this procedure.

The additional statutory requirement of mailing to those requesting a copy of the resume relates not to the jurisdiction of the court or due process, but is for informational purposes only.

The final and important safeguard regarding notice is met when the statute requires the referee to direct mailing to those he deems affected by a particular claim.

On the surface **O'Neil** dealt with a statute of limitations, and in **Eagle County** and **Darrow** the problem of notice was not directly involved. But in **O'Neil** the only notice which could have possibly reached the adjacent district, other than the important notice the statute itself gave, was the publication. The same is true in **Eagle County.** In **Darrow,** however, as the rule herein under consideration will require, the notice was given division wide, and this was more effective as notice in the area affected than any previous statutory notice requirements.

We thus conclude that publication once in a newspaper or newspapers of general circulation within the division as required by statute and the proposed rule meets the requirements of due process, because:

1. Three years is a reasonable time for anyone to establish the error, if any, in the decree and judgment.[5]

2. In this day and age of rapid communication and transit, many newspapers are in general circulation throughout the state and not just a division.

3. The system has been effectively in force and in operation for nearly two years with relation to well owners and is the accepted state method of giving notice.

[5] This limitation was increased from two to three years by the 1970 amendment, section 37-92-304(10), C.R.S. 1973.

Rule 90. Dispositions of Water Court Applications

(a) The water clerk shall receive and file all applications and number them upon payment of filing fees. The water clerk shall not accept for filing any application that is not accompanied by the required filing fee. Each application filed within each division shall be consecutively numbered, preceded by the year and the letters CW (e.g. 2009CW100) to identify such applications as concerning water matters. The applicant for a finding of reasonable diligence relating to a conditional water right and/or to make a conditional water right absolute shall include in the application a listing of the original and any other prior case numbers pertaining to the conditional water right included in the application; thereafter, the assigned case number for the application shall appear on any document, pleading, or other item in the case. Referee rulings and water court judgments and decrees shall include all relevant prior case numbers.

(b) The water clerk shall include in the resume all applications filed during the preceding month that substantially contain the information required by Rule 3 of the Uniform Local Rules for All State Water Court Divisions and the standard forms approved by the water judges under C.R.S. § 37-92-302(2)(a), which together provide the information sufficient for publication to the public and potential parties. The water clerk, in consultation with the referee pursuant to Rule 6 of the Uniform Local Rules For All State Water Court Divisions, shall promptly refer to the water judge for consideration and disposition any application that does not substantially contain the information required by Rule 3 of the Uniform Local Rules For All State Water Court Divisions and the standard forms approved by the water judges under C.R.S. § 37-92-302(2)(a). Any such application shall not be published in the resume pending disposition by the water judge. The water clerk shall promptly inform the applicant that the application has been referred to the water judge and provide the applicant with a list of the required information that was not contained in the application.

(c) In determining whether or not to order publication of the application in the resume pursuant to C.R.S. § 37-92-302(3)(a), the water judge shall promptly review the application and shall employ an inquiry notice standard in conducting the review. Upon a finding that the application does not provide sufficient inquiry notice contemplated by Rule 3 of the Uniform Local Rules for All State Water Court Divisions and the standard forms approved by the water judges under C.R.S. § 37-92-302(2)(a) to justify publication, the water judge shall set a date pursuant to C.R.C.P. 41(b)(2) and C.R.C.P. 121, Section 1-10, by which date the application will be dismissed unless, prior to that date, a sufficient application is filed. The application will retain its original filing date unless and until the application is dismissed.

(d) For purposes of relation back of the filing date of a subsequent applicant's application for a water right or conditional water right pursuant to C.R.S. § 37-92-306.1, the subsequent application shall be filed within sixty days of the date the prior application is published in the resume.

(e) Upon request, the water clerk shall provide a prospective applicant or opposer with one copy of the form for the relevant application or statement of opposition. The standard

forms for applications and statements of opposition may also be found in the "Water Courts" section of the Colorado Judicial Branch web page.

Rule 91. Entry of Decree When No Protest Has Been Filed

The water judge may enter a decree at any time upon any ruling of the referee to which no protest has been filed, and it shall be sufficient for such purpose to enter thereon substantially the following language:

No protest was filed in this matter. The foregoing ruling is confirmed and approved, and is made the Judgment and Decree of this Court.

Dated: _____

_____
Water Judge

Rule 92. Conditional Water Rights -- Extension of Time for Entry of Findings of Reasonable Diligence

Where a decree or other determination with respect to a conditional water right was entered not earlier than June 7, 1971, and not later than June 6, 1973, the time during which the owner or user thereof must obtain a finding of reasonable diligence in the development of the proposed appropriation in order to maintain the conditional water right shall be extended by two years.

Rules 93 to 96.

[Note: There are at present no Colorado Rules 93 to 96.]

CHAPTER 11

Change of Judge; Place of Trial

CHAPTER 11

CHANGE OF JUDGE; PLACE OF TRIAL

Rule 97. Change of Judge

A judge shall be disqualified in an action in which he 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 attorney as to render it improper for him to sit on the trial, appeal, or other proceeding therein. A judge may disqualify himself on his 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, 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) Venue for Real Property, Franchises, and Utilities. All actions affecting real property, franchises, or utilities shall be tried in the county in which the subject of the action, or a substantial part thereof, is situated.

(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) For the recovery of a penalty or forfeiture imposed by statute, except that when it is imposed for an offense committed on a lake, river, or other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river, or stream and opposite the place where the offense was committed;

(2) Against a public officer or person specially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who by his command, or in his aid, does anything touching the duties of such officer, or for a failure to perform any act or duty which he is by law required to perform.

(c) Venue for Tort, Contract, and Other Actions. (1) Except as provided in sections (a), (b), and (c)(2) through (6) of this Rule, an action shall be tried in the county in which the defendants, or any of them, may reside at the commencement of the action, or in the county where the plaintiff resides when service is made on the defendant in such county; or if the defendant is a nonresident of this state, the same may be tried in any county in which the defendant may be found in this state, or in the county designated in the complaint, and if any defendant is about to depart from the state, such action may be tried in any county where plaintiff resides, or where defendant may be found and service had.

(2) Except as provided in subsection (3) of this section, an action on book account or for goods sold and delivered may also be tried in the county where the plaintiff resides or where the goods were sold; an action upon contract may also be tried in the county where the same was to be performed.

(3) (A) For the purposes of this Rule, a consumer contract is any sale, lease, or loan in which (i) the buyer, lessee, or debtor is a person other than an organization; (ii) the goods are purchased or leased, the services are obtained, or the debt is incurred, primarily for a personal, family, or household purpose; and (iii) the initial amount due under the contract, the total amount initially payable under the lease, or the initial principal does not exceed twenty-five thousand dollars.

(B) An action on a consumer contract shall be tried (i) in the county in which the contract was signed or entered into by any defendant; or (ii) in the county in which any defendant resided at the time the contract was entered into; or (iii) in the county in which any defendant resides at the time the action is commenced. If the defendant is a nonresident of this state, the same may be tried in any county in which the defendant may be found in this state, or in the county designated in the complaint, and if any defendant is about to depart from the state, such action may be tried in any county where plaintiff resides, or where defendant may be found and service had.

(C) In any action on a consumer contract if the plaintiff fails to state facts in the complaint or by affidavit showing that the action has been commenced in the proper county as described in this Rule, or if it appears from the stated facts that venue is improper, the court may, upon its own motion or upon motion of any party, dismiss any such action without prejudice; however, if appropriate facts appear in the record, the court shall transfer the action to an appropriate county. Any provision or authorization in any consumer contract purporting to waive any rights under subsection (3) of section (c) of this Rule is void.

(D) Any debt collector covered by the provisions of the Federal "Fair Debt Collection Practices Act" shall comply with the provisions of said Act set forth in 15 U.S.C. 1692(i) concerning legal actions by debt collectors, notwithstanding any provision of this Rule.

(4) An action upon a contract for services may also be tried in the county in which the services were to be performed.

(5) An action for tort may also be tried in the county where the tort was committed.

(6) An action in interpleader may also be tried in any county where a claimant resides.

(d) Venue for Injunction to Stay Proceedings. When any injunction shall be granted to stay a suit or judgment, the proceeding shall be had in the county where the judgment was obtained or the suit is pending.

(e) Motion to Change Venue; When Presented; Waiver; Effect of Filing. (1) Except for actions under section (c)(3), (f)(2), or (g) of this Rule, a motion to change venue shall be filed within the time permitted for the filing of motions under the defenses numbered (1) to (4) of section (b) of Rule 12, and if any such motion, or any other motion permitted by Rule 12, is filed within said time, simultaneously therewith. Unless so filed, the right to have venue changed is waived. A motion under sections (c)(3), (f)(2), or (g) of this Rule, shall be filed prior to the time a case is set for trial, or the right to have venue changed on said grounds is waived, unless the court, in its discretion, upon motion filed or of its own motion,

finds that a change of venue should be ordered.

(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 time to file his 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 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 so that he cannot expect a fair trial, he 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) Parties Must Agree on Change. Where there are two or more plaintiffs or defendants, the place of trial shall not be changed unless the motion is made by or with the consent of all the plaintiffs or defendants, as the case may be.

(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 right to change of judge or place of trial if his objection thereto is made in apt time.

Rule 99. No Rule

CHAPTER 12

Elections

CHAPTER 12

ELECTIONS

Rule 100. Contested Elections

(a) Statement of Contest; Where Filed. Any qualified elector wishing to contest the election of any person to the office of presidential elector, supreme court justice, court of appeals judge, district, or county judge, shall within 35 days after the canvass of the secretary of state, in case of a presidential elector, supreme court justice, court of appeals judge, or district judge, file in the office of the secretary of state a written statement of his intention to contest; and where the contest is for the office of county judge, such statement shall be filed in the office of the county clerk of the proper county within 35 days after the canvass by the county board of canvassers, which statement shall set forth: (1) The name of the contestor; (2) the name of the contestee; (3) the office; (4) the time of the election; (5) the particular cause of contest. The statement shall be verified by the affidavit of the contesting party.

(b) Trial. The contestor, or some one in behalf of the person for whose benefit the contest is made, shall, within 35 days after the filing of the statement of contest, file a complaint in the office of the clerk of the supreme court, if the contest relates to a presidential elector or supreme court justice, or in the office of the clerk of the court of appeals, if the contest relates to a court of appeals judge, or in the office of the clerk of the district court in the proper county, if the contest relates to a district or county judge. Upon the filing of such complaint the clerk shall issue summons. When the case is at issue, the court shall hear and determine the same in a summary manner, without the intervention of a jury.

CHAPTER 13

Seizure of Person or Property

CHAPTER 13

SEIZURE OF PERSON OR PROPERTY

Rule 101. Arrest and Exemplary Damages

Repealed May 29, 1986, effective January 1, 1987.

Rule 102. Attachments

(a) Before Judgment. Any party, at the time of filing a claim, in an action on contract, express or implied, or in an action to recover damages for tort committed against the person or property of a resident of this state, or at any time after the filing but before judgment, may have nonexempt property of the party against whom the claim is asserted (hereinafter defendant), attached by an *ex parte* order of court in the manner and on the grounds prescribed in this Rule, unless the defendant shall give good and sufficient security as required by section (f) of this Rule. No *ex parte* attachments before judgment shall be permitted other than those specified in this Rule.

(b) Affidavit. No writ of attachment shall issue unless the party asserting the claim (hereinafter plaintiff), his agent or attorney, or some credible person for him 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 or stands in defiance of an officer, so that process of law cannot be served upon him.

(4) The defendant is presently about to remove his property or effects, or a material part thereof, from this state with intent to defraud, delay, or hinder one or more of his creditors, or to render process of execution unavailing if judgment is obtained.

(5) The defendant has fraudulently conveyed, transferred, or assigned his property or effects, or a material part thereof, so as to hinder or delay one or more of his creditors, or to

render process or execution unavailing if judgment is obtained.

(6) The defendant has fraudulently concealed, removed, or disposed of his property or effects, or a material part thereof, so as to hinder or delay one or more of his 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 property or effects, or a material part thereof, so as to hinder or delay one or more of his 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 property or effects, or a material part thereof, so as to hinder or delay one or more of his 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 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 to satisfy the court that each, for himself, is worth the amount for which he has become surety over and above his just debts and liabilities, in property located in this state and not by law exempt from execution.

(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 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 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) Service; How Made. The writ of attachment shall be served in like manner and under the same conditions as are provided in these rules for the service of process. Service shall be deemed completed upon the expiration of the same period as is provided for service of process.

(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 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 proceedings endorsed thereon, or attached thereto, making a full inventory of the property attached as a part of his return upon the writ.

(j) Execution of Writ on Sunday or Legal Holiday. If an affidavit or testimony is received stating that it is necessary to execute the writ of attachment on Sunday or on a legal holiday, to secure property sufficient to satisfy the judgment to be obtained, and if the court is so satisfied, the court shall endorse on the writ an order to the officer directing the writ to be executed on such day.

(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 complaint setting forth his claim against the defendant, shall be made a party plaintiff and have like remedies against the defendant to secure his 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 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 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 claim or demand, as found by the court to be due, together with his 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 hands, for the purpose of defrauding his 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) The defendant may, at any time before trial, by affidavit, traverse and put in issue the matters alleged in the affidavit, testimony, or other evidence upon which the attachment is based and if the plaintiff shall establish the reasonable probability that any one of the causes alleged in the affidavit exists, said attachment shall be sustained, otherwise the same shall be dissolved. A hearing on the defendant's traverse shall be held within 7 days from the filing of the traverse and upon no less than two business days' notice to the plaintiff. If the debt for which the action is brought is not due and for that reason the attachment is not sustained, the action shall be dismissed; but if the debt is due, but the attachment nevertheless is not sustained, the action may proceed to judgment after the attachment is dissolved, as in other actions where no attachment is issued.

(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 answer and any counterclaim for this purpose.

(o) Amendment of Affidavit. If at the hearing of issues formed by the traverse it shall appear that the evidence introduced does not prove the cause or causes alleged in the affidavits, but the evidence does tend to prove another cause of attachment in existence at the time of the issuance of the writ, then on motion the affidavits may be amended to conform to proof the same as pleadings are allowed to be amended in cases of variance.

(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 favor may also recover such damages as he may have suffered by reason of the attachment of the property.

(q) Perishable Property May Be Sold. Where property taken by writ of execution or attachment, or seized under order of court, is in danger of serious and immediate decay or waste, or likely to depreciate rapidly in value pending the determination of the issues, or, where the keeping of it will be attended with great expense, any party to the action may apply to the court, upon due notice, for a sale thereof, and, thereupon the court may, in its discretion, order the property sold in the manner provided for in said order and the proceeds of said sale shall, thereupon, be deposited with the clerk to abide the further order of the court.

(r) Application of Proceeds; Satisfaction of Judgment. If judgment is recovered by

the plaintiff or any intervenor, on order of court, all funds previously deposited with the clerk, or in the hands of the sheriff, shall be first applied thereto. If any balance remain due, execution shall issue and be delivered to the sheriff who shall sell so much of the attached property as may be sufficient to satisfy the judgment. Sales shall be conducted as in cases of sales on execution. If there is a personal judgment and after such sale the same is not satisfied in full, the sheriff shall thereupon collect the balance as upon an execution in other cases.

(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 hands, and any proceeds of the property attached unapplied on the judgment.

(t) Procedure When Judgment is For Defendant. If the defendant recover judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales, all money collected by the sheriff, and all the property attached remaining in the sheriff's hands shall be delivered to the defendant, the writ of attachment shall be discharged, and the property released therefrom.

(u) Defendant May Release Property; Bond. The defendant may at any time before judgment have released to him 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 under any writ of attachment without taking a sufficient bond, he and his sureties shall be liable to the plaintiff for the damages sustained thereby.

(w) Application to Discharge Attachment. The defendant may also, at any time before trial, move that the attachment be discharged, on the ground that the writ was improperly issued, for any reason appearing upon the face of the papers and proceedings in the action. If on such application it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged.

(x) New Bond; When Ordered; Failure to Furnish. If at any time where an attachment has been issued it shall appear to the court that the undertaking is insufficient, the court shall order another undertaking, and if the plaintiff fails to comply with such order within 21 days after the same shall be made, all or any writs of attachment issued therein shall be quashed. The additional undertaking shall be executed in the same manner as the original, and the sureties therein shall be jointly and severally liable with those in the original undertaking.

(y) New Trial; Appeal and Writs of Certiorari. Motions for new trial may be made

in the same time and manner, and shall be allowed in attachment proceedings, as in other actions. Appeals from the county court to the district court and writs of certiorari may be taken and prosecuted from any final judgment or order in such proceedings as in other civil cases. Any order by which an attachment is released or sustained is a final judgment.

Rule 103. Garnishment

This rule sets forth the exclusive process for garnishment. There shall be five (5) types of writs: (1) Writ of Continuing Garnishment, (2) Writ of Garnishment with Notice of Exemption and Pending Levy, (3) Writ of Garnishment for Support, (4) Writ of Garnishment -- Judgment Debtor Other Than Natural Person, and (5) Writ of Garnishment in Aid of Writ of Attachment.

SECTION 1

WRIT OF CONTINUING GARNISHMENT (ON EARNINGS OF A NATURAL PERSON)

(a) Definitions.

(1) "Continuing garnishment" means the exclusive procedure for withholding the earnings of a judgment debtor for successive pay periods for payment of a judgment debt other than a judgment for support as provided in subsection (c) of this rule.

(2) "Earnings" shall be defined in section 13-54.5-101 (2), C.R.S., as applicable.

(b) Form of Writ of Continuing Garnishment and Related Forms. A writ of continuing garnishment shall be in the form and content of Appendix to Chapters 1 to 17, Form 26, C.R.C.P. It shall also include at least four (4) "Calculation of Amount of Exempt Earnings" forms to be in the form and content of Appendix to Chapters 1 to 17, Form 27, C.R.C.P. Objection to the calculation of exempt earnings shall be in the form and content of Appendix to Chapters 1 to 17, Form 28, C.R.C.P.

(c) When Writ of Continuing Garnishment Issues. After entry of judgment when a writ of execution can issue, a writ of continuing garnishment against earnings shall be issued by the clerk of the court upon request. Under a writ of continuing garnishment, a judgment creditor may garnish earnings except to the extent such earnings are exempt under law. Issuance of a writ of execution shall not be required.

(d) Service of Writ of Continuing Garnishment. A judgment creditor shall serve two (2) copies of the writ of continuing garnishment, together with a blank copy of C.R.C.P. Form 28, "Objection to the Calculation of the Amount of Exempt Earnings" (Appendix to Chapters 1 to 17, Form 28, C.R.C.P.), upon the garnishee, one copy of which the garnishee shall deliver to the judgment debtor as provided in subsection (h)(1) of this rule. Service of the writ shall be in accordance with C.R.C.P. 4, and the person who serves the writ shall note the date and time of such service on the return service. In any civil action, a judgment creditor shall serve no more than one writ of continuing garnishment upon any one garnishee for the same judgment debtor during the Effective Garnishment Period. This restriction shall

not preclude the issuance of a subsequent writ within the Effective Garnishment Period.

(e) Jurisdiction. Service of a writ of continuing garnishment upon the garnishee shall give the court jurisdiction over the garnishee and any earnings of the judgment debtor within the control of the garnishee.

(f) Effective Garnishment Period.

(1) A writ of continuing garnishment shall be a lien and continuing levy against the nonexempt earnings of the judgment debtor until such time as earnings are no longer due, the underlying judgment is vacated, modified or satisfied in full, the writ is dismissed, or for 91 days (13 weeks) following service of the writ, if the judgment was entered prior to August 8, 2001, and 182 days (26 weeks) following service of the writ if the judgment was entered on or after August 8, 2001, except when such writ is suspended pursuant to subsection (j) of this rule.

(2) When a writ of continuing garnishment is served upon a garnishee during the Effective Garnishment Period of a prior writ, it shall be effective for the Effective Garnishment Period following the Effective Garnishment Period of any prior writ.

(3) If a writ of garnishment for support pursuant to C.R.S. 14-14-105 is served during the effective period of a writ of continuing garnishment, the Effective Garnishment Period shall be tolled and all priorities preserved until the termination of the writ of garnishment for support.

(g) Exemptions. A garnishee shall not be required to deduct, set up or plead any exemption for or on behalf of a judgment debtor excepting as set forth in the writ.

(h) Delivery of Copy to Judgment Debtor.

(1) The garnishee shall deliver a copy of the writ of continuing garnishment, together with the calculation of the amount of exempt earnings and the blank copy of C.R.C.P. Form 28, "Objection to the Calculation of the Amount of Exempt Earnings" (Appendix to Chapters 1 to 17, Form 28, C.R.S.), to the judgment debtor at the time the judgment debtor receives earnings for the first pay period affected by such writ.

(2) For all subsequent pay periods affected by the writ, the garnishee shall deliver a copy of the calculation of the amount of exempt earnings to the judgment debtor at the time the judgment debtor receives earnings for that pay period.

(i) Objection to Calculation of Amount of Exempt Earnings. A judgment debtor may object to the calculation of exempt earnings. A judgment debtor's objection to calculation of exempt earnings shall be in accordance with Section 6 of this rule.

(j) Suspension. A writ of continuing garnishment may be suspended for a specified period of time by the judgment creditor upon agreement with the judgment debtor, which agreement shall be in writing and filed by the judgment creditor with the clerk of the court in which judgment was entered and a copy shall be delivered by the judgment creditor to the garnishee. No suspension shall extend the running of the Effective Garnishment Period nor affect priorities.

(k) Answer and Tender of Payment by Garnishee.

(1) The garnishee shall file the answer to the writ of continuing garnishment with the clerk of the court and send a copy to the judgment creditor no less than 7 nor more than 14 days following the time the judgment debtor receives earnings for the first pay period

affected by such writ, or 42 days following the date such writ was served pursuant to section (1)(d) of this rule, whichever is less. However, if the judgment creditor is represented by an attorney, or is a collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., the garnishee may be directed to pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the attorney or the licensed collection agency.

(2) The garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the clerk of the court which issued such writ no less than 7 nor more than 14 days following the time the judgment debtor receives earnings affected by such writ. However, if the answer and subsequent calculations are only mailed to an attorney or licensed collection agency under subsection (k)(1), the payment shall accompany the answer.

(3) Any writ of continuing garnishment served upon the garnishee while any previous writ is still in effect shall be answered by the garnishee with a statement that the garnishee has been previously served with one or more writs of continuing garnishment and/or writs of garnishment for support and specify the date on which such previously served writs are expected to terminate.

(l) Disbursement of Garnished Earnings.

(1) If no objection is filed by the judgment debtor within 7 days, the garnishee shall send the nonexempt earnings to the attorney, collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., or court designated on the writ of continuing garnishment (C.R.C.P. Form 26, page 1, paragraph e). The judgment creditor shall refund to the judgment debtor any disbursement in excess of the amount necessary to satisfy the judgment.

(2) If a written objection to the calculation of exempt earnings is filed with the clerk of the court, the garnishee shall send the garnished nonexempt earnings to the clerk of the court. The garnished nonexempt earnings shall be placed in the registry of the court pending further order of the court.

(m) Request for accounting of garnished funds by judgment debtor. Upon reasonable written request by a judgment debtor, the judgment creditor shall provide an accounting in writing of all funds received to the date of the request, including the balance due at the date of the request.

SECTION 2

WRIT OF GARNISHMENT (ON PERSONAL PROPERTY OTHER THAN EARNINGS OF A NATURAL PERSON) WITH NOTICE OF EXEMPTION AND PENDING LEVY

(a) Definition. "Writ of garnishment with notice of exemption and pending levy" means the exclusive procedure through which the personal property of any kind (other than earnings of a natural person) in the possession or control of a garnishee including the credits, debts, choses in action, or money owed to the judgment debtor, whether they are due at the time of the service of the writ or are to become due thereafter, is required to be held for payment of a judgment debt. For the purposes of this rule such writ is designated "writ with notice."

(b) Form of Writ With Notice and Claim of Exemption. A writ with notice shall be in the form and content of Appendix to Chapters 1 to 17, Form 29, C.R.C.P. A judgment debtor's written claim of exemption shall be in the form and content of Appendix to Chapters 1 to 17, Form 30, C.R.C.P.

(c) When Writ With Notice Issues. After entry of a judgment when a writ of execution may issue, a writ with notice shall be issued by the clerk of the court upon request. Under such writ any indebtedness, intangible personal property, or tangible personal property capable of manual delivery, other than earnings of a natural person, owed to, or owned by, the judgment debtor, and in the possession or control of the garnishee at the time of service of such writ upon the garnishee, shall be subject to the process of garnishment. Issuance of a writ of execution shall not be required before the issuance of a writ with notice.

(d) Service of Writ With Notice.

(1) Service of a writ with notice shall be made in accordance with C.R.C.P. 4.

(2) Following service of the writ with notice on the garnishee, a copy of the writ with notice, together with a blank copy of C.R.C.P. Form 30 "Claim of Exemption to Writ of Garnishment with Notice" (Appendix to Chapters 1 to 17, Form 30, C.R.C.P.), shall be served upon each judgment debtor whose property is subject to garnishment by such writ as soon thereafter as practicable. Such service shall be in accordance with C.R.S. 13-54.5-107 (2).

(e) Jurisdiction. Service of a writ with notice upon the garnishee shall give the court jurisdiction over the garnishee and any personal property of any description, owned by, or owed to the judgment debtor in the possession or control of the garnishee.

(f) Claim of Exemption. A judgment debtor's claim of exemption shall be in accordance with Section 6 of this rule.

(g) Court Order on Garnishment Answer.

(1) If an answer to a writ with notice shows the garnishee is indebted to the judgment debtor, the clerk shall enter judgment in favor of the judgment debtor and against the garnishee for the use of the judgment creditor in an amount not to exceed the total amount due and owing on the judgment and request such indebtedness paid into the registry of the court.

(2) No such judgment and request shall enter until the judgment creditor has made a proper showing that: (A) a copy of the writ with notice was properly served upon the judgment debtor, and (B) no written claim of exemption was filed within 14 days after such service or a written claim of exemption was properly filed and the same was disallowed.

(3) If an answer to a writ with notice shows the garnishee to possess or control intangible personal property or personal property capable of manual delivery owned by the judgment debtor, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor.

(4) No such order shall enter until the judgment creditor has made a proper showing that: (A) a copy of the writ with notice was properly served upon the judgment debtor, and (B) no

written claim of exemption was filed within 14 days after such service or a written claim of exemption was properly filed with the court and the same was disallowed.

(h) Disbursement by Clerk of Court. The clerk of the court shall disburse funds to the judgment creditor without further application or order and enter the disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

(i) Automatic Release of Garnishee. If a garnishee answers a writ with notice that the garnishee is indebted to the judgment debtor in an amount less than $50.00 and no traverse has been filed, the garnishee shall automatically be released from said writ if the garnishee shall not have been ordered to pay the indebtedness to the clerk of the court within six (6) months from the date of service of such writ.

SECTION 3

WRIT OF GARNISHMENT FOR SUPPORT

(a) Definitions.

(1) "Writ of garnishment for support" means the exclusive procedure for withholding the earnings of a judgment debtor for payment of a judgment debt for child support arrearages, maintenance when combined with child support, or child support debts, or maintenance.

(2) "Earnings" shall be as defined in Section 13-54.5-101 (2), C.R.S., as applicable.

COMMITTEE COMMENT

The Colorado Legislature amended Sections 13-54-104 and 13-54.5-101,C.R.S. (Section 7 of Chapter 65, Session Laws of Colorado 1991), which changed the definition of "earnings" applicable only to actions commenced on or after May 1, 1991. The amendment impacts the ability to garnish certain forms of income, depending upon when the original action was commenced. Sections 1 and 3 of the Rule and Forms 26 and 31 have been revised to deal with this legislative amendment.

(b) Form of Writ of Garnishment for Support. A writ of garnishment for support shall be in the form and content of Appendix to Chapters 1 to 17, Form 31, C.R.C.P. and shall include at least four (4) "Calculation of Amount of Exempt Earnings" forms which shall be in the form and content of Appendix to Chapters 1 to 17, Form 27, C.R.C.P.

(c) When Writ of Garnishment for Support Issues. Upon compliance with C.R.S. 14-10-122 (1)(c), a writ of garnishment for support shall be issued by the clerk of the court upon request. Under such writ a judgment creditor may garnish earnings except to the extent such are exempt under law. Issuance of a writ of execution shall not be required.

(d) Service of Writ of Garnishment for Support. Service of a writ of garnishment for support shall be in accordance with C.R.C.P. 4.

(e) Jurisdiction. Service of a writ of garnishment for support upon the garnishee shall

give the court jurisdiction over the garnishee and any earnings of the judgment debtor within the control of the garnishee.

(f) Effective Garnishment Period and Priority.

(1) A writ of garnishment for support shall be continuing and shall require the garnishee to withhold, pursuant to law, the portion of earnings subject to garnishment at each succeeding earnings disbursement interval until the judgment is satisfied or the garnishment released by the court or released in writing by the judgment creditor.

(2) A writ of garnishment for support shall have priority over any writ of continuing garnishment notwithstanding the fact such other writ may have been served upon the garnishee previously.

(g) Answer and Tender of Payment by Garnishee.

(1) The garnishee shall answer the writ of garnishment for support no less than 7 nor more than 14 days following the time the judgment debtor receives earnings for the first pay period affected by such writ. If the judgment debtor is not employed by the garnishee at the time the writ is served, the garnishee shall answer the writ within 14 days from the service thereof.

(2) The garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings, as directed in the writ of garnishment for support, to the family support registry, the clerk of the court which issued such writ, or to the judgment creditor no less than 7 nor more than 14 days following the time the judgment debtor receives earnings during the Effective Garnishment Period of such writ.

(h) Disbursement of Garnished Earnings. The family support registry or the clerk of the court shall disburse nonexempt earnings to the judgment creditor without further application or order and enter such disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 4

WRIT OF GARNISHMENT -- JUDGMENT DEBTOR OTHER THAN NATURAL PERSON

(a) Definition. "Writ of garnishment -- judgment debtor other than natural person" means the exclusive procedure through which personal property of any kind of a judgment debtor other than a natural person in the possession or control of the garnishee including the credits, debts, choses in action, or money owed to the judgment debtor, whether they are due at the time of the service of the writ or are to become due thereafter is required to be held by a garnishee for payment of a judgment debt. For purposes of this rule, such writ is designated "writ of garnishment -- other than natural person."

(b) Form of Writ of Garnishment -- Other Than Natural Person. A writ of garnishment under this Section shall be in the form and content of Appendix to Chapters 1 to 17, Form 32, C.R.C.P.

(c) When Writ of Garnishment -- Other Than Natural Person Issues. When the

judgment debtor is other than a natural person, after entry of a judgment, and when a writ of execution may issue, a writ of garnishment shall be issued by the clerk of the court upon request. Under such writ of garnishment, the judgment creditor may garnish personal property of any description owned by, or owed to, such judgment debtor and in the possession or control of the garnishee. Issuance of a writ of execution shall not be required.

(d) Service of Writ of Garnishment -- Other Than Natural Person. Service of the writ of garnishment -- other than natural person shall be made in accordance with C.R.C.P. 4. No service of the writ or other notice of levy need be made on the judgment debtor.

(e) Jurisdiction. Service of the writ of garnishment -- other than natural person shall give the court jurisdiction over the garnishee and personal property of any description, owned by, or owed to, a judgment debtor who is other than a natural person, in the possession or control of the garnishee.

(f) Court Order on Garnishment Answer. When the judgment debtor is other that a natural person:

(1) If the answer to a writ of garnishment shows the garnishee is indebted to such judgment debtor, the clerk shall enter judgment in favor of such judgment debtor and against the garnishee for the use of the judgment creditor for the amount of the indebtedness shown in such answer and order such amount paid into the registry of the court. In no event shall any judgment against the garnishee be more than the total amount due and owing on the judgment.

(2) If the answer to a writ of garnishment shows the garnishee to possess or control personal property of any description, owned by, or owed to, such judgment debtor, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor.

(g) Disbursement by Clerk of Court. The clerk of the court shall disburse any funds in the registry of court to the judgment creditor without further application or order and enter such disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 5

WRIT OF GARNISHMENT IN AID OF WRIT OF ATTACHMENT

(a) Definition. "Writ of garnishment in aid of writ of attachment" means the exclusive procedure through which personal property of any kind of a defendant in an attachment action (other than earnings of a natural person) in the possession or control of the garnishee including the credits, debts, choses in action, or money owed to the judgment debtor, whether they are due at the time of the service of the writ or are to become due thereafter, is required to be held by a garnishee. For purposes of this rule, such writ is designated "writ of

garnishment in aid of attachment."

(b) Form of Writ of Garnishment in Aid of Attachment and Form of Notice of Levy. A writ of garnishment in aid of attachment shall be in the form and content of Appendix to Chapters 1 to 17, Form 33, C.R.C.P. A Notice of Levy shall be in the form and content of Appendix to Chapters 1 to 17, Form 34, C.R.C.P.

(c) When Writ of Garnishment in Aid of Attachment Issues. At any time after the issuance of a writ of attachment in accordance with C.R.C.P. 102, a writ of garnishment shall be issued by the clerk of the court upon request. Under such writ of garnishment the plaintiff in attachment may garnish personal property of any description, except earnings of a natural person, owed to, or owned by, such defendant in attachment and in the possession or control of the garnishee.

(d) Service of Writ of Garnishment in Aid of Attachment. Service of the writ of garnishment in aid of attachment shall be made in accordance with C.R.C.P. 4. If the defendant in attachment is a natural person, service of a notice of levy shall be made as required by C.R.S. 13-55-102. If the defendant in attachment is other than a natural person, a notice of levy need not be served on the defendant in attachment.

(e) Jurisdiction. Service of the writ of garnishment in aid of attachment shall give the court jurisdiction over the garnishee and personal property of any description (except earnings of a natural person), owned by, or owed to, a defendant in attachment in the possession or control of the garnishee.

(f) Court Order on Garnishment Answer.

(1) When the defendant in attachment is an entity other than a natural person:

(A) If the answer to a writ of garnishment in aid of attachment shows the garnishee is indebted to such defendant in attachment, the clerk shall enter judgment in favor of such defendant in attachment and against the garnishee for the use of the plaintiff in attachment for the amount of the indebtedness shown in such answer and order such amount paid into the registry of the court. In no event shall any judgment against the garnishee be more than the total amount due and owing nor shall such judgment enter for the benefit of a plaintiff in attachment until a judgment has been entered by the court against such defendant in attachment.

(B) If the answer to a writ of garnishment in aid of attachment shows the garnishee to possess or control personal property of any description, owned by, or owed to, such defendant in attachment, at any time after judgment has entered against such defendant in attachment, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor/defendant in attachment.

(2) When the defendant in attachment is a natural person:

(A) If the answer to a writ of garnishment in aid of attachment shows the garnishee is indebted to such defendant in attachment, after judgment has entered against such defendant in attachment/judgment debtor upon a showing that such defendant in attachment has been served with a notice of levy as required by C.R.S. 13-55-102, the court shall enter judgment

in favor of the defendant in attachment/judgment debtor and against the garnishee for the use of the plaintiff in attachment/judgment creditor for the amount of the indebtedness shown in such answer and order such amount paid into the registry of the court. In no event shall any judgment against the garnishee be more than the amount of the judgment against the defendant in attachment/judgment debtor.

(B) If the answer to a writ of garnishment in aid of attachment shows the garnishee to possess or control personal property owned by, or owed to, such defendant in attachment, after judgment has entered against such defendant in attachment/judgment debtor and upon a showing that such defendant in attachment has been served with a notice of levy as required by C.R.S. 13-55-102, the court shall order the garnishee to deliver the property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt but any surplus of property or proceeds shall be delivered to the defendant in attachment/judgment debtor.

(g) Disbursement by Clerk of Court. The clerk of the court shall disburse any funds in the registry of the court to the judgment creditor without further application or order and enter such disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 6

JUDGMENT DEBTOR'S OBJECTION -- WRITTEN CLAIM OF EXEMPTION -- HEARING

(a) Judgment Debtor's Objection to Calculation of Exempt Earnings Under Writ of Continuing Garnishment.

(1) If a judgment debtor objects to the initial or a subsequent calculation of the amount of exempt earnings, the judgment debtor shall have 7 days from the receipt of the copy of the writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods, within which to resolve the issue of such miscalculation by agreement with the garnishee.

(2) If the judgment debtor's objection is not resolved with the garnishee within 7 days upon good faith effort, the judgment debtor may file a written objection setting forth, with reasonable detail, the grounds for such objection. Such objection must be filed within 14 days from receipt of the copy of writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods.

(3) The written objection shall be filed with the clerk of the court by the judgment debtor in the form and content of Appendix to Chapters 1 to 17, Form 28, C.R.C.P.

(4) The judgment debtor shall, by certified mail, return receipt requested, immediately deliver a copy of such objection to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor. If the garnishee has been directed to transmit the nonexempt earnings to an attorney or a collection agency licensed pursuant to section 12-14-101, et seq, C.R.S., then upon receipt of the objection, the garnishee shall transmit the

nonexempt earnings to the clerk of the court.

(5) Upon the filing of a written objection, all proceedings with relation to the earnings of the judgment debtor in possession and control of the garnishee, the judgment creditor, the attorney for the judgment creditor, or in the registry of the court shall be stayed until the written objection is determined by the court.

(b) Judgment Debtor's Claim of Exemption Under a Writ With Notice.

(1) When a garnishee, pursuant to a writ with notice, holds any personal property of the judgment debtor, other than earnings, which the judgment debtor claims to be exempt, the judgment debtor, within 14 days after being served a copy of such writ as required by Section 2(d)(2) of this rule, shall make and file a written claim of exemption with the clerk of the court in which the judgment was entered.

(2) The claim of exemption to the writ of garnishment with notice shall be in the form and content of Appendix to Chapters 1 to 17, Form 30, C.R.C.P.

(3) The judgment debtor shall, by certified mail, return receipt requested, deliver a copy of the claim of exemption to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor.

(4) Upon the filing of a claim of exemption to a writ with notice, all proceedings with relation to property in the possession or control of the garnishee shall be stayed until such claim is determined by the court.

(c) Hearing on Objection or Claim of Exemption.

(1) Upon the filing of an objection pursuant to Section 6(a) of this rule or the filing of a claim of exemption pursuant to Section 6(b) of this rule, the court in which the judgment was entered shall set a time for hearing of such objection or claim of exemption which hearing shall not be more than 14 days after the filing of such objection or claim of exemption.

(2) When an objection or claim of exemption is filed, the clerk of the court shall immediately inform the judgment creditor, the judgment debtor and the garnishee, or their attorneys of record, by telephone, by mail, or in person, of the date and time of such hearing.

(3) The clerk of the court shall document in the court record that notice of the hearing has been given in the manner required by this rule. Said documentation in the court record shall constitute a sufficient return and prima facie evidence of such notice.

(4) The court in which judgment was entered shall conduct a hearing at which all interested parties may testify, and shall determine the validity of the objection or claim of exemption filed by the judgment debtor and shall enter a judgment in favor of the judgment debtor to the extent of the validity of the objection or claim of exemption, which judgment shall be a final judgment for the purpose of appellate review.

(5) If the court shall find the amount of exempt earnings to have been miscalculated or if said property is found to be exempt, the court shall order the clerk of the court to remit the amount of over-garnished earnings, or the garnishee to remit such exempt property to the clerk of the court for the use and benefit of the judgment debtor within three (3) business days.

(d) Objection or Claim of Exemption Within Six (6) Months.

(1) Notwithstanding the provisions of Section 6(a)(2) and Section 6(b)(1) of this rule, a

judgment debtor failing to make and file a written objection or claim of exemption within the time therein provided, may, at any time within six (6) months from receipt of the copy of the writ with notice or a copy of the writ of continuing garnishment or the calculation of the amount of exempt earnings, move the court in which the judgment was entered to hear an objection or claim of exemption as to any earnings of property levied in garnishment which the judgment debtor claims to have been miscalculated or which the judgment debtor claims to be exempt.

(2) A hearing pursuant to this subsection shall be held only upon a verified showing, under oath, of good cause which shall include: mistake, accident, surprise, irregularity in proceedings, newly discovered evidence, events not in the control of the judgment debtor, or such other grounds as the court may allow, but in no event shall a hearing be held pursuant to this subsection on grounds available to the judgment debtor as the basis of an objection or claim of exemption within the time periods provided in Section 6(a)(2) and Section 6(b)(1).

(3) At such hearing, if the judgment giving rise to such claim has been satisfied against property or earnings of the judgment debtor, the court shall hear and summarily try and determine whether the amount of the judgment debtor's earnings paid to the judgment creditor was correctly calculated and whether the judgment debtor's property sold as upon execution was exempt. If the court finds earnings to have been miscalculated of if property is found to be exempt, the court shall enter judgment in favor of the judgment debtor for the amount of the over-garnished earnings or such exempt property or the value thereof which judgment shall be satisfied by payment to the clerk of the court or the return of exempt property to the judgment debtor within three (3) business days.

(e) Reinstatement of Judgment Debt. If at any time the court orders a return of over-garnished earnings or exempt property or the value of such exempt property pursuant to Sections 6(c)(5) and 6(d)(3) of this rule, the court shall thereupon reinstate the judgment to the extent of the amount of such order.

SECTION 7

FAILURE OF GARNISHEE TO ANSWER
(ALL FORMS OF GARNISHMENT)

(a) Default Entered by Clerk of Court.

(1) If a garnishee, having been served with any form of writ provided for by this rule, fails to answer or pay any nonexempt earnings as directed within the time required, the clerk of the court shall enter a default against such garnishee upon request.

(2) No default shall be entered in an attachment action against the garnishee until the expiration of 35 days after service of a writ of garnishment upon the garnishee.

(b) Procedure After Default of Garnishee Entered.

(1) After a default is entered, the judgment creditor, plaintiff in attachment or any intervenor in attachment, may proceed before the court to prove the liability of the garnishee to the judgment debtor or defendant in attachment.

(2) If a garnishee is under subpoena to appear before the court for a hearing to prove such liability and such subpoena shall have been issued and served in accordance with C.R.C.P. 45 and shall fail to appear, the court shall thereupon enter such sanctions as are just, including, but not limited to, contempt of court, issuance of a bench warrant, reasonable attorney fees and the cost and expense of the judgment creditor, plaintiff in attachment or intervenor in attachment.

(3) Upon hearing, if the court finds the garnishee liable to the judgment debtor or defendant in attachment or in the possession or control of personal property of the judgment debtor or defendant in attachment at the time of service of the writ:

(A) The court shall enter judgment in favor of the judgment debtor or defendant in attachment against the garnishee for the use and benefit of the judgment creditor, plaintiff in attachment or intervenor in attachment, if the garnishee was liable to the judgment debtor or defendant in attachment;

(B) The court shall order the garnishee to deliver the personal property to the sheriff to be sold as upon execution in the same manner as section 4(f)(2) of this rule, if the garnishee was in the possession or control of personal property of the judgment debtor or defendant in attachment and may enter any order necessary to protect the interests of the parties. Provided, however, in the event that the garnishee no longer has possession or control over the personal property, the court may either enter a judgment for the value of such property at the time of the service of the writ or enter any order necessary to protect the interests of the parties or both.

(4) At any hearing the court shall make such orders as to reasonable attorney's fees, costs and expense of the parties to such hearing, as are just.

SECTION 8

TRAVERSE OF ANSWER
(ALL FORMS OF GARNISHMENT)

(a) Time for Filing of Traverse. The judgment creditor, plaintiff in attachment or intervenor in attachment, may file a traverse of an answer to any form of writ provided by this rule provided such traverse is filed within the greater time period of 21 days from the date such answer should have been filed with the court or 21 days after such answer was filed with the court. The failure to timely file a traverse shall be deemed an acceptance of the answer as true.

(b) Procedure.

(1) Within the time provided, the judgment creditor, plaintiff in attachment, or intervenor in attachment, shall state, in verified form, the grounds of traverse and shall mail a copy of the same to the garnishee in accordance with C.R.C.P. 5.

(2) Upon application of the judgment creditor, plaintiff in attachment, or intervenor in attachment, the traverse shall be set for hearing before the court at which hearing the statements in the traverse shall be deemed admitted or denied.

(3) Upon hearing of the traverse, if the court finds the garnishee liable to the judgment

debtor or defendant in the attachment or in the possession or control of personal property of the judgment debtor or defendant in attachment at the time of service of the writ:

(A) The court shall enter judgment in favor of the judgment debtor or defendant in attachment against the garnishee for the use and benefit of the judgment creditor, plaintiff in attachment or intervenor in attachment, if the garnishee was liable to the judgment debtor or defendant in attachment;

(B) The court shall order the garnishee to deliver the personal property to the sheriff to be sold as upon execution in the same manner as section 4(f)(2) of this rule, if the garnishee was in the possession or control of personal property of the judgment debtor or defendant in attachment and may enter any order necessary to protect the interests of the parties. Provided, however, in the event that the garnishee no longer has possession or control over the personal property, the court may either enter a judgment for the value of such property at the time of the service of the writ or enter any order necessary to protect the interests of the parties or both.

(4) If a garnishee is under subpoena to appear for a hearing upon a traverse and such subpoena shall have been issued and served in accordance with C.R.C.P. 45, and shall fail to appear, the court shall thereupon enter such sanctions as are just, including, but not limited to, contempt of court, issuance of a bench warrant, reasonable attorney fees and the cost and expense of the judgment creditor, plaintiff in attachment or intervenor in attachment.

(5) At any hearing upon a traverse, the court shall make such orders as to reasonable attorney fees, costs and expense of the parties to such hearing as are just.

SECTION 9

INTERVENTION
(ALL FORMS OF GARNISHMENT)

Any person who claims an interest in any personal property of any description of a judgment debtor or defendant in attachment which property is the subject of any answer made by a garnishee, may intervene as provided in C.R.C.P. 24 at any time prior to entry of judgment against the garnishee.

SECTION 10

SET-OFF BY GARNISHEE
(ALL FORMS OF GARNISHMENT)

Every garnishee shall be allowed to claim as a set-off and retain or deduct all demands or claims on the part of the garnishee against any party to the garnishment proceedings, which the garnishee might have claimed if not summoned as a garnishee, whether such are payable or not at the time of service of any form or writ provided for by this rule.

SECTION 11

GARNISHEE NOT REQUIRED TO
DEFEND CLAIMS OF THIRD PERSONS
(ALL FORMS OF GARNISHMENT)

(a) Garnishee With Notice. A garnishee with notice of the claim of a third person in any property of any description of a judgment debtor or defendant in attachment which is the subject of any answer made by the garnishee in response to any form of writ provided for by this rule shall not be required to defend on account of such claim, but shall state in such answer that the garnishee is informed of such claim of a third person.

(b) Court to Issue Summons. When such an answer has been filed, the clerk of the court, upon application, shall issue a summons requiring such third person to appear within the time specified in C.R.C.P. 12 to answer, set up, and assert a claim or be barred thereafter.

(c) Delivery of Property by Garnishee.

(1) If the answer states that the garnishee is informed of the claim of a third person, the garnishee may at any time pay to the clerk of the court any garnished amount payable at the time of the service of any writ provided for by this rule, or deliver to the sheriff any property the garnishee is required to hold pursuant to any form of writ provided for in this rule.

(2) Upon service of the summons upon such third person pursuant to C.R.C.P. 4, the garnishee shall thereupon be released and discharged of any liability to any person on account of such indebtedness to the extent of any amount paid to the clerk of the court or any property delivered to the sheriff.

SECTION 12

RELEASE AND DISCHARGE OF GARNISHEE
(ALL FORMS OF GARNISHMENT)

(a) Effect of Judgment. A judgment against a garnishee shall release and discharge such garnishee from all claims or demands of the judgment debtor or defendant in attachment to the extent of all sums paid or property delivered by the garnishee pursuant to such judgment.

(b) Effect of Payment. Payment by a garnishee of any sums required to be remitted by such garnishee pursuant to Sections 1(k)(2) or 3(g)(2) of this rule shall release and discharge such garnishee from all claims or demands of the judgment debtor to the extent of all such sums paid.

(c) Release by Judgment Creditor or Plaintiff in Attachment. A judgment creditor or plaintiff in attachment may issue a written release of any writ provided by this rule. Such release shall state the effective date of the release and shall be promptly filed with the clerk of the court.

SECTION 13

GARNISHMENT OF PUBLIC BODY
(ALL FORMS OF GARNISHMENT)

Any writ provided for in this rule wherein a public body is designated as the garnishee, shall be served upon the officer of such body whose duty it is to issue warrants, checks or money to the judgment debtor or defendant in attachment, or, such officer as the public body may have designated to accept service. Such officer need not include in any answer to such writ, as money owing, the amount of any warrant or check drawn and signed prior to the time of service of such writ.

EFFECTIVE DATE OF THIS RULE AND AMENDMENTS TO THIS RULE

Repealed October 31, 1991, effective November 1, 1991.

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 as provided in this Rule.

(b) Causes, Affidavit. Where a delivery is claimed, the plaintiff, his agent or attorney, or some credible person for him, shall, by verified complaint or by complaint and affidavit under penalty of perjury show to the court as follows:

(1) That the plaintiff is the owner of the property claimed or is entitled to possession thereof and the source of such title or right; and if plaintiff's interest in such property is based upon a written instrument, a copy thereof shall be attached;

(2) That the property is being detained by the defendant against the plaintiff's claim of right to possession; the means by which the defendant came into possession thereof, and the specific facts constituting detention against the right of the plaintiff to possession;

(3) A particular description of the property, a statement of its actual value, and a statement to his 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 may file affidavits on his behalf with the court and may appear and present testimony in his behalf at the time of such hearing, or that he 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 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) The defendant gained possession of the property by theft.

(2) The property consists of one or more negotiable instruments or credit cards.

(3) By reason of specific, competent evidence shown, by testimony with the personal knowledge of an affiant or witness, the property is perishable, and will perish before any noticed hearing can be had, or that the defendant may destroy, dismantle, remove parts from, or in any way substantially change the character of the property, or the defendant may conceal or remove the property from the jurisdiction of the court to sell the property to an innocent purchaser.

(4) That the defendant has by contract voluntarily and intelligently and knowingly waived his 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) Bond. An order of possession shall not issue pursuant to section (d) of this rule until plaintiff has filed with the court in an amount set by the court in its discretion not to exceed double the value of the property a written undertaking executed by plaintiff and such surety as the court may require for the return of the property to the defendant, if return thereof be ordered, and for the payment to the defendant of any sum that may from any cause be recovered against the plaintiff.

(f) Temporary Order to Preserve Property. Under the circumstances described in section (b) of this Rule, or in lieu of the immediate issuance of an order of possession under any circumstances described in section (d) of this Rule, the court may, in addition to the issuance of the order to show cause, issue such temporary orders, directed to the defendant, prohibiting or requiring such acts with respect to the property as may appear to be necessary for the preservation of the rights of the parties and the status of the property.

(g) Order for Possession after Hearing; Bond; Directed to Sheriff. Upon the hearing on the order to show cause, which hearing shall be held as a matter of course by the court,

the court shall consider the showing made by the parties appearing, and shall make a preliminary determination of which party, with reasonable probability, is entitled to possession, use, and disposition of the property pending final adjudication of the claims of the parties. If the court determines that the action is one in which a pre-judgment order of possession should issue, it shall direct the issuance of such order and may require a bond in such amount and with such surety as the court may determine to protect the rights of the parties. Failure of the defendant to be present or represented at the hearing on the order to show cause shall not constitute a default in the main action. The order of possession shall be directed to the sheriff within whose jurisdiction the property is located.

(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 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 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 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 agent, and retain it in his 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 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 identity, purpose, and the authority under which he acts. If it is not voluntarily delivered, he shall cause the building or enclosure to be broken open in such manner as he reasonably believes will cause the least damage to the building or enclosure, and take the property into his possession. He may call upon the power of the county to aid and protect him, but if he reasonably believes that entry and seizure of the property will involve a substantial risk of death or serious bodily harm to any person, he 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 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 personally, if he can be found or to his 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 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 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 excepts to the sufficiency of the surety or the amount of the bond. If he fails to do so, he 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 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 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 shall keep it in a secure place and deliver it to the party entitled thereto, upon receiving his fees for taking and his 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 favor, he may also recover such damages as he 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 proceedings thereon, to the court in which the action is pending, within 21 days after taking the property mentioned therein.

(o) Precedence on Docket. In all proceedings brought to recover the possession of personal property, all courts, in which such actions are pending, shall, upon request of any party thereto, give such actions precedence over all other civil actions, except actions to which special precedence is otherwise given by law, in the matter of the setting of the same for hearing or trial, and in hearing or trial thereof, to the end that all such actions shall be quickly heard and determined.

(p) Judgment. In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had, and damages for taking and withholding the same. The provisions of Rule 13, C.R.C.P., shall apply to replevin actions.

CHAPTER 14

Real Estate

CHAPTER 14

REAL ESTATE

Rule 105. Actions Concerning Real Estate

(a) Complete Adjudication of Rights. An action may be brought for the purpose of obtaining a complete adjudication of the rights of all parties thereto, with respect to any real property and for damages, if any, for the withholding of possession. The court in its decree shall grant full and adequate relief so as to completely determine the controversy and enforce the rights of the parties. The court may at any time after the entry of the decree make such additional orders as may be required in aid of such decree.

(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 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 as if he 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 answer any interest in the property or allows judgment to be taken against him without answer, the plaintiff shall not recover costs against him, 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) Execution of Quitclaim Deed Saves Costs. If a party, 21 days or more before bringing an action for obtaining an adjudication of the rights of another person with respect to any real property, shall request of such person the execution of a quitclaim deed to such property and shall also tender to such person $20.00 to cover the expense of the execution and delivery of a deed and if such person shall refuse or neglect to execute and deliver such deed, the filing by such person of a disclaimer shall not avoid the imposition upon such person of the costs in the action afterwards brought.

(e) Set-off for Improvements. Where a party or those under whom he 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) Lis Pendens.

(1) **Filing and Notice.** A notice of lis pendens may be recorded as provided by statute.

(2) **Determination of Effect on Real Property.** Any interested person may petition the court in the action identified in the notice of lis pendens for a determination that a judgment on the issues raised by the pleadings in the pending action will not affect all, or a designated

part, of the real property described in the notice of lis pendens, or a specifically described interest therein. After a hearing on such petition, the court shall make findings of fact and enter an order setting forth the description of the property as contained in the recorded notice of lis pendens and the description of the portion thereof or the interest therein, if any, the title to which will not be affected by judgment on the issues then pending in the action. Such order shall be a final judgment as to the matters set forth therein and if the order includes the determination required by Rule 54(b) as to its finality apart from remaining issues, it shall be appealable only as a separate judgment of that date.

(3) **Disclaimer.** Nothing in this Rule 105(f) shall be construed so as to preclude any party litigant from disclaiming an interest in all or any part of the real property affected by such notice of lis pendens, by filing with the court an instrument so indicating, containing a reference to the notice of lis pendens by its recording data sufficient to locate it in the records of the clerk and recorder. The filing of such instrument with the court then having jurisdiction shall bar any further claims of said party to such real property in said action.

(4) Repealed, effective April 1, 1993.

(g) Description of Real Property. In any proceeding for the recovery of real property or an interest therein, such property shall be designated by legal description.

COMMITTEE COMMENT

The previous provisions of Rule 105(f)(1) and (4) have been superseded by the passage of House Bill 92-1038, now C.R.S. § 38-35-110 (1992). The statute sets out the circumstances under which a lis pendens may be recorded, states the legal effect of the recording as a matter of substantive law, and provides for the release of the effect of a lis pendens in certain circumstances. The statute clarifies certain issues that had arisen in interpreting the former rule. Subsections (2) and (3) have been retained, as they provide procedures for the removal of the effect of a lis pendens during the course of litigation, an area of concern which is not addressed by the statute, and which is strictly procedural in nature.

Rule 105.1. Spurious Lien or Document

(a) Petition; Contents, Order to Show Cause. Any person whose real or personal property is affected by a spurious lien or spurious document, as defined by law, may file a petition in the district court in the county in which the lien or document was recorded or filed, or in the district court for the county in which affected real property is located, for an order to show cause why the lien or document should not be declared invalid. The petition, which may also be brought as a counterclaim or a cross-claim in a pending action, shall set forth a concise statement of the facts upon which the petition is based, shall be supported by the affidavit of the petitioner or the petitioner's attorney, and shall be accompanied by a copy of the lien or document as recorded or filed in the public records. The order to show cause may be granted ex parte and shall:

(1) Direct any lien claimant and any person who recorded or filed the lien or document

to appear as respondent before the court at a time and place certain not less than 14 days nor more than 21 days after service of the order to show cause why the lien or document should not be declared invalid and why such other relief provided for by statute should not be granted;

(2) State that if the respondent fails to appear at the time and place specified, the lien or document, if found by the court to be spurious, will be declared invalid and released; and

(3) State that the court shall award costs, including reasonable attorney fees, to the prevailing party.

(b) Notice; Service. The petitioner shall issue a notice to respondent setting forth the time and place for the hearing on the show cause order, which hearing shall be set not less than 14 days nor more than 21 days from service of the show cause order, and shall advise respondent of the right to file and serve a response as provided in section (c), including a reference to the last day for filing a response and the addresses at which such response must be filed and served. The notice shall contain the return address of the petitioner or the petitioner's attorney. The notice and a copy of the petition and order to show cause shall be served by the petitioner on the respondent not less than 14 days prior to the date set for the hearing, by (1) mailing a true copy thereof by first class mail to each respondent at the address or addresses stated in the lien or document and (2) filing a copy with the clerk of the district court and delivering a second copy to the clerk of the district court for posting in the clerk's office, which shall be evidenced by the certificate of the petitioner or petitioner's agent or attorney. Alternatively, the petitioner may serve the petition, notice, and show cause order upon each respondent in accordance with Rule 4, or, in the event the claim is brought as a counterclaim or cross-claim in a pending action in which the parties have appeared, in accordance with Rule 5.

(c) Response; Contents; Filing and Service. Not less than 7 days prior to the date set for the hearing, the respondent shall file and serve a verified response to the petition, setting forth the facts supporting the validity of the lien or document and attaching copies of all documents which support the validity of the lien or document. Service of such response shall be made in accordance with Rule 5(b).

(d) Hearing; Decree; Hearing Dispensed With If No Response Filed. If, following a hearing on the order to show cause, the court determines that the lien or document is a spurious lien or a spurious document, the court shall make findings of fact and enter an order and decree declaring the spurious lien or document and any related notices of lis pendens invalid, releasing the recorded or filed spurious lien or spurious document, and entering a monetary judgment in the amount of the petitioner's costs, including reasonable attorney fees, against the respondent and in favor of the petitioner. If, following the hearing on the order to show cause, the court determines that the lien or document is not a spurious lien or document, the court shall issue an order so finding and enter a monetary judgment against the petitioner and in favor of the respondent in the amount of the respondent's costs, including reasonable attorney fees. If necessary, the court may in its discretion continue the hearing on the show cause order for further proceedings and trial. If no response is filed and served by the respondent within the time permitted by section (c), the court shall examine the petition and, if satisfied that venue is proper and that the lien or document is spurious, the

court shall dispense with the hearing and forthwith enter the order, which shall be a final judgment for purposes of appeal. If the petition has been personally served upon the respondent in accordance with Rule 4(e) or (g), the court shall enter judgment in favor of petitioner and against the respondent for the petitioner's costs, including reasonable attorney fees.

(e) Docket Fee. A docket fee in the amount specified by law shall be paid by the petitioner. The respondent shall pay, at the time of the filing of the response, a docket fee in the amount specified by law for a defendant or respondent in a civil action under section 13-32-101(1)(d), C.R.S.

CHAPTER 15

Remedial Writs and Contempt

CHAPTER 15

REMEDIAL WRITS AND CONTEMPT

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 the superior or 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 is entitled, and from which he is unlawfully precluded by such lower judicial body, governmental body, corporation, board, officer, or person. The judgment shall include any damages sustained;

(3) When any person usurps, intrudes into, or unlawfully holds or exercises any office or franchise, the district attorney of the proper district may and, when directed by the governor so to do, shall bring an action against such person in the name of the people of the state, but if the district attorney declines so to do, it may be brought upon the relation and complaint of any person. The Rule heretofore existing requiring leave of court to institute such proceedings is hereby abolished. When such an action is brought against a defendant alleged to have usurped, intruded into, or who allegedly unlawfully holds or exercises any public office, civil or military, or any franchise it shall be given precedence over other civil actions except similar actions previously commenced. The judgment may determine the rightful holder of the office or franchise;

(4) Where any governmental body or officer or any lower judicial body exercising judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion, and there is no plain, speedy and adequate remedy otherwise provided by law:

(I) Review shall be limited to a determination of whether the body or officer has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer.

(II) Review pursuant to this subsection (4) shall be commenced by the filing of a complaint. An answer or other responsive pleading shall then be filed in accordance with the Colorado Rules of Civil Procedure.

(III) If the complaint is accompanied by a motion and proposed order requiring certification of a record, the court shall order the defendant body or officer to file with the clerk on a specified date, the record or such portion or transcript thereof as is identified in the order, together with a certificate of authenticity. The date for filing the record shall be after the date upon which an answer to the complaint must be filed.

(IV) Within 21 days after the date of receipt of an order requiring certification of a record, a defendant may file with the clerk a statement designating portions of the record not set forth in the order which it desires to place before the court. The cost of preparing the record shall be advanced by the plaintiff, except that the court may, on objection by the plaintiff, order a defendant to advance payment for the costs of preparing such portion of the record designated by the defendant as the court shall determine is unessential to a complete understanding of the controversy; and upon a failure to comply with such order, the portions for which the defendant has been ordered to advance payment shall be omitted from the record. Any party may move to correct the record at any time.

(V) The proceedings before or decision of the body or officer may be stayed, pursuant to Rule 65 of the Colorado Rules of Civil Procedure.

(VI) Where claims other than claims under this Rule are properly joined in the action, the court shall determine the manner and timing of proceeding with respect to all claims.

(VII) A defendant required to certify a record shall give written notice to all parties, simultaneously with filing, of the date of filing the record with the clerk. The plaintiff shall file, and serve on all parties, an opening brief within 42 days after the date on which the record was filed. If no record is requested by the plaintiff, the plaintiff shall file an opening brief within 42 days after the defendant has served its answer upon the plaintiff. The defendant may file and serve an answer brief within 35 days after service of the plaintiff's brief, and the plaintiff may file and serve a reply brief to the defendant's answer brief within 14 days after service of the answer brief.

(VIII) The court may accelerate or continue any action which, in the discretion of the court, requires acceleration or continuance.

(IX) In the event the court determines that the governmental body, officer or judicial body has failed to make findings of fact or conclusions of law necessary for a review of its action, the court may remand for the making of such findings of fact or conclusions of law.

(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 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) Limitations as to Time. Where a statute provides for review of the acts of any governmental body or officer or judicial body by certiorari or other writ, or for a proceeding in quo warranto, relief therein provided may be had under this Rule. If no time within which review may be sought is provided by any statute, a complaint seeking review under subsection (a)(4) of this Rule shall be filed in the district court not later than 28 days after the

final decision of the body or officer. A timely complaint may be amended at any time with leave of the court, for good cause shown, to add, dismiss or substitute parties, and such amendment shall relate back to the date of filing of the original complaint.

Rule 106.5. Correctional Facility Quasi-Judicial Hearing Review

(a) Scope. This rule applies to every action brought by an inmate to review a decision resulting from a quasi-judicial hearing of any facility of the Colorado Department of Corrections ("CDOC") or any private facility in Colorado involving a CDOC inmate for events that occurred at the facility. To the extent this rule does not cover procedures in such cases, the parties shall follow C.R.C.P. 106(a)(4). All other provisions of C.R.C.P. 106(a)(4) shall apply except where modified by this Rule 106.5. The provisions of C.R.C.P. 106(b) and C.R.C.P. 5 shall govern all cases brought under this Rule 106.5.

(b) Designation of Defendant. Only the Executive Director of the CDOC and the Warden of the facility shall be named as Defendants and shall be listed as such. The District Court shall dismiss any other Defendant.

(c) Venue. All actions under this rule shall be filed in the district court in the county in which the quasi-judicial agency action occurred, even if the inmate is no longer assigned to that facility at the time the complaint is filed.

(d) Service of Process.

(1) If the inmate does not qualify for *in forma pauperis* status, the rules relating to service of process set forth in C.R.C.P. 4(e)(10) shall apply, but only the Warden, the Executive Director of the Department of Corrections, and the Attorney General shall be served.

(2) If the inmate files a motion to proceed *in forma pauperis* status and that motion is granted, service of process shall be accomplished in the following manner: The clerk of the District Court shall scan the complaint and serve it by electronic means on the Attorney General, the Executive Director of the Department of Corrections, and the Warden of the Facility (or the designee of each of these officials), along with a notice indicating the fact of the inmate's filing and the date received by the Court. Each person notified shall send an acknowledgment by electronic means indicating that the specified official has received the electronic notice and the scanned copy of the complaint.

(e) Response of Defendant. Within 21 days after the date on which the Attorney General sends acknowledgment that it has received the notice and complaint from the Clerk of the District Court, the Defendants shall file either (1) an answer to the complaint and a certified copy of the record as explained below, or (2) a motion in response to the complaint.

(f) Notice to Submit Record. The facility shall file the certified record and affidavit of certification directly to the Court no later than the deadline to file an answer or motion as indicated above. This obligation to submit the record shall not apply if the Attorney General notifies the Warden within 14 days of the electronic service that a motion to dismiss the complaint for lack of subject matter jurisdiction has been filed, in which event the filing of the record shall be suspended pending disposition of the motion.

(g) Contents of the Record. The certified record submitted by the Warden to the District

Court shall contain all material related to the proceeding at the facility to permit the Court to address the issues raised in the complaint. The record shall include the Notice of Charges, the Disposition of Charges, the Offender Appeal Form, all exhibits offered at the hearing, and the current applicable version of the Code of Penal Discipline. If any part of the proceeding was recorded, a copy of the recording shall be provided.

(h) Cost of the Record. The cost of preparation of the record shall initially be paid by the Warden but, upon the filing of the certified record with the Court, the Warden shall immediately deduct the cost of preparation of the record, including the recording, from the inmate's account. If there are insufficient funds in that account, the Warden shall apply a charge to that account. In no event shall the filing of the record be delayed because the inmate has no assets and no means by which to pay the cost of certification of the record.

(i) Briefs.

(1) If counsel for the Defendants files a motion to dismiss, the inmate shall have 14 days after service of the motion to file a brief in response, and the defense counsel shall have 14 days after service of the response to file a reply.

(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 jurisdiction or abused his or her 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) Time Periods. The parties shall follow the time periods set forth above unless the Court, on motion and for good cause shown, enters an order altering those time periods.

(k) Promulgation of Rule. A copy of this Rule 106.5 shall be made available in the law library of every facility operated by the Colorado Department of Corrections and every private prison in Colorado that houses CDOC inmates.

Rule 107. Remedial and Punitive Sanctions for Contempt

(a) Definitions. (1) Contempt: Disorderly or disruptive behavior, a breach of the peace, boisterous conduct or violent disturbance toward the court, or conduct that unreasonably interrupts the due course of judicial proceedings; behavior that obstructs the administration of justice; disobedience or resistance by any person to or interference with any lawful writ, process, or order of the court; or any other act or omission designated as contempt by the statutes or these rules.

(2) Direct Contempt: Contempt that the court has seen or heard and is so extreme that no warning is necessary or that has been repeated despite the court's warning to desist.

(3) Indirect Contempt: Contempt that occurs out of the direct sight or hearing of the court.

(4) Punitive Sanctions for Contempt: Punishment by unconditional fine, fixed sentence of imprisonment, or both, for conduct that is found to be offensive to the authority and dignity of the court.

(5) Remedial Sanctions for Contempt: Sanctions imposed to force compliance with a lawful order or to compel performance of an act within the person's power or present ability to perform.

(6) Court: For purposes of this rule, "court" means any judge, magistrate, commissioner, referee, or a master while performing official duties.

(b) Direct Contempt Proceedings. When a direct contempt is committed, it may be punished summarily. In such case an order shall be made on the record or in writing reciting the facts constituting the contempt, including a description of the person's conduct, a finding that the conduct was so extreme that no warning was necessary or the person's conduct was repeated after the court's warning to desist, and a finding that the conduct is offensive to the authority and dignity of the court. Prior to the imposition of sanctions, the person shall have the right to make a statement in mitigation.

(c) Indirect Contempt Proceedings. When it appears to the court by motion supported by affidavit that indirect contempt has been committed, the court may ex parte order a citation to issue to the person so charged to appear and show cause at a date, time and place designated why the person should not be punished. The citation and a copy of the motion, affidavit and order shall be served directly upon such person at least 21 days before the time designated for the person to appear. If such person fails to appear at the time so designated, and it is evident to the court that the person was properly served with copies of the motion, affidavit, order, and citation, a warrant for the person's arrest may issue to the sheriff. The warrant shall fix the date, time and place for the production of the person in court. The court shall state on the warrant the amount and kind of bond required. The person shall be discharged upon delivery to and approval by the sheriff or clerk of the bond directing the person to appear at the date, time and place designated in the warrant, and at any time to which the hearing may be continued, or pay the sum specified. If the person fails to appear at the time designated in the warrant, or at any time to which the hearing may be continued, the bond may be forfeited upon proper notice of hearing to the surety, if any, and to the extent of the damages suffered because of the contempt, the bond may be paid to the aggrieved party. If the person fails to make bond, the sheriff shall keep the person in custody subject to the order of the court.

(d) Trial and Punishment. (1) Punitive Sanctions. In an indirect contempt proceeding where punitive sanctions may be imposed, the court may appoint special counsel to prosecute the contempt action. If the judge initiates the contempt proceedings, the person shall be advised of the right to have the action heard by another judge. At the first appearance, the person shall be advised of the right to be represented by an attorney and, if indigent and if a jail sentence is contemplated, the court will appoint counsel. The maximum jail sentence shall not exceed six months unless the person has been advised of the right to a jury trial. The person shall also be advised of the right to plead either guilty or not guilty to the charges, the presumption of innocence, the right to require proof of the charge beyond a reasonable doubt, the right to present witnesses and evidence, the right to cross-examine all adverse witnesses, the right to have subpoenas issued to compel attendance of witnesses at trial, the right to remain silent, the right to testify at trial, and the right to appeal any adverse decision. The court may impose a fine or imprisonment or both if the court expressly finds that the person's

conduct was offensive to the authority and dignity of the court. The person shall have the right to make a statement in mitigation prior to the imposition of sentence.

(2) Remedial Sanctions. In a contempt proceeding where remedial sanctions may be imposed, the court shall hear and consider the evidence for and against the person charged and it may find the person in contempt and order sanctions. The court shall enter an order in writing or on the record describing the means by which the person may purge the contempt and the sanctions that will be in effect until the contempt is purged. In all cases of indirect contempt where remedial sanctions are sought, the nature of the sanctions and remedies that may be imposed shall be described in the motion or citation. Costs and reasonable attorney's fees in connection with the contempt proceeding may be assessed in the discretion of the court. If the contempt consists of the failure to perform an act in the power of the person to perform and the court finds the person has the present ability to perform the act so ordered, the person may be fined or imprisoned until its performance.

(e) Limitations. The court shall not suspend any part of a punitive sanction based upon the performance or non-performance of any future acts. The court may reconsider any punitive sanction. Probation shall not be permitted as a condition of any punitive sanction. Remedial and punitive sanctions may be combined by the court, provided appropriate procedures are followed relative to each type of sanction and findings are made to support the adjudication of both types of sanctions.

(f) Appeal. For the purposes of appeal, an order deciding the issue of contempt and sanctions shall be final.

CHAPTER 16

Affidavits, Arbitration, Miscellaneous

CHAPTER 16

AFFIDAVITS, ARBITRATION, MISCELLANEOUS

Rule 108. Affidavits

An affidavit may be sworn to either within or without this state before any officer authorized by law to take and certify the acknowledgment of deeds conveying lands.

Rule 109. Arbitration

Repealed March 17, 1994, as to cases filed on or after July 1, 1994.

Rule 109.1. Mandatory Arbitration

Repealed May 30, 1991, as to cases filed on and after July 1, 1991.

Rule 110. Miscellaneous

(a) Amendments. No writ or process shall be quashed, nor any order or decree set aside, nor any undertaking be held invalid, nor any affidavit, traverse, or other paper be held insufficient if the same is corrected within the time and manner prescribed by the court, which shall be liberal in permitting amendments.

(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 deputy or other person authorized to perform his duties. The word "oath" includes the word "affirmation"; and the phrase "to swear" includes "to affirm"; signature or subscription shall include mark, when the person is unable to write, his name being written near it and witnessed by a person who writes his 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 deputy.

(d) Cross Claimants, Counterclaimants and Third-Party Claimants. Where a cross claim, counterclaim or third-party claim is filed, the claimant thereunder shall have the same rights and remedies as if a plaintiff.

Rules 111 to 119.

Rules 111 to 119, inclusive, Supreme Court Proceedings, are deleted and are replaced by Chapter 32, Colorado Appellate Rules 1 through 58.

CHAPTER 17

Court Proceedings:
Sales Under Powers

CHAPTER 17

COURT PROCEEDINGS: SALES UNDER POWERS

Rule 120. Orders Authorizing Sales Under Powers

(a) Motion; Contents. Whenever an order of court is desired authorizing a sale under a power of sale contained in an instrument, any interested person or someone on such person's behalf may file a verified motion in a district court seeking such order. The motion shall be accompanied by a copy of the instrument containing the power of sale, shall describe the property to be sold, and shall specify the default or other facts claimed by the moving party to justify invocation of the power of sale. When the property to be sold is personal property, the motion shall state the names and last known addresses, as shown by the records of the moving party, of all persons known or believed by the moving party to have an interest in such property which may be materially affected by such sale. When the property to be sold is real property and the power of sale is contained in a deed of trust to a public trustee, the motion shall state the name and last known address, as shown by the records of the moving party, of the grantor of such deed of trust, of the current record owner of the property to be sold, and of any person known or believed by the moving party to be personally liable upon the indebtedness secured by the deed of trust, as well as the names and addresses of those persons who appear to have acquired a record interest in such real property, subsequent to the recording of such deed of trust and prior to the recording of the notice of election and demand for sale, whether by deed, mortgage, judgment or any other instrument of record. In giving notice to persons who appear to have acquired a record interest in real property, the address of each such person shall be the address which is given in the recorded instrument evidencing such person's interest, except that if such recorded instrument does not give an address or if only the county and state are given as the address of such person, no address need be stated for such person in the motion. The clerk shall fix a time not less than 21 nor more than 35 days after the filing of the motion and a place for the hearing of such motion.

(b) Notice; Contents; Service. The moving party shall issue a notice describing the instrument containing the power of sale, the property sought to be sold thereunder, and the default or other facts upon which the power of sale is invoked. The notice shall also state the time and place set for the hearing and shall refer to the right to file and serve responses as provided in section (c), including a reference to the last day for filing such responses and the addresses at which such responses must be filed and served. The notice shall contain the following advisement: "If this case is not filed in the county where your property is located, you have the right to ask the court to move the case to that county. Your request may be made as a part of your response or any paper you file with the court at least 7 days before the hearing." The notice shall contain the return address of the moving party. Such notice shall be served by the moving party not less than 14 days prior to the date set for the hearing, by: (1) mailing a true copy thereof to each person named in the motion (other than persons for

whom no address is stated) at the address or addresses stated in the motion; (2) and by filing a copy with the clerk and by delivering a second copy to the clerk for posting by the clerk; and (3) if a residential property as defined by statute, by posting a true copy in a conspicuous place on the subject property as required by statute. Such mailing and delivery to the clerk for posting, and property posting shall be evidenced by the certificate of the moving party or moving party's agent. For the purpose of this section, posting may be electronic on the court's public website so long as the electronic address for the posting is displayed conspicuously at the courthouse.

(c) Response; Contents; Filing and Service. Any interested person who disputes, on grounds within the scope of the hearing provided for in section (d), the moving party's entitlement to an order authorizing sale may file and serve a response to the motion, verified by the oath of such person, setting forth the facts upon which he relies and attaching copies of all documents which support his position. The response shall be filed and served not less than 7 days prior to the date set for the hearing, said interval including intermediate Saturdays, Sundays, and legal holidays, C.R.C.P. 6(a) notwithstanding, unless the last day of the period so computed is a Saturday, a Sunday or a legal holiday, in which event the period runs until the end of the next succeeding day which is not a Saturday, Sunday or a legal holiday. Service of such response upon the moving party shall be made in accordance with C.R.C.P. 5(b). C.R.C.P. 6(e) shall not apply to computation of time periods under this section (c).

(d) Hearing; Scope of Issues; Order; Effect. At the time and place set for the hearing or to which the hearing may have been continued, the court shall examine the motion and the responses, if any. The scope of inquiry at such hearing shall not extend beyond the existence of a default or other circumstances authorizing, under the terms of the instrument described in the motion, exercise of a power of sale contained therein, and such other issues required by the Service Member Civil Relief Act (SCRA), 50 U.S.C. § 520, as amended. The court shall determine whether there is a reasonable probability that such default or other circumstance has occurred, and whether an order authorizing sale is otherwise proper under said Service Member Civil Relief Act, and shall summarily grant or deny the motion in accordance with such determination. Neither the granting nor the denial of a motion under this Rule shall constitute an appealable order or judgment. The granting of any such motion shall be without prejudice to the right of any person aggrieved to seek injunctive or other relief in any court of competent jurisdiction, and the denial of any such motion shall be without prejudice to any right or remedy of the moving party. The court shall not require the appointment of an attorney to represent any interested person as a condition of granting such motion, unless it appears from the motion or other papers filed with the court that there is a reasonable probability that the interested person is in the military service.

(e) Hearing Dispensed with if no Response Filed. If no response has been filed within the time permitted by section (c), the court shall examine the motion and, if satisfied that venue is proper and the moving party is entitled to an order authorizing sale upon the facts stated therein, the court shall dispense with the hearing and forthwith enter an order authorizing sale.

(f) Venue. For the purposes of this section, a consumer obligation is any obligation (i)

as to which the obligor is a natural person, and (ii) is incurred primarily for a personal, family, or household purpose. Any proceeding under this Rule involving a consumer obligation shall be brought in and heard in the county in which such consumer signed the obligation or in which the property or a substantial part thereof is located. Any proceeding under this Rule which does not involve a consumer obligation or an instrument securing a consumer obligation may be brought and heard in any county. However, in any proceeding under this Rule, if a response is filed, and if in the response or in any other writing filed with the court, the responding party requests a change of venue to the county in which the encumbered property or a substantial part thereof is situated, the court shall order transfer of the proceeding to such county.

(g) Return of Sale. The court shall require a return of such sale to be made to the court, and if it appears therefrom that such sale was conducted in conformity with the order authorizing the sale, the court shall thereupon enter an order approving the sale.

(h) Docket Fee. A docket fee in the amount specified by law shall be paid by the person filing such motion. Unless the court shall otherwise order, any person filing a response to the motion shall pay, at the time of the filing of such response, a docket fee in the amount specified by law for a defendant or respondent in a civil action under section 13-32-101 (1) (d), C.R.S.

COMMITTEE COMMENT

The 1989 amendment to C.R.C.P. 120 (Sales Under Powers) is a composite of changes necessary to update the Rule and make it more workable. The amendment was developed by a special committee made up of practitioners and judges having expertise in that area of practice, with both creditor and debtor interests represented.

The changes are in three categories. There are changes that permit court clerks to perform many of the tasks that were previously required to be accomplished by the Court and thus save valuable Court time. There are changes to venue provisions of the Rule for compliance with the Federal Fair Debt Collection Practices Act. There are also a number of editorial changes to improve the language of the Rule.

There was considerable debate concerning whether the Federal "Fair Debt Collection Practices Act" is applicable to a C.R.C.P. 120 proceeding. Rather than attempting to mandate compliance with that federal statute by specific rule provision, the Committee recommends that a person acting as a debt collector in a matter covered by the provisions of the Federal "Fair Debt Collection Practices Act" be aware of the potential applicability of the Act and comply with it, notwithstanding any provision of this Rule.

Rule 120.1. Order Authorizing Expedited Sale Pursuant to Statute

(a) Motion; Contents. An order of the court authorizing an expedited sale may be sought in conjunction with the order authorizing sale. An eligible holder as defined by statute

may file a verified motion, together with a supporting affidavit, in a district court seeking an order authorizing an expedited sale together with the motion for order authorizing sale pursuant to C.R.C.P. Rule 120. The affidavit shall state the following: (1) The moving party is an eligible holder as that term is defined by statute; (2) the subject deed of trust secures an eligible evidence of debt as that term is defined by statute; and (3) the property has been abandoned as defined by statute, or in the alternative, the grantor of the deed of trust requests an order for expedited foreclosure sale.

(b) Notice; Contents; Service. The moving party shall issue a combined notice, which shall include the provisions as specified in C.R.C.P. Rule 120(b) and add a statement that the moving party is seeking in addition to the order authorizing sale, an order for expedited foreclosure sale. The moving party shall additionally state that the property is abandoned, or in the alternative that the grantor of the deed of trust has requested the order for expedited foreclosure sale. Such combined notice shall be prepared and served in Spanish and English. Such combined notice shall be served by the moving party as required by C.R.C.P. Rule 120(b). In addition to the mailing of such combined notice, filing of such combined notice with the clerk and providing a second copy for the clerk to post, the combined notice shall be either personally served on the grantor of the deed of trust, or alternatively such combined notice shall be posted at the real property as provided in C.R.C.P. Rule 120(b). Such mailing, delivery to the clerk for posting, and property posting shall be evidenced by the certificate of the moving party or the moving party's agent.

(c) Response; Contents; Filing and Service. The grantor of the deed of trust may dispute the moving party's motion for expedited sale in the same time frame as provided in C.R.C.P. Rule 120.

(d) Hearing; Scope of Issues; Order; Effect. At the time and place set for the hearing or to which the hearing may have been continued, the court shall examine the motion and responses, if any. The scope of inquiry under this section shall not extend beyond the determination that the property is abandoned as that term is defined by statute, or that the grantor requests for an order for expedited sale. The court shall enter the order for expedited sale if there is clear and convincing evidence that the property has been abandoned or that the grantor of the deed of trust has requested such order. In order to establish clear and convincing evidence that the property has been abandoned, the moving party shall file an affidavit with the court as provided by statute. The court shall determine whether there is clear and convincing evidence that the property is abandoned.

(e) Hearing Dispensed with if no Response Filed. If no response has been filed within the time permitted by C.R.C.P. Rule 120(c), the court shall examine the motion and, if satisfied that the moving party is entitled to an order for expedited sale upon the facts stated in the motion and affidavit, the court shall dispense with the hearing and forthwith enter the order for expedited sale.

CHAPTER 17A

Practice Standards and Local Court Rules

CHAPTER 17A

PRACTICE STANDARDS AND LOCAL COURT RULES

Rule 121. Local Rules -- Statewide Practice Standards

(a) Repeal of local rules. All District Court local rules, including local procedures and standing orders having the effect of local rules, enacted before April 1, 1988 are hereby repealed.

(b) Authority to enact local rules on matters which are strictly local. Each court by action of a majority of its judges may from time to time propose local rules and amendments of local rules not inconsistent with the Colorado Rules of Civil Procedure or Practice Standards set forth in C.R.C.P. 121(c), nor inconsistent with any directive of the Supreme Court. A proposed rule or amendment shall not be effective until approved by the Supreme Court. No local procedure shall be effective unless adopted as a local rule in accordance with this Section (b) of C.R.C.P. 121. To obtain approval, three copies of any proposed local rule or amendment of a local rule shall be submitted to the Supreme Court through the office of the State Court Administrator. Reasonable uniformity of local rules is required. Numbering and format of any proposed local rule or amendment of a local rule shall be as prescribed by the Supreme Court. The Supreme Court's approval of a local rule or local procedure shall not preclude review of that rule or procedure under the law of circumstances of a particular case.

(c) Matters of statewide concern. The Colorado Rules of Civil Procedure and the following rule subject areas called "Practice Standards" are declared to be of statewide concern and shall preempt and control in their form and content over any differing local rule:

DISTRICT COURT* PRACTICE STANDARDS
§§ 1-1 to End

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*Includes Denver Probate Court where applicable.

Section 1-1

ENTRY OF APPEARANCE AND WITHDRAWAL

1. Entry of Appearance.

No attorney shall appear in any matter before the court unless that attorney has entered an appearance by filing an Entry of Appearance or signing a pleading. An entry of appearance shall state (a) the identity of the party for whom the appearance is made; (b) the

attorney's office address; (c) the attorney's telephone number; (d) the attorney's E-Mail address; and (e) the attorney's registration number.

2. Withdrawal From an Active Case.

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

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

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.

COMMITTEE COMMENT

The purpose of section 1-1(5) is to implement Colorado Rules of Civil Procedure 11(b) and 311(b), which authorize limited representation of a pro se party either on a pro bono or fee basis, in accordance with Colorado Rule of Professional Conduct 1.2. This provision provides assurance that an attorney who makes a limited appearance for a pro se party in a specified case proceeding(s), at the request of and with the consent of the pro se party, can withdraw from the case upon filing a notice of completion of the limited appearance, without leave of court.

COMMITTEE COMMENT

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

Section 1-2

SPECIAL ADMISSION OF OUT-OF-STATE ATTORNEYS

Special admission of an out-of-state attorney shall be in accordance with C.R.C.P. Chapter 18, Rules Governing Admission to the Bar 220 and 221.

Section 1-3

JURY FEES

Each party exercising the right to trial by jury shall file and serve a demand therefor and

simultaneously pay the requisite jury fee. The demand and payment of the jury fee shall be in accordance with Rule 38. The jury fee shall not be returned under any circumstances. Failure of a party to timely file and serve a demand for trial by jury and pay the jury fee shall constitute a waiver of that party's right to trial by jury. When any party exercises the right to trial by jury, every other party to the action must pay the requisite jury fee unless such other party files a notice of waiver of the right to trial by jury pursuant to Rule 38(a)(2). Any party who has demanded a trial by jury and has paid the requisite jury fee and any party who has not waived the right to trial by jury and has paid the requisite jury fee is entitled to trial by jury of all issues properly designated for trial by jury unless that party waives such right pursuant to Rule 38(e).

COMMITTEE COMMENT

Amendment of this practice standard is to conform it to the requirements of C.R.S. 13-71-144 (1989) and amended C.R.C.P 38. Under that statutory requirement, each party who wishes to be assured of having a jury trial, must demand a jury trial and pay a jury fee within the time specified. The case will be tried to a jury if the party demanding a jury trial makes a timely demand, pays the jury fee at the time of the demand and does not later waive a jury trial. If a demand is timely made and the jury fee timely paid, the right to jury trial cannot be withdrawn as against a party who has demanded a jury trial and timely paid a jury fee. For a party to be certain of having a jury trial, that party must demand it and timely pay a jury fee.

Section 1-4

SUPPRESSION FOR SERVICE OF PROCESS

In any civil action, upon written request of the claiming party, the fact of the filing of a case shall be suppressed by the clerk only upon order of the court to secure service of summons or other process and such order shall expire upon service of such summons or other process.

COMMITTEE COMMENT

This Practice Standard was a local rule found in most districts. It provides the machinery for the clerk to temporarily suppress the fact of filing of a case temporarily to avoid publicity that may affect ability to serve process. Such temporary suppression in aid of service of process, is different from the Practice Standard pertaining to limitation of access to court files.

Section 1-5

LIMITATION OF ACCESS TO COURT FILES

1. Nature of Order. Upon motion by any party named in any civil action, the court may limit access to court files. The order of limitation shall specify the nature of limitation, the duration of the limitation, and the reason for limitation.

2. When Order Granted. An order limiting access shall not be granted except upon a finding that the harm to the privacy of a person in interest outweighs the public interest.

3. Application for Order. A motion for limitation of access may be granted, ex parte, upon motion filed with the complaint, accompanied by supporting affidavit or at a hearing concerning the motion.

4. Review by Order. Upon notice to all parties of record, and after hearing, an order limiting access may be reviewed by the court at any time on its own motion or upon the motion of any person.

COMMITTEE COMMENT

This Practice Standard was made necessary by lack of uniformity throughout the districts concerning access to court files. Some districts permitted free access after service of process was obtained. Others, particularly in malpractice or domestic relations cases, almost routinely prohibited access to court file information. The committee deemed it preferable to have machinery available for limitation in an appropriate case, but also a means for other entities having interest in the litigation, including the media, to have access.

Section 1-6

SETTINGS FOR TRIALS OR HEARINGS/SETTINGS BY TELEPHONE

1. All settings of trials and hearings, other than those set on the initiative of the court, shall be by the courtroom clerk upon notice to all other parties. Settings by telephone are encouraged. The original or a copy of the notice shall be on file with the courtroom clerk before the setting and shall contain the following:

(a) The caption of the case with designation "Notice to Set" or "Notice to Set by Telephone."

(b) The nature of the matter being set.

(c) The date and time at which the setting will occur.

(d) The courtroom clerk's address, by division or courtroom number if applicable and telephone number.

(e) A statement that the party or attorney being notified may appear or if not present, will be called at or about the time specified.

(f) A statement if the setting is to be by telephone.

2. The party issuing the notice to set shall be responsible for contacting all other counsel and clearing available dates with them.

3. Any attorney receiving the notice to set who does not personally appear at the setting

shall have personnel at his or her office, supplied with a current appointment calendar and authorized to make settings for that attorney, at the date and time in the notice.

4. The party requesting the setting shall immediately confirm in writing the date and time of the matter that has been set with all other parties or their attorneys and shall file that confirmation with the court.

COMMITTEE COMMENT

The change in Standard 1-6 is to allow for settings on initiative of the Court. This change is to resolve the question raised by several districts as to whether the Court had the power to initiate its own settings. There has also been a slight tidying-up of language of the first sentence.

Section 1-7

AUDIO-VISUAL DEVICES

The photographing, broadcasting, televising or recording of court proceedings in any courtroom shall be governed in accordance with Canon 3 of the Code of Judicial Conduct of the State of Colorado.

COMMITTEE COMMENT

This Practice Standard was deemed necessary because it was apparent from local rules of a number of counties that there was a general lack of awareness of Canon 3 of the Code of Judicial Conduct pertaining to photographing, broadcasting, televising or recording court proceedings. This Practice Standard draws attention to Canon 3 and incorporates its provisions by reference.

Section 1-8

CONSOLIDATION

A party seeking consolidation shall file a motion to consolidate in each case sought to be consolidated. The motion shall be determined by the court in the case first filed in accordance with Practice Standard § 1-15. If consolidation is ordered, all subsequent filings shall be in the case first filed and all previous filings related to the consolidated cases placed together under that case number, unless otherwise ordered by the court.

Section 1-9

MULTI-DISTRICT LITIGATION

Consolidation of matters pending in other districts shall be determined in accordance with C.R.C.P. 42.1.

Section 1-10

DISMISSAL FOR FAILURE TO PROSECUTE

1. Upon due notice to the opposite party, any party to a civil action may apply to have any action dismissed when such action has not been prosecuted or brought to trial with due diligence.

2. The court, on its own motion, may dismiss any action not prosecuted with due diligence, upon 35 days' notice in writing to each attorney of record and each appearing party not represented by counsel, or require the parties to show cause in writing why the case should not be dismissed. Showing of cause and objections thereto shall be determined in accordance with Practice Standard § 1-15 (Determination of motions).

3. If the case has not been set for trial, no activity of record in excess of 12 continuous months shall be deemed prima facie failure to prosecute.

4. Failure to show cause on or before the date set forth in the court's notice shall justify dismissal without further proceedings.

5. Any dismissal under this rule shall be without prejudice unless otherwise specified by the court.

COMMITTEE COMMENT

The purpose of this Practice Standard is to encourage prosecution of pending cases and permit machinery to dispose of matters which are not being prosecuted. Dismissal is without prejudice, and there are sufficient safeguards incorporated into the Practice Standard to permit retention on the docket if cause for the delay and interest in the case is shown. The Practice Standard does not mandate that the court search its files and send out notices, but permits such action if the court wishes. The Practice Standard also permits initiation of the procedure by motion.

Section 1-11

CONTINUANCES

Motions for continuances of hearings or trials shall be determined in accordance with Practice Standard 1-15 and shall be granted only for good cause. Stipulations for continuance shall not be effective unless and until approved by the court. A motion for continuance or request for extension of time will not be considered without a certificate that a copy of the

motion has also been served upon the moving attorney's client.

Section 1-12

MATTERS RELATED TO DISCOVERY

1. Unless otherwise ordered by the court, reasonable notice for the taking of depositions pursuant to C.R.C.P. 30(b)(1) shall not be less than 7 days. Before serving a notice to take a deposition, counsel seeking the deposition shall make a good faith effort to schedule it by agreement at a time reasonably convenient and economically efficient to the proposed deponent and counsel for all parties. Prior to scheduling or noticing any deposition, all counsel shall confer in a good faith effort to agree on a reasonable means of limiting the time and expense of that deposition. Pending resolution of any motion pursuant to C.R.C.P. 26(c), the filing of the motion shall stay the discovery at which the motion is directed.

2. Motions under Rules 26(c) and 37(a), C.R.C.P., shall set forth the interrogatory, request, question or response constituting the subject matter of the motion.

3. Interrogatories and requests under Rules 33, 34, and 36, C.R.C.P., and the responses thereto shall be served upon other counsel or parties, but shall not be filed with the court. If relief is sought under Rule 26(c), C.R.C.P., or Rule 37(a), C.R.C.P., copies of the portions of the interrogatories, requests, answers or responses in dispute shall be filed with the court contemporaneously with the motion. If interrogatories, requests, answers or responses are to be used at trial, the portions to be used shall be made available and placed, but not filed, with the trial judge at the outset of the trial insofar as their use reasonably can be anticipated.

4. The originals of all stenographically reported depositions shall be delivered to the party taking the deposition after submission to the deponent as required by Rule 30(e), C.R.C.P. The original of the deposition shall be retained by the party to whom it is delivered to be available for appropriate use by any party in a hearing or trial of the case. If a deposition is to be used at trial, it shall be made available for inspection and placed, but not filed with the trial judge at the outset of the trial insofar as its use reasonably can be anticipated.

5. Unless otherwise ordered, the court will not entertain any motion under Rule 37(a), C.R.C.P., unless counsel for the moving party has conferred or made reasonable effort to confer with opposing counsel concerning the matter in dispute before the filing of the motion. Counsel for the moving party shall file a certificate of compliance with this rule at the time the motion under Rule 37(a), C.R.C.P., is filed.

COMMITTEE COMMENT

Provisions of the practice standard are patterned in part after the local rule now in effect in the United States District court for the District of Colorado. This practice standard specifies the minimum time for the serving of a notice to take deposition. Before serving a notice, however, counsel are required to make a good faith effort to schedule the deposition by agreement at a time reasonably convenient and

economically efficient to the deponent and all counsel. Counsel are also required to confer in a good faith effort to agree on a reasonable means of limiting the time and expense of any deposition. The provisions of this Practice Standard are also designed to lessen paper mass/filing space problems and resolve various general problems related to discovery.

Section 1-13

DEPOSITION BY AUDIO TAPE RECORDING

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

(a) An oath or affirmation shall be administered to the witness by a notary public or other officer authorized to administer oaths.

(b) Two tape recorders with separate microphones shall be used.

(c) Speakers shall identify themselves before each statement except during extended colloquy between examiner and deponent.

(d) The recording shall be transcribed at the expense of the party taking the deposition.

(e) The transcribed testimony shall be made available for correction and signature by the deponent in accordance with Rule 30(e), C.R.C.P.

(f) The tape from which the transcription is made shall be retained by the party taking the deposition. The second tape shall be retained by the adverse party. Both tapes shall be preserved until the litigation is concluded.

(g) The party responsible for the transcription shall make available to the other parties upon request copies of the transcription at a reasonable charge and shall also submit to the other parties copies of changes, if any, which are made by the deponent and shall also inform the other parties of the date when the deposition is available for signature and whether signature is obtained.

(h) The transcription shall be retained by the party taking the deposition and made available in accordance with Paragraph 4 Practice Standard 1-12 (Matters Related To Discovery).

COMMITTEE COMMENT

This Practice Standard sets forth detailed procedural safeguards for taking of depositions by tape recording as set out in Sanchez v. District Court, 200 Colo. 33, 624 P.2d 1314 (1981).

Section 1-14

DEFAULT JUDGMENTS

1. To enter a default judgment under C.R.C.P. 55(b) of the Colorado Rules of Civil

Procedure, the following documents in addition to the motion for default judgment are necessary:

(a) The original summons showing valid service on the particular defendant in accordance with Rule 4, C.R.C.P.

(b) An affidavit stating facts showing that venue of the action is proper. The affidavit may be executed by the attorney for the moving party.

(c) An affidavit or affidavits establishing that the particular defendant is not a minor, an incapacitated person, an officer or agency of the State of Colorado, or in the military service. The affidavit must be executed by the attorney for the moving party on the basis of reasonable inquiry.

(d) An affidavit or affidavits or exhibits establishing the amount of damages and interest, if any, for which judgment is being sought. The affidavit may not be executed by the attorney for the moving party. The affidavit must be executed by a person with knowledge of the damages and the basis therefor.

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

(f) If the action is on a promissory note, the original note shall be presented to the court in order that the court may make a notation of the judgment on the face of the note. If the note is to be withdrawn, a photocopy shall be substituted.

(g) A proposed form of judgment which shall recite in the body of the judgment:

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

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

(3) Venue has been considered and is proper;

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

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

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

2. If further documentation, proof or hearing is required, the court shall so notify the moving party.

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

4. In proceedings which come within the provisions of Rules 55 or 120, C.R.C.P., attendance by the moving party or his 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.

COMMITTEE COMMENT

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

Section 1-15

DETERMINATION OF MOTIONS

1. Briefs; When Required; Time for Serving and Filing -- Length. (a) Except motions during trial or where the court deems an oral motion to be appropriate, any motions involving a contested issue of law shall be supported by a recitation of legal authority incorporated into the motion except for a motion pursuant to C.R.C.P. 56. Motions or briefs in excess of 10 pages in length, exclusive of tables and appendices, are discouraged. Except for electronic filings made pursuant to Section 1-26 of this Rule, the original and one copy of all motions and briefs shall be filed with the court, and a copy served as required by law.

(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.

2. Affidavits. If facts not appearing of record may be considered in disposition of the motion, the parties may file affidavits within the time specified in Rules 6(d), 56 or 59, C.R.C.P. 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 the motion or fails to file a brief with a C.R.C.P. 56 motion, the court may deem the motion abandoned and may enter an order denying the motion. 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. If possible, motions shall be determined promptly upon the written motion and briefs submitted. However, the court may order oral argument or an evidentiary hearing, or if the request for oral argument or an evidentiary hearing is requested in a motion, or any brief, oral argument may be allowed by the court at its discretion. 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. 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.

8. Duty to Confer. Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel shall confer with opposing counsel before filing a motion. The motion shall, at the beginning, contain a certification that the movant in good faith has conferred with opposing counsel about the motion. If the relief sought by the motion has been agreed to by the parties or will not be opposed, the court shall be so advised in the motion. If no conference has occurred, the reason why shall be stated.

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

10. Proposed Order. 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.

COMMITTEE COMMENT

This Practice Standard was necessary because of lack of uniformity among the districts concerning how motions were to be made, set and determined. The Practice Standard recognizes that oral argument and hearings are not necessary in all cases, and encourages disposition of motions upon written submissions. The standard

also sets forth the uniform requirements concerning filing of legal authority, filing of matters not already of record necessary to determination of motions, and the manner of setting an oral argument if argument is permitted. The practice standard is broad enough to include all motions, including venue motions. Some motions will not require extended legal analysis or affidavits. Obviously, if the basis for a motion is simple and routine, the citation of authorities can be correspondingly simple. Motions or briefs in excess of 10 pages are discouraged.

This standard specifies contemporaneous recitation of legal authority either in the motion itself for all motions except those under C.R.C.P. Rule 56. Moving counsel should confer with opposing counsel before filing a motion to attempt to work out the difference prompting the motion. Every motion must, at the beginning, contain a certification that the movant, in good faith, has conferred with opposing counsel about the motion. If there has been no conference, the reason why must be stated. To assist the court, if the relief sought by the motion has been agreed to or will not be opposed, the court is to be so advised in the motion.

Paragraph 4 of the standard contains an important feature. Any matter requiring immediate action should be called to the attention of the courtroom clerk by the party filing a motion for forthwith disposition. Calling the urgency of a matter to the attention of the court is a responsibility of the parties. The court should permit a forthwith determination.

Section 1-16

PREPARATION OF ORDERS AND OBJECTIONS AS TO FORM

1. When directed by the court, the attorney for the prevailing party or such attorney as the court directs shall file and serve a proposed order within 14 days of such direction or such other time as the court directs. Prior to filing the proposed order, the attorney shall submit it to all other parties for approval as to form. The proposed order shall be timely filed even if all parties have not approved it as to form. A party objecting to the form of the proposed order as filed with court shall have 7 days after service of the proposed order to file and serve objections and suggested modifications to the form of the proposed order.

2. Alternatively, when directed by the court, the attorney for the prevailing party or such attorney as the court directs shall file and serve a stipulated order within 14 days after the ruling, or such other time as the court directs. Any matter upon which the parties cannot agree as to form shall be designated in the proposed order as "disputed." The proposed order shall set forth each party's specific alternative proposal for each disputed matter.

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

Section 1-17

COURT SETTLEMENT CONFERENCES

1. At any time after the filing of Disclosure Certificates as required by C.R.C.P. 16, any party may file with the courtroom clerk and serve a request for a court settlement conference, together with a notice for setting of such request. The court settlement conference shall, if the request is granted, be conducted by any available judge other than the assigned judge. In all instances, the assigned judge shall arrange for the availability of a different judge to conduct the court settlement conference.

2. All discussions at the settlement conference shall remain confidential and shall not be disclosed to the judge who presides at trial. Statements at the settlement conference shall not be admissible evidence for any purpose in any other proceeding.

3. This Rule shall not apply to proceedings conducted pursuant to Rule 16.2(i).

COMMITTEE COMMENT

This Practice Standard provides machinery for settlement conference upon request of the parties. The Practice Standard was deemed necessary because it was previously not possible to have a settlement conference in some districts. The committee recognized that there may be practical difficulties in a particular district because of nonavailability of a separate judge. It was felt that this problem could perhaps be largely overcome by cooperation between several districts or by use of a retired judge to make the service available.

Part 2 of the Practice Standard was deemed necessary to encourage settlement conference participation by litigants. Confidentiality and nonadmissibility of statements or communications made at settlement conference should override and prevail as a matter of policy over any asserted right or interest to the contrary.

Section 1-18
PRETRIAL PROCEDURE, CASE MANAGEMENT, DISCLOSURE AND SIMPLIFICATION OF ISSUES

Pretrial procedure, case management, disclosure and simplification of issues shall be in accordance with C.R.C.P. 16.

Section 1-19

JURY INSTRUCTIONS

Jury instructions shall be prepared and tendered to the court pursuant to C.R.C.P. 16(d).

Section 1-20

SIZE, AND FORMAT OF DOCUMENTS

All court documents shall be prepared in 8-1/2" x 11" format with black type or print and

conform to the format, and spacing requirements specified in C.R.C.P. 10(d). Except documents filed by E-Filing or facsimile copy, all court documents shall be on recycled white paper. Any form required by these rules may be reproduced by word processor or other means, provided that the reproduction substantially follows the format of the form and indicates the effective date of the form which it reproduces.

COMMITTEE COMMENT

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

Section 1-21

COURT TRANSCRIPTS

1. A party requesting a transcript shall arrange for preparation of the transcript directly with the reporter, or if the session or proceeding was recorded by mechanical or electronic means, the courtroom clerk. Where a transcript is to be made a part of the record on appeal, a party shall request preparation of the transcript by reference in the Designation of Record and by direct arrangement with the court reporter or courtroom clerk as provided herein.
2. Unless otherwise ordered by the court, a court reporter may require a deposit of sufficient money to cover the estimated cost of preparation before preparing the transcript.
3. The transcript shall be signed and certified by the person preparing the transcript. A transcript lodged with the court shall not be removed from the court without court order except when transmitted to the appellate court.

COMMITTEE COMMENT

This Practice Standard sets forth uniform requirements for obtaining, paying for, certification and removal of court reporter transcripts.

Section 1-22

COSTS AND ATTORNEY FEES

1. COSTS. A party claiming costs shall file a Bill of Costs within 21 days of the entry of order or judgment, or within such greater time as the court may allow. The Bill of Costs shall itemize and total costs being claimed. Taxing and determination of costs shall be in

accordance with C.R.C.P. 54(d) and Practice Standard § 1-15.

2. ATTORNEY FEES. (a) **Scope.** This practice standard applies to requests for attorney fees made at the conclusion of the action, including attorney fee awards requested pursuant to Section 13-17-102, C.R.S. It also includes awards of fees made to the prevailing party pursuant to a contract or statute where the award is dependent upon the achievement of a successful result in the litigation in which fees are to be awarded and the fees are for services rendered in connection with that litigation. This practice standard does not apply to attorney fees which are part of a judgment for damages and incurred as a result of other proceedings, or for services rendered other than in connection with the proceeding in which judgment is entered. This practice standard also does not apply to requests for attorney fees on matters relating to pre-trial sanctions and motions for default judgment unless otherwise ordered by the court.

(b) **Motion and Response.** Any party seeking attorney fees under this practice standard shall file and serve a motion for attorney fees within 21 days of entry of judgment or such greater time as the court may allow. The motion shall explain the basis upon which fees are sought, the amount of fees sought, and the method by which those fees were calculated. The motion shall be accompanied by any supporting documentation, including materials evidencing the attorney's time spent, the fee agreement between the attorney and client, and the reasonableness of the fees. Any response and reply, including any supporting documentation, shall be filed within the time allowed in practice standard § 1-15. The court may permit discovery on the issue of attorney fees only upon good cause shown when requested by any party.

(c) **Hearing; Determination of Motion.** Any party which may be affected by the motion for attorney fees may request a hearing within the time permitted to file a reply. Any request shall identify those issues which the party believes should be addressed at the hearing. When required to do so by law, the court shall grant a party's timely request for a hearing. In other cases where a party has made a timely request for a hearing, the court shall hold a hearing if it determines in its discretion that a hearing would materially assist the court in ruling on the motion. In exercising its discretion as to whether to hold a hearing in these cases, the court shall consider the amount of fees sought, the sufficiency of the disclosures made by the moving party in its motion and supporting documentation, and the extent and nature of the objections made in response to the motion. The court shall make findings of fact to support its determination of the motion. Attorney fees awarded under this practice standard shall be taxed as costs.

COMMITTEE COMMENT

1. COSTS. This Standard establishes a uniform, optimum time within which to claim costs. The 15 day requirement encourages prompt filings so that disputes on costs can be determined with other post-trial motions. This Standard also requires itemization and totaling of cost items and reminds practitioners of the means of determining disputes on costs. C.R.S. 13-16-122 (1981) sets forth those items generally awardable as costs.

2. ATTORNEY FEES. Subject to

certain exceptions, this Standard establishes a uniform procedure for resolving attorney fee disputes in matters where the request for attorney fees is made at the conclusion of an action of where attorney fees are awarded to the prevailing party (see "Scope"). Unless otherwise ordered by the court, attorney fees under C.R.S. 14-10-119 should be heard at the time of the hearing on the motion or proceeding for which they are requested.

Section 1-23

BONDS IN CIVIL ACTIONS

1. Bonds Which Are Automatically Effective Upon Filing With The Court.The following bonds are automatically effective upon filing with the clerk of the court:

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

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

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

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

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

(b) Any Other Proposed Bond.

3. Amounts of Bond.

(a) Supersedeas Bonds. Unless the court otherwise orders, or any applicable statute directs a higher amount, the amount of a supersedeas bond to stay execution of a money judgment shall be 125% of the total amount of the judgment entered by the court (including any prejudgment interest, costs and attorneys fees awarded by the court). The amount of a supersedeas bond to stay execution of a non-money judgment shall be determined by the court. Nothing in this rule is intended to limit the court's discretion to deny a stay with respect to non-money judgments. Any interested party may move the trial court (which shall have jurisdiction not withstanding the pendency of an appeal) for an increase in the amount of the bond to reflect the anticipated time for completion of appellate proceedings or any increase in the amount of judgment.

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

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

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

6. Objections to Bonds. Any party in interest may file an objection to any bond which is automatically effective under subsection 1 of this rule or to any proposed bond subject to subsection 2 of this rule. A bond, which is automatically effective under subsection 1 remains in effect unless the court orders otherwise. Any objections shall be filed not later than 14 days after service of the bond or proposed bond except that objections based upon the entry of any amended or additional judgment shall be made not later than 14 days after entry of any such amended or additional judgment.

COMMITTEE COMMENT

The Committee is aware that issues have arisen regarding the effective date of a bond, and thus the effectiveness of injunction orders and other orders which are conditioned upon the filing of an acceptable bond. Certain types of bonds are almost always acceptable and thus, under this rule, are automatically effective upon filing with the Court subject to the consideration of timely filed objections. Other types of bonds may or may not be acceptable and should not be effective until the Court determines the sufficiency of the bond. The court may permit property bonds upon such conditions as are appropriate to protect the judgment creditor (or other party sought to be protected). Such conditions may include an appraisal by a qualified appraiser, information regarding liens and encumbrances against the property, and title insurance.

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

Section 1-24

SETTING OF DEADLINES

[Practice Standard on Setting of Deadlines being prepared.]

Section 1-25

FACSIMILE COPIES

1. Facsimile copy, defined. A facsimile copy is a copy generated by a system that encodes a document into electrical signals, transmits these electrical signals over a

telephone/data line, then reconstructs the signals to print an exact duplicate of the original document at the receiving end.

2. Facsimile copies which conform with the quality requirements specified in C.R.C.P. 10(d)(1) may be filed with the court in lieu of the original document. Once filed with the court, the facsimile copy shall be treated as an original for all court purposes. If a facsimile copy is filed in lieu of the original document, the attorney or party filing the facsimile shall retain the original document for production to the court, if requested to do so.

3. The court is not required to provide confirmation that it has received a facsimile transmission.

4. Any facsimile copy transmitted directly to the court shall be accompanied by a cover sheet which states the title of the document, case number, number of pages, identity and voice telephone number of transmitter and any instructions.

5. Payment of any required filing fees shall not be deferred for documents filed with the court by facsimile transmission.

6. This rule shall not require courts to have a fascimile machine nor shall the court be required to transmit orders or other material to attorneys or parties via facsimile transmission.

COMMITTEE COMMENT

Facsimile transmissions are becoming commonplace in the business world. It was therefore deemed reasonable that the court system adapt to accommodate the use of this technology. Use of the technology, however, should not create more work for court staff. In order not to add to the duties of overburdened court personnel, provision is made that court personnel need not provide confirmation that a facsimile transmission has been received. This should not create difficulty for attorneys because almost all equipment manufactured today provides confirmation that a document has been received. This confirmation should be attached to the document sent and retained with the original document in the party's file.

The committee envisioned at least two ways in which facsimile filings could be accomplished. The first would be an arrangement where the facsimile machine would be located in a court clerk's office. The other would be where transmissions would be made to a machine outside the courthouse and then delivered to the clerk for filing. These rules were designed to accommodate both kinds of filings.

Ordinary thermofax paper fades in sunlight, deteriorates with handling and has a short shelf life. Therefore, only permanent plain paper which is not subject to these infirmities is acceptable for court purposes.

The committee also recognized that a requirement for filing of the original after filing of a facsimile copy would create more work for court staff. The committee therefore decided to accept facsimile copies in lieu of the original with the provision that the original would be maintained if it were ever needed for any purpose.

The requirement under C.R.C.P. 121, Sec. 1-15 for filing of a copy of any motions or briefs has been modified so that a copy is also filed with the clerk of the court. The clerk of the court is then

responsible for distributing the copy to the courtroom clerk. This change is necessary because the courtroom clerk will ordinarily not have a separate facsimile machine.

Some judicial districts have or are acquiring the ability to accept credit cards or bank cards for payment of fees and fines. In the judicial districts where bank cards can be used for payment, parties may file complaints, answers and other pleadings which require a filing fee by faxing an appropriate bank card authorization along with the pleadings. If a judicial district does not accept payment by bank card, those types of pleadings cannot be filed by facsimile transmission because payment of filing fees will not be deferred.

The committee believes that reasonable fees can be charged for the costs associated with facsimile filings. However, the setting of such fees is not within the scope of the Rules of Civil Procedure.

The adoption of this rule does not require an attorney to have a designated facsimile telephone number.

Section 1-26

ELECTRONIC FILING AND SERVICE SYSTEM

1. Definitions:

(a) **Document:** A pleading, motion, writing or other paper filed or served under the E-System.

(b) **E-Filing/Service System:** The E-Filing/Service System ("E-System") approved by the Colorado Supreme Court for filing and service of documents via the Internet through the Court-authorized E-System provider.

(c) **Electronic Filing:** Electronic filing ("E-Filing") is the transmission of documents to the clerk of the court, and from the court, via the E-System.

(d) **Electronic Service:** Electronic service ("E-Service") is the transmission of documents to any party in a case via the E-System. Parties who have subscribed to the E-System have agreed to receive service, other than service of a summons, via the E-System.

(e) **E-System Provider:** The E-Service/E-Filing System Provider authorized by the Colorado Supreme Court.

(f) **Signatures:**

(I) Electronic Signature: an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by the person with the intent to sign the E-filed or E-served document.

(II) Scanned Signature: A graphic image of a handwritten signature.

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

3. To Whom Applicable:

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

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

4. Commencement of Action--Service of Summons: Cases may be commenced under C.R.C.P. 3 by E-Filing the initial pleading. Service of a summons shall be made in accordance with C.R.C.P. 4. The serving party or the party's attorney shall enter into the e-system the best known address for each served party as that party is served.

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

6. E-Service--When Required - Date and Time of Service: Documents submitted to the court through E-Filing shall be served under C.R.C.P. 5 by E-Service. Parties shall keep their address and contact information updated in the e-system. A filing party shall enter or confirm the served party's last known address in the e-system. A document transmitted to the E-System Provider for service by 11:59 p.m. Colorado time shall be deemed to have been served on that date.

7. Filing Party to Maintain the Signed Copy--Paper Document Not to Be Filed--Duration of Maintaining of Document: A printed or printable copy of an E-Filed or E-Served document with original, electronic, or scanned signatures shall be maintained by the filing party and made available for inspection by other parties or the court upon request, but shall not be filed with the court. When these rules require a party to maintain a document, the filer is required to maintain the document for a period of two years after the final resolution of the action, including the final resolution of all appeals. For domestic relations decrees, separation agreements and parenting plans, original signature pages bearing the attorneys, parties', and notaries' signatures must be scanned and E-filed. For probate of a will, the original must be lodged with the court.

8. Documents Requiring E-Filed Signatures: For E-Filed and E-Served documents, signatures of attorneys, parties, witnesses, notaries and notary stamps may be affixed electronically or documents with signatures obtained on a paper form scanned.

9. C.R.C.P. 11 Compliance: An e-signature is a signature for the purposes of C.R.C.P. 11.

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

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

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

court at any later time requests a printed copy.

13. E-Filing May be Mandated: With the permission of the Chief Justice, a chief judge may mandate E-Filing within a county or judicial district for specific case classes or types of cases. A judicial officer may mandate E-Filing and E-Service in that judicial officer's division for specific cases, for submitting documents to the court and serving documents on case parties. Where E-Filing is mandatory, the court may thereafter accept a document in paper form and the court shall scan the document and upload it to the E-Service Provider. After notice to an attorney that all future documents are to be E-Filed, the court may charge a fee of $50 per document for the service of scanning and uploading a document filed in paper form. Where E-Filing and E-Service are mandatory, the Chief Judge or appropriate judicial officer may exclude pro se parties from mandatory E-Filing requirements.

14. Relief in the Event of Technical Difficulties:

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

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

15. Form of Electronic Documents

(a) **Electronic document format, size and density.** Electronic document format, size, and density shall be as specified by Chief Justice Directive # 11-01.

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

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

COMMITTEE COMMENT

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

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

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

APPENDIX TO CHAPTERS 1 TO 17A

The Colorado
Rules of Civil Procedure

APPENDIX TO CHAPTERS 1 TO 17A

FORMS
(See Rule 84.)

(Forms are available online at http://www.courts.state.co.us/Forms/Index.cfm.)

Forms

Introductory Statement.

1. The following forms are intended for illustration only. They are limited in number. No attempt is made to furnish a manual of forms.

2. Except where otherwise indicated, each form shown in this chapter should have a caption similar to the samples shown below. Each caption shall contain a document name and party designation that may vary according to the type of form being used. See the applicable forms to determine the appropriate title and party designation. Documents initiated by a party shall use a form of caption shown in sample caption A. Documents issued by the court under the signature of the clerk or judge should omit the attorney section as shown in sample caption B. The number of the action and the division in which the action is pending, where applicable, should be indicated in the caption of all papers subsequently filed. In the caption of the summons and in the caption of the complaint all parties must be named, but for other documents it is sufficient to state the name of the first party on both sides of the litigation, with an appropriate reference to other parties, such as et. al. See Rules 4(a), 7(b)(2), and 10(a).

3. When the action is in the County Court, the complaint in all cases should contain the jurisdictional allegation, as set forth in Form 2 below.

4. Each form is to be signed in the individual name of at least one attorney of record (Rule 11). If a party is not represented by an attorney, the signature and address of the party are required in place of those of the attorney. The plaintiff's address must be given on the complaint and the defendant's address on the answer.

5. An addendum should be used for identifying additional parties or attorneys when the space provided on a pre-printed or computer-generated form is not adequate.

6. Forms of captions are to be consistent with Rule 10, C.R.C.P.

Sample Caption A for documents initiated by a party

☐ County Court ☐ District Court _____, Colorado Court Address: _____ **Plaintiff(s):** v. ***[Substitute appropriate party designations & names]*** **Defendant(s):** _____ Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg.#:	▲ **COURT USE ONLY** ▲ Case Number: Division: Courtroom:

NAME OF DOCUMENT

Sample Caption B for documents by the court under the signature of the clerk or judge

☐ County Court ☐ District Court _____, Colorado Court Address: _____ **Plaintiff(s):** v. *[Substitute appropriate party designations & names]* **Defendant(s):**	▲ **COURT USE ONLY** ▲ Case Number: Division: Courtroom:

NAME OF DOCUMENT

SPECIAL FORM INDEX

Form 1. Summons.
Form 1.1. Summons by Publication.
Form 1.2. District Court Civil (CV) Case Cover Sheet For Initial Pleading of Complaint, Counterclaim, Cross-claim or Third Party Complaint.
Form 1.3. Notice to Elect Exclusion from C.R.C.P. 16.1 Simplified Procedure.
Form 2. Allegation of Jurisdiction (for cases in the County Court).
Form 3. Complaint on a promissory note.
Form 4. Complaint on an account.
Form 5. Complaint for goods sold and delivered.
Form 6. Complaint for money lent.
Form 7. Complaint for money paid by mistake.
Form 8. Complaint for money had and received.
Form 9. Complaint for negligence.
Form 10. Complaint for negligence where plaintiff is unable to determine definitely whether the person responsible is C.D. or E.F. or whether both are responsibleand where his evidence may justify a finding of wilfulness or ofrecklessness or of negligence.
Form 11. Complaint for conversion.
Form 12. Complaint for specific performance of contract to convey land.
Form 13. Complaint on claim for debt and to set aside fraudulent conveyance under Rule 18(b).
Form 14. Complaint for interpleader and declaratory relief.
Form 15. Motion to dismiss, presenting defenses of failure to state a claim, and of lack of service of process.
Form 15A. Certification of Conferring.
Form 16. Answer presenting defenses under Rule 12(b).
Form 17. Answer to complaint set forth in Form 8, with counterclaim for interpleader.
Form 18. Motion to bring in third-party defendant.
Form 19. Motion to intervene as a defendant under Rule 24.
Form 20. Pattern Interrogatories under Rule 33.
Form 20.2. Pattern Interrogatories (Domestic Relations) (Repealed). [See Form 35.3]
Form 21. Request for Admission under Rule 36. [Moved - See Form 21B]
Form 21A. Motion for Production of Documents, etc., under Rule 34.
Form 21B. Request for Admission under Rule 36.
Form 21.2. Pattern Requests for Production of Documents (Domestic Relations) (Repealed). [See Form 35.4]
Form 22. Allegation of reason for omitting party.
Form 23. Affidavit, Writ of Garnishment and Interrogatories (Rule 103) (Repealed).
Form 24. Writ of assistance.
Form 25. Request for production of documents, etc., under Rule 34. [Moved - See Form 21A]

Form 26. Writ of Continuing Garnishment.
Form 27. Calculation of the Amount of Exempt Earnings.
Form 28. Objection to Calculation of the Amount of Exempt Earnings.
Form 29. Writ of Garnishment with Notice of Exemption and Pending Levy.
Form 30. Claim of Exemption to Writ of Garnishment with Notice.
Form 31. Writ of Garnishment for Support.
Form 32. Writ of Garnishment -- Judgment Debtor Other than Natural Person.
Form 33. Writ of Garnishment in Aid of Writ of Attachment.
Form 34. Notice of Levy.
Form 35.1. Mandatory Disclosure.
Form 35.2. Sworn Financial Statement.
Form 35.3. Supporting Schedules.
Form 35.4. Pattern Interrogatories (Domestic Relations).
Form 35.5. Pattern Requests for Production of Documents (Domestic Relations).
Form 36. Notice of Withdrawal as Attorney of Record.

Form 1.
SUMMONS

[Insert caption A from page _____ with the following designation of parties]

Plaintiff:

v.

Defendant:

THE PEOPLE OF THE STATE OF COLORADO
TO THE ABOVE NAMED DEFENDANT _____:

You are hereby summoned and required to file with the clerk of this court an answer or other response to the attached complaint. If service of the summons and complaint was made upon you within the State of Colorado, you are required to file your answer or other response within 20 days after such service upon you. If service of the summons and complaint was made upon you outside of the State of Colorado, you are required to file your answer or other response within 30 days after such service upon you.

If you fail to file your answer or other response to the complaint in writing within the applicable time period, judgment by default may be entered against you by the court for the relief demanded in the complaint without further notice.

The following documents are also served herewith:

Dated _____

_____
Attorney for Plaintiff

This summons is issued pursuant to Rule 4, C.R.C.P., as amended. A copy of the complaint must be served with this summons. This form should not be used where service by publication is desired.

TO THE CLERK: If the summons is issued by the clerk of the court, the signature block for the clerk or deputy should be provided by stamp, or typewriter, in the space to the left of the attorney's name.

Form 1.1.
SUMMONS BY PUBLICATION

[Insert caption A from page _____ with the following designation of parties]

A, B, and C,
Plaintiff(s) [Petitioner(s)]:

v.
D, E, F, and G,
Defendant(s) [Respondent(s)]:

THE PEOPLE OF THE STATE OF COLORADO
TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby summoned and required to appear and defend against the claims of the complaint [petition] filed with the court in this action, by filing with the clerk of this court an answer or other response. You are required to file your answer or other response within ___ * days after the service of this summons upon you. Service of this summons shall be complete on the day of the last publication. A copy of the complaint [petition] may be obtained from the clerk of the court.

If you fail to file your answer or other response to the complaint [petition] in writing within _____* days after the date of the last publication, judgment by default may be rendered against you by the court for the relief demanded in the complaint [petition] without further notice.

This is an action:

Dated _____

Published in the _____.
First Publication: _____, 20___.
Last Publication: _____, 20___.

_____
Attorney for Plaintiff(s)/Petitioner(s)

[This summons is issued pursuant to Rule 4(g), Colorado Rules of Civil Procedure. This form should not be used where personal service is desired.]

[TO THE CLERK: When this summons is issued by the clerk of the court, the signature block for the clerk or deputy should be provided by stamp, or typewriter, in the space to the left of the attorney's name.]

*Rule 12(a), C.R.C.P., allows 30 days for answer or response where service of process is by publication. However, under various statutes, a different response time is set forth; e.g., § 38-6-104, C.R.S. (eminent domain); § 38-36-121, C.R.S. (Torrens registration).

Form 1.2.
DISTRICT COURT CIVIL (CV) CASE COVER SHEET
FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM,
CROSS-CLAIM OR THIRD PARTY COMPLAINT

District Court _____County, Colorado Court Address: _____ Plaintiff(s): v. Defendant(s):	▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom

DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT

1. This cover sheet shall be filed with the initial pleading of a complaint, counterclaim, cross-claim or third party complaint in every district court civil (CV) case. It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases.

2. Check the boxes applicable to this case.

   ❑ Simplified Procedure under C.R.C.P. 16.1 **applies** to this case because this party does not seek a monetary judgment in excess of $100,000.00 against another party, including any attorney fees, penalties or punitive damages but excluding interest and costs and because this case is not a class action or forcible entry and detainer, Rule 106, Rule 120, or other expedited proceeding.

   ❑ Simplified Procedure under C.R.C.P. 16.1, **does not apply** to this case because (check one box below identifying why 16.1 does not apply):

      ❑ This is a class action or forcible entry and detainer, Rule 106, Rule 120, or other similar expedited proceeding, **or**
      ❑ This party is seeking a monetary judgment for more than $100,000.00 against another party, including any attorney fees, penalties or punitive damages, but excluding interest and costs (see C.R.C.P. 16.1(c)), **or**
      ❑ Another party has previously stated in its cover sheet that C.R.C.P. 16.1 does not apply to this case.

3. ❑ This party makes a **Jury Demand** at this time and pays the requisite fee. See C.R.C.P. 38. (Checking this box is optional.)

Date: _____ _____
Signature of Party or Attorney for Party

NOTICE

- ✓ This cover sheet must be filed in all District Court Civil (CV) Cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk's show cause order requiring its filing.
- ✓ This cover sheet must be served on all other parties along with the initial pleading of a complaint, counterclaim, cross-claim, or third party complaint.
- ✓ This cover sheet shall not be considered a pleading for purposes of C.R.C.P. 11.

Form 1.3.
NOTICE TO ELECT EXCLUSION FROM
C.R.C.P. 16.1 SIMPLIFIED PROCEDURE

District Court _____County, Colorado Court Address: _____ Plaintiff(s): v. Defendant(s):	▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom
NOTICE TO ELECT EXCLUSION FROM C.R.C.P. 16.1 SIMPLIFIED PROCEDURE	

Simplified Procedure under C.R.C.P. 16.1 is intended to be a less expensive and faster method of handling civil cases and applies where amount sought against each party is $100,000.00 or less, see C.R.C.P. 16.1(c). The Rule requires early and full disclosure of the information that each party has about the dispute and addresses what evidence will be introduced at trial.

The party and attorney, if applicable, signing this Notice hereby elect to exclude this case from the Simplified Procedure under C.R.C.P. 16.1. This election is being filed with the Court no later than the time provided by C.R.C.P. 16.1(d).

IT IS UNDERSTOOD THAT ONCE THIS NOTICE OF EXCLUSION IS FILED WITH THE COURT, THE PROCEDURES OF C.R.C.P. 16, CASE MANAGEMENT AND TRIAL MANAGEMENT WILL APPLY TO THIS CASE.

This Notice must be signed by the party and, if represented, by the attorney.

Date: _____ _____
Signature of Party

Date: _____ _____
Signature of Attorney for Party

CERTIFICATE OF SERVICE

I certify that on _____ (date) this ***NOTICE TO ELECT EXCLUSION FROM C.R.C.P. 16.1 SIMPLIFIED PROCEDURE*** was filed with the Court; and true and accurate copies of the Notice were served on all other parties by: _____ (method of service) and if by mail, postage pre-paid, and addressed to the following:

_____

_____

_____

_____ _____
Signature of Party or Attorney for Party

Form 2.
ALLEGATION OF JURISDICTION
(for cases in the County Court)

1. That the amount (or value of the property) involved herein does not exceed _____ dollars.

Form 3.
COMPLAINT ON A PROMISSORY NOTE

1. Defendant on or about (date), executed and delivered to plaintiff a promissory note (in the following words and figures: (here set out the note verbatim)); (a copy of which is hereto annexed as Exhibit A); (whereby defendant promised to pay to plaintiff or order on (date), the sum of _____ dollars with interest thereon at the rate of _____ percent per annum).

2. Defendant owes to plaintiff the amount of said note and interest. Wherefore plaintiff demands judgment against defendant for the amount of the note, interest, and costs.

Signed: _____
Attorney for Plaintiff.

Address of Plaintiff: _____

Notes

1. The pleader may use the material in one of the three sets of brackets. His choice will depend upon whether he desires to plead the document verbatim, or by exhibit, or according to its legal effect.

2. Under the rules free joinder of claims is permitted. See Rules 8 (e) and 18. Consequently the claims set forth in each and all of the following forms may be joined with this complaint or with each other. Ordinarily each claim should be stated in a separate division of the complaint, and the divisions should be designated as counts successively numbered. In particular the rules permit alternative and inconsistent pleading. See Form 10.

3. On complaint and answer, address of parties must be furnished. See Rule 11, C.R.C.P. and C.A.R. 3 (d).

Form 4.
COMPLAINT ON AN ACCOUNT

Defendant owes plaintiff ___ dollars according to the account hereto annexed as Exhibit A.

Wherefore (etc. as in Form 3).

Form 5.
COMPLAINT FOR GOODS SOLD AND DELIVERED

Defendant owes plaintiff ___ dollars for goods sold and delivered by plaintiff to defendant between (date) and (date). Wherefore (etc. as in Form 3).
NoteThis form may be used either where the action is for an agreed price or where it is for the reasonable value of the goods.

Form 6.
COMPLAINT FOR MONEY LENT

Defendant owes plaintiff ___ dollars for money lent by plaintiff to defendant on (date). Wherefore (etc. as in Form 3).

Form 7.
COMPLAINT FOR MONEY PAID BY MISTAKE

Defendant owes plaintiff ___ dollars for money paid by plaintiff to defendant by mistake on (date), under the following circumstances: (here state the circumstances with particularity - see Rule 9 (b)). Wherefore (etc. as in Form 3).

Form 8.
COMPLAINT FOR MONEY HAD AND RECEIVED

Defendant owes plaintiff ___ dollars for money had and received from one G.H. on (date), to be paid by defendant to plaintiff. Wherefore (etc. as in Form 3).

Form 9.
COMPLAINT FOR NEGLIGENCE

1. On (date), in a public highway called Broadway Street in Denver, Colorado, defendant negligently drove a motor vehicle against plaintiff who was then crossing said highway.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of ___ dollars.

Wherefore plaintiff demands judgment against defendant in the amount established by the evidence, interest and costs.

Note

Since contributory negligence is an affirmative defense, the complaint need contain no allegation of due care of plaintiff.

Form 10.
COMPLAINT FOR NEGLIGENCE WHERE PLAINTIFF IS UNABLE TO DETERMINE DEFINITELY WHETHER THE PERSON RESPONSIBLE IS C. D. OR E. F. OR WHETHER BOTH ARE RESPONSIBLE AND WHERE HIS EVIDENCE MAY JUSTIFY A FINDING OF WILFULNESS OR OF RECKLESSNESS OR OF NEGLIGENCE

[Insert caption A from page _____ with the following designation of parties]

A.B.,
Plaintiff:

v.
C.D. and E.F.,
Defendant:

---

1. On (date), in a public highway called Broadway Street, in Denver, Colorado, defendant C. D. or defendant E. F., or both defendants C. D. and E. F. willfully or recklessly or negligently drove or caused to be driven a motor vehicle against plaintiff who was then crossing said highway.

2. As a result plaintiff was thrown down and had his leg broken and was otherwise injured, was prevented from transacting his business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of ___ dollars.

Wherefore plaintiff demands judgment against C. D. or against E. F. or against both in the amount established by the evidence, interest and costs.

Form 11.
COMPLAINT FOR CONVERSION

1. On or about (date), defendant converted to his own use ten bonds of the _____

Company (here insert brief identification as by number and issue) of the value of ___ dollars, the property of plaintiff.

Wherefore plaintiff demands judgment against defendant in the amount established by the evidence, interest, and costs.

Form 12.
COMPLAINT FOR SPECIFIC PERFORMANCE OF CONTRACT TO CONVEY LAND

1. On or about (date), plaintiff and defendant entered into an agreement in writing a copy of which is hereto annexed as Exhibit A.

2. In accordance with the provisions of said agreement plaintiff tendered to defendant the purchase price and requested a conveyance of the land, but defendant refused to accept the tender and refused to make the conveyance.

3. Plaintiff now offers to pay the purchase price.

Wherefore plaintiff demands: (1) That defendant be required specifically to perform said agreement; (2) damages as established by the evidence; and (3) that if specific performance is not granted plaintiff have judgment against defendant for the value of the property, interest and costs.

Note

Here, as in Form 3, plaintiff may set forth the contract verbatim in the complaint or plead it, as indicated, by exhibit, or plead it according to its legal effect.

Form 13.
COMPLAINT ON CLAIM FOR DEBT AND TO SET ASIDE FRAUDULENT CONVEYANCE UNDER RULE 18(b)

[Insert caption A from page _____ with the following designation of parties]

A.B.,
Plaintiff:

v.

C.D. and E.F.
Defendants:

1. Defendant C. D. on or about _____ executed and delivered to plaintiff a promissory note (in the following words and figures: (here set out the note verbatim)); (a copy of which is hereto annexed as Exhibit A); (whereby defendant C. D. promised to pay to plaintiff or order on _____ the sum of ___ dollars with interest thereon at the rate of ___ percent per annum).

2. Defendant C. D. owes to plaintiff the amount of said note and interest.

3. Defendant C. D. on or about _____ conveyed all his property, real and personal (or specify and describe) to defendant E. F. for the purpose of defrauding plaintiff and hindering and delaying the collection of the indebtedness evidenced by the note above referred to.

Wherefore plaintiff demands: (1) That plaintiff have judgment against defendant C. D. for the amount established by the evidence; (2) that the conveyance to defendant E. F. be declared void and the judgment herein be declared a lien on said property; and (3) that plaintiff have judgment against the defendants for interest and costs.

Form 14.
COMPLAINT FOR INTERPLEADER AND DECLARATORY RELIEF

1. On or about (date), plaintiff issued to G. H. a policy of life insurance whereby plaintiff promised to pay to K. L. as beneficiary the sum of ___ dollars upon the death of G. H. The policy required the payment by G. H. of a stipulated premium on (date), and annually thereafter as a condition precedent to its continuance in force.

2. No part of the premium due (date), was ever paid and the policy ceased to have any force or effect on (date).

3. Thereafter, on (date), G. H. and K. L. died as the result of a collision between a locomotive and the automobile in which G. H. and K. L. were riding.

4. Defendant C. D. is the duly appointed and acting executor of the will of G. H.; defendant E. F. is the duly appointed and acting executor of the will of K. L.; defendant X. Y. claims to have been duly designated as beneficiary of said policy in place of K. L.

5. Each of defendants, C. D., E. F., and X. Y. is claiming that the above-mentioned policy was in full force and effect at the time of the death of G. H.; each of them is claimed to be the only person entitled to receive payment of the amount of the policy and has made demand for payment thereof.

6. By reason of these conflicting claims of the defendants, plaintiff is in great doubt as to which defendant is entitled to be paid the amount of the policy, if it was in force at the death of G. H.

Wherefore plaintiff demands that the court adjudge:

1. That none of the defendants is entitled to recover from plaintiff the amount of said policy or any part thereof.

2. That each of the defendants be restrained from instituting any action against plaintiff for the recovery of the amount of said policy or any part thereof.

3. That, if the court shall determine that said policy was in force at the death of G. H.,

the defendants be required to interplead and settle between themselves their rights to the money due under said policy, and that plaintiff be discharged from all liability in the premises except to the person whom the court shall adjudge entitled to the amount of said policy.

4. That plaintiff recover its costs.

Form 15.
MOTION TO DISMISS, PRESENTING DEFENSES OF FAILURE TO STATE A CLAIM, AND OF LACK OF SERVICE OF PROCESS

The defendant moves the court as follows:

1. To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

2. To dismiss the action or in lieu thereof to quash the return of service of summons on the ground: (here state reasons, such as, (a) that the defendant is a corporation organized under the laws of Delaware and was not and is not subject to service of process within the State of Colorado; (b) that the defendant has not been properly served with process in this action, all of which more clearly appears in the affidavits of M. N. and X. Y. hereto annexed as Exhibit A and Exhibit B respectively; (c) etc.).

3. To dismiss the action on the ground: (here state the same.)

Signed: _____
Attorney for Defendant.

Notice of Motion

To: _____
Attorney for Plaintiff.

Please take notice that on the _____ day of _____, 20___, the undersigned will apply to the court to set the attached motion for hearing (or to hear the attached motion forthwith).

Signed: _____
Attorney for Defendant.

Received a copy of the within notice and motion at the City and County of Denver, Colorado, this _____ day of _____, 20___, at the hour of ___ M.

_____
Attorney for Plaintiff.

Form 15A.
CERTIFICATION OF CONFERRING
[AS REQUIRED BY C.R.C.P. 121 § 1-15 ¶ 8]

* C.R.C.P. 121 § 1-15 ¶ 8 Certification: Plaintiff's counsel has conferred in good faith with Defendant's counsel about this Motion. Defendant's counsel [opposes] [does not oppose] the relief requested in this Motion.

Form 16.
ANSWER PRESENTING DEFENSES UNDER RULE 12(b)

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

If defendant is indebted to plaintiffs for the goods mentioned in the complaint, he is indebted to them jointly with G. H. G. H. is alive; is a citizen and resident of this state, is subject to the jurisdiction of this court, as to both service of process and venue; can be made a party, but has not been made one.

Third Defense

Defendant admits the allegation contained in paragraphs 1 and 4 of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint; and denies each and every other allegation contained in the complaint.

Fourth Defense

The right of action set forth in the complaint did not accrue within six years next before the commencement of this action.

Counterclaim

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint.)

Cross Claim Against Defendant M. N.

(Here set forth the claim constituting a cross claim against defendant M. N. in the manner in which a claim is pleaded in a complaint.)

Signed: _____
Attorney for Defendant.

Defendant's Address: _____

Form 17.
ANSWER TO COMPLAINT SET FORTH IN FORM 8, WITH COUNTERCLAIM FOR INTERPLEADER

Defense

Defendant denies the allegations stated to the extent set forth in the counterclaim herein.

Counterclaim for Interpleader

1. Defendant received the sum of ___ dollars as a deposit from E. F.
2. Plaintiff has demanded the payment of such deposit to him by virtue of an assignment of it which he claims to have received from E. F.
3. E. F. has notified the defendant that he claims such deposit, that the purported assignment is not valid, and that he holds the defendant responsible for the deposit.

Wherefore defendant demands:
1. That the court order E. F. to be made a party defendant to respond to the complaint and to this counterclaim.
2. That the court order the plaintiff and E. F. to interplead their respective claims.
3. That the court adjudge whether the plaintiff or E. F. is entitled to the sum of money.
4. That the court discharge defendant from all liability in the premises except to the person it shall adjudge entitled to the sum of money.
5. That the court award to the defendant its costs and attorney's fees.

Form 18.
MOTION TO BRING IN THIRD-PARTY DEFENDANT

Defendant moves for leave to make E. F. a party to this action and that there be served upon him summons and third-party complaint as set forth in Exhibit A hereto attached.

Signed: _____
Attorney for Defendant C.D.

Notice of Motion

(Contents the same as in Form 15. No notice is necessary if the motion is made before the moving defendant has served his answer.)

SUMMONS

[Insert caption A from page _____ with the following designation of parties]

A.B.,
Plaintiff:

v.

C.D.
Defendant and
Third-party Plaintiff:

v.

E.F.,
Third-party Defendant:

THE PEOPLE OF THE STATE OF COLORADO:
TO the above-named third-party defendant, GREETINGS:

You are hereby summoned and required to file with the clerk an answer to the third-party complaint, a copy of which is herewith served upon you, within 20 days after service of this summons upon you. If you fail so to do, judgment by default will be taken against you for the relief demanded in the third-party complaint.

If service upon you is made outside the State of Colorado, you are required to file your answer to said third-party complaint within 30 days after service of this summons upon you.*

There is also served upon you herewith a copy of the complaint of the plaintiff which you may answer.

Dated _____, 20___.

_____ _____
Clerk of the _____Court Attorney for Third-party Plaintiff

*If body execution is sought the summons must state the claim set out in said third-party complaint is "founded upon tort".

THIRD PARTY COMPLAINT

[Insert caption A from page _____ with the following designation of parties]

A.B.
Plaintiff:

v.

C.D.,
Defendant and
Third-party Plaintiff:

v.

E. F.,
Third-party Defendant:

---

1. Plaintiff A. B. has filed against defendant C. D. a complaint, a copy of which is hereto attached as Exhibit C.

2. (Here state the grounds upon which C. D. is entitled to recover from E. F., all or part of what A. B. may recover from C. D. The statement should be framed as in an original complaint.)

Wherefore C. D. demands judgment against third-party defendant E. F. for all sums that may be adjudged against defendant C. D. in favor of plaintiff A. B.

Signed: _____
Attorney for C.D., Third-party Plaintiff

Address of Third-party Plaintiff: _____

Form 19.
MOTION TO INTERVENE AS A DEFENDANT UNDER RULE 24.

[Insert caption A from page _____ with the following designation of parties]

A.B.,
Plaintiff:

v.

C.D.,
Defendant:

v.

E.F.,
Applicant for intervention:

E. F. moves for leave to intervene as a defendant in this action, in order to assert the defenses set forth in his proposed answer, of which a copy is hereto attached, on the grounds (here state them) and as such has a defense to plaintiff's claim presenting (both questions of law and of fact) which are common to the main action.

Signed: _____
Attorney for E.F., Applicant for Intervention.

Notice of Motion
(Contents the same as in Form 15)

INTERVENER'S ANSWER

[Insert caption A from page _____ with the following designation of parties]

A.B.,
Plaintiff:

v.

C.D.
Defendant:

v.

E.F.,
Intervener:

First Defense

Intervener admits the allegations stated in paragraphs ___ and ___ of the complaint; denies the allegations in paragraphs ___ and ___.

Second Defense

(Set forth any defenses.)

Signed: _____
Attorney for E.F., Intervener.

Form 20.
PATTERN INTERROGATORIES UNDER RULE 33

[Insert caption A from page _____ with the following designation of parties]

Plaintiff(s):

v.

Defendant(s):

The following Pattern Interrogatories are propounded to:

_____ pursuant to C.R.C.P. 16(a)(1)(IV), 26, and 33(e).

Section 1. Instructions to All Parties

(a) These are general instructions. For time limitations, requirements for service on other parties, and other details, see C.R.C.P. 16(b)(1)(IV), 26, 33, 121 § 1-12, and the cases construing those Rules.

(b) These interrogatories do not change existing law relating to interrogatories nor do they affect an answering party's right to assert any privilege or objection.

Section 2. Instructions to the Asking Party

(a) These interrogatories are designed for optional use in district courts only.

(b) Check the box next to each interrogatory that you want the answering party to answer. Use care in choosing those interrogatories that are applicable to the case.

(c) The interrogatories in section 16.0, Defendant's Contentions - Personal Injury, should not be used until the defendant has had a reasonable opportunity to conduct an investigation or discovery of plaintiff's injuries and damages.

(d) Subject to the limitations in C.R.C.P. 16(b)(1)(IV) and 33, additional interrogatories may be attached.

Section 3. Instructions to the Answering Party

(a) An answer or other appropriate response must be given to each interrogatory checked by the asking party.

(b) As a general rule, within 30 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. See C.R.C.P. 33 for details.

(c) Each answer must be as complete and straightforward as the information reasonably available to you permits. If an interrogatory cannot be answered completely, answer it to the extent possible.

(d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.

(e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.

(f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.

(g) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers: "I declare under penalty of perjury under the laws of the State of Colorado that the foregoing answers are true and correct."

(DATE)_____ (SIGNATURE)_____

Section 4. Definitions

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

(a) **INCIDENT** includes the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding.

(b) **YOU OR ANYONE ACTING ON YOUR BEHALF** includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

(c) **PERSON** includes a natural person, firm, association, organization, partnership, business, trust, corporation, or public entity.

(d) **DOCUMENT** means a writing, as defined in CRE 1001 and includes the original or a copy of handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

(e) **HEALTH CARE PROVIDER** includes any **PERSON** or entity referred to as a "Health Care Professional" or "Health Care Institution" in C.R.S. § 13-64-202(3) and (4).

(f) **ADDRESS** means the street address, including the city, state, and zip code.

Section 5. Interrogatories

The following interrogatories have been approved by the Colorado Supreme Court under C.R.C.P. 16(b)(1)(IV), 26, and 33(e):

CONTENTS

1.0 Identity of Persons Answering These Interrogatories
2.0 General Background Information - Individual
3.0 General Background Information - Business Entity
4.0 Insurance
5.0 *(Reserved)*
6.0 Physical, Mental, or Emotional Injuries
7.0 Property Damage
8.0 Loss of Income or Earning Capacity\
9.0 Other Damages
10.0 Medical History
11.0 Other Claims and Previous Claims
12.0 Investigation - General
13.0 Investigation - Surveillance
14.0 Statutory or Regulatory Violations
15.0 Affirmative Defenses
16.0 Defendant's Contentions - Personal Injury
17.0 Responses to Request for Admissions
18.0 *(Reserved)*
19.0 *(Reserved)*
20.0 How the Incident Occurred - Motor Vehicle
25.0 *(Reserved)*
30.0 *(Reserved)*
40.0 *(Reserved)*
50.0 Contract
60.0 *(Reserved)*

1.0 Identity of Persons Answering These Interrogatories

☐ 1.1 State the name, **ADDRESS**, telephone number, and relationship to you of each PERSON who prepared or assisted in the preparation of the responses to these interrogatories. (Do not identify anyone who simply typed or reproduced the responses.)

2.0 General Background Information - Individual

☐ 2.1 State:
(a) your name;
(b) every name you have used in the past;
(c) the dates you used each name.

☐ 2.2 State the date and place of your birth.

☐ 2.3 At the time of the **INCIDENT**, did you have a driver's license?
If so, state:
(a) the state or other issuing entity;
(b) the license number and type;
(c) the date of issuance;
(d) all restrictions.

☐ 2.4 At the time of the **INCIDENT**, did you have any other permit or license for the operation of a motor vehicle?
If so, state:
(a) the state or other issuing entity;
(b) the license number and type;
(c) the date of issuance;
(d) all restrictions.

☐ 2.5 State:
(a) your present residence **ADDRESS**;
(b) your residence **ADDRESSES** for the last five years;
(c) the dates you lived at each **ADDRESS**.

☐ 2.6 State:
(a) the name, **ADDRESS**, and telephone number of your present employer or place of self-employment;
(b) the name, **ADDRESS**, dates of employment, job title, and nature of work for each employer or self-employment you have had from five years before the **INCIDENT** until today.

☐ 2.7 State:
(a) the name and **ADDRESS** of each school or other academic or vocational institution you have attended beginning with high school;
(b) the dates you attended;
(c) the highest grade level you have completed;
(d) the degrees received.

☐ 2.8 Have you ever been convicted of a felony?
If so, for each conviction state:

(a) the city and state where you were convicted;
(b) the date of conviction;
(c) the offense;
(d) the court and case number.

☐ 2.9 Can you speak English with ease?
If not, what language and dialect do you normally use?

☐ 2.10 Can you read and write English with ease?
If not, what language and dialect do you normally use?

☐ 2.11 At the time of the **INCIDENT**, were you acting as an agent or employee for any **PERSON**?
If so, state:
(a) the name, **ADDRESS**, and telephone number of that **PERSON**;
(b) a description of your duties.

☐ 2.12 At the time of the **INCIDENT**, did you or any other person have any physical, emotional, or mental disability or condition that may have contributed to the occurrence of the **INCIDENT**?
If so, for each person state:
(a) the name, **ADDRESS**, and telephone number;
(b) the nature of the disability or condition;
(c) the manner in which the disability or condition contributed to the occurrence of the **INCIDENT**.

☐ 2.13 Within 24 hours before the **INCIDENT**, did you or any person involved in the **INCIDENT** use or take any of the following substances: alcoholic beverage, marijuana, or other drug or medication of any kind (prescription or not)?
If so, for each person state:
(a) the name, **ADDRESS**, and telephone number;
(b) the nature or description of each substance;
(c) the quantity of each substance used or taken;
(d) the date and time of day when each substance was used or taken;
(e) the **ADDRESS** where each substance was used or taken;
(f) the name, **ADDRESS**, and telephone number of each person who was present when each substance was used or taken;
(g) the name, **ADDRESS**, and telephone number of any **HEALTH CARE PROVIDER** that prescribed or furnished the substance and the condition for which it was prescribed or furnished.

3.0 General Background Information - Business Entity

☐ 3.1 Are you a corporation?
If so, state:
(a) the name stated in the current articles of incorporation;
(b) all other names used by the corporation during the past ten years and the dates each was used;
(c) the date and place of incorporation;
(d) the **ADDRESS** of the corporation's principal place of business;
(e) whether you are qualified to do business in Colorado.

☐ 3.2 Are you a partnership?
If so, state:
(a) the current partnership name;
(b) all other names used by the partnership during the past ten years and the dates each was used;
(c) whether you are a limited partnership and, if so, under the laws of what jurisdiction;
(d) the name and **ADDRESS** of each general partner;
(e) the **ADDRESS** of the partnership's principal place of business.

☐ 3.3 Are you a joint venture?
If so, state:
(a) the current joint venture name;
(b) all other names used by the joint venture during the past ten years and the dates each was used;
(c) the name and **ADDRESS** of each joint venturer,
(d) the **ADDRESS** of the joint venturer's principal place of business.

☐ 3.4 Are you an unincorporated association?
If so, state:
(a) the current unincorporated association's name;
(b) all other names used by the unincorporated association during the past ten years and the dates each was used;
(c) the **ADDRESS** of the association's principal place of business.

☐ 3.5 Have you done business under a fictitious name during the past ten years?
If so, for each fictitious name state:
(a) the name;
(b) the dates the name was used;
(c) the state and county of each fictitious name filing;
(d) the **ADDRESS** of your principal place of business.

☐ 3.6 Within the past five years, has any public entity registered or licensed your businesses?

If so, for each license or registration:
(a) identify the license or registration;
(b) state the name of the public entity;
(c) state the dates of issuance and expiration.

4.0 Insurance

☐ 4.1 At the time of the **INCIDENT**, was there in effect any policy of insurance through which you were or might be insured in any manner (for example, primary, pro rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the **INCIDENT**?

If so, for each policy state:
(a) the kind of coverage;
(b) the name and **ADDRESS** of the insurance company;
(c) the name, **ADDRESS**, and telephone number of each named insured;
(d) the policy number;
(e) the limits of coverage for each type of coverage contained in the policy;
(f) whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company;
(g) the name, **ADDRESS**, and telephone number of the custodian of the policy.

☐ 4.2 Are you self-insured under any statute for the damages, claims, or actions that have arisen out of the **INCIDENT**?

If so, specify the statute.

5.0 (Reserved)

6.0 Physical, Mental, or Emotional Injuries

☐ 6.1 Do you attribute any physical, mental, or emotional injuries to the **INCIDENT**.

If your answer is "no," do not answer interrogatories 6.2 through 6.7.

☐ 6.2 Identify each injury you attribute to the **INCIDENT** and the area of your body affected.

☐ 6.3 Do you still have any complaints that you attribute to the **INCIDENT**?

If so, for each complaint state:
(a) a description;
(b) whether the complaint is subsiding, remaining the same, or becoming worse;
(c) the frequency and duration.

☐ 6.4 Did you receive any consultation or examination (except from expert witnesses

covered by C.R.C.P. 35 or treatment from a **HEALTH CARE PROVIDER** for any injury you attribute to the **INCIDENT**?

If so, for each **HEALTH CARE PROVIDER** state:

(a) the name, **ADDRESS**, and telephone number;
(b) the type of consultation, examination, or treatment provided;
(c) the dates you received consultation, examination, or treatment;
(d) the charges to date.

☐ 6.5 Have you taken any medication, prescribed or not, as a result of injuries that you attribute to the **INCIDENT**?

If so, for each medication state:

(a) the name;
(b) the **PERSON** who prescribed or furnished it;
(c) the date prescribed or furnished;
(d) the dates you began and stopped taking it;
(e) the cost to date.

☐ 6.6 Are there any other medical services not previously listed (for example, ambulance, nursing, prosthetics)?

If so, for each service state:

(a) the nature;
(b) the date;
(c) the cost;
(d) the name, **ADDRESS**, and telephone number of each provider.

☐ 6.7 Has any **HEALTH CARE PROVIDER** advised that you may require future or additional treatment for any injuries that you attribute to the **INCIDENT**?

If so, for each injury state:

(a) the name and **ADDRESS** of each **HEALTH CARE PROVIDER**;
(b) the complaints for which the treatment was advised;
(c) the nature, duration, and estimated cost of the treatment.

7.0 Property Damage

☐ 7.1 Do you attribute any loss of or damage to a vehicle or other property to the **INCIDENT**?

If so, for each item of property:

(a) describe the property;
(b) describe the nature and location of the damage to the property;
(c) state the amount of damage you are claiming for each item of property and how the amount was calculated;
(d) if the property was sold, state the name, **ADDRESS**, and telephone number of the seller, the date of sale, and the sale price.

☐ 7.2 Has a written estimate or evaluation been made for any item of property referred to in your answer to interrogatory 7.1?

If so, for each estimate or evaluation state:

(a) the name, **ADDRESS**, and telephone number of the **PERSON** who prepared it and the date prepared;

(b) the name, **ADDRESS**, and telephone number of each **PERSON** who has a copy;

(c) the amount of damage stated.

☐ 7.3 Has any item of property referred to in your answer to interrogatory 7.1 been repaired?

If so, for each item state:

(a) the date repaired;

(b) a description of the repair;

(c) the repair cost;

(d) the name, **ADDRESS**, and telephone number of the **PERSON** who repaired it;

(e) the name, **ADDRESS**, and telephone number of the **PERSON** who paid for the repair.

8.0 Loss of Income or Earning Capacity

☐ 8.1 Do you attribute any loss of income or earning capacity to the **INCIDENT**? If your answer is "no," do not answer interrogatories 8.2 through 8.8.

☐ 8.2 State:

(a) the nature of your work;

(b) your job title at the time of the **INCIDENT**;

(c) the date your employment began.

☐ 8.3 State the last date before the **INCIDENT** that you worked for compensation.

☐ 8.4 State your monthly income at the time of the **INCIDENT** and how the amount was calculated.

☐ 8.5 State the date you returned to work at each place of employment following the **INCIDENT**.

☐ 8.6 State the dates you did not work and for which you lost income.

☐ 8.7 State the total income you have lost to date as a result of the INCIDENT and how the amount was calculated.

☐ 8.8 Will you lose income in the future as a result of the INCIDENT?

If so, state:

(a) the facts upon which you base this contention;

(b) an estimate of the amount;

(c) an estimate of how long you will be unable to work;

(d) how the claim for future income is calculated.

9.0 Other Damages

☐ 9.1 Are there any other damages that you attribute to the **INCIDENT**?

If so, for each item of damage state:

(a) the nature;

(b) the date it occurred;

(c) the amount;

(d) the name, **ADDRESS**, and telephone number of each **PERSON** to whom an obligation was incurred.

☐ 9.2 Do any **DOCUMENTS** support the existence or amount of any item of damages claimed in interrogatory 9.1?

If so, state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

10.0 Medical History

☐ 10.1 At any time before the **INCIDENT**, did you have complaints or injuries that involved the same part of your body claimed to have been injured in the **INCIDENT**?

If so, for each state:

(a) a description;

(b) the dates it began and ended;

(c) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER** whom you consulted or who examined or treated you.

☐ 10.2 List all physical, mental, and emotional disabilities you had immediately before the **INCIDENT**. (You may omit mental or emotional disabilities unless you attribute any mental or emotional injury to the **INCIDENT**.)

☐ 10.3 At any time after the **INCIDENT**, did you sustain injuries of the kind for which you are now claiming damages.

If so, for each incident state:

(a) the date and the place it occurred;

(b) the name, **ADDRESS**, and telephone number of any other **PERSON** involved;

(c) the nature of any injuries you sustained;

(d) the name, *ADDRESS*, and telephone number of each **HEALTH CARE PROVIDER** that you consulted or who examined or treated you; (e)the nature of the treatment and its duration.

11.0 Other Claims and Previous Claims

☐ 11.1 Except for this action, in the last ten years have you filed an action or made a written claim or demand for compensation for personal injuries?

If so, for each action, claim, or demand state:

(a) the date, time, and place and location of the **INCIDENT** (closest street **ADDRESS** or intersection);
(b) the name, **ADDRESS**, and telephone number of each **PERSON** against whom the claim was made or action filed;
(c) the court, names of the parties, and case number of any action filed;
(d) the name, **ADDRESS**, and telephone number of any attorney representing you;
(e) whether the claim or action has been resolved or is pending.

☐ 11.2 In the last ten years have you made a written claim or demand for workers' compensation benefits?

If so, for each claim or demand state:

(a) the date, time, and place of the **INCIDENT** giving rise to the claim;
(b) the name, **ADDRESS**, and telephone number of your employer at the time of the injury;
(c) the name, **ADDRESS**, and telephone number of the workers' compensation insurer and the claim number;
(d) the period of time during which you received workers' compensation benefits;
(e) a description of the injury;
(f) the name, **ADDRESS**, and telephone number of any **HEALTH CARE PROVIDER** that provided services;
(g) the case number of the workers' compensation claim.

12.0 Investigation - General

☐ 12.1 State the name, **ADDRESS**, and telephone number of each individual:

(a) who witnessed the **INCIDENT** or the events occurring immediately before or after the **INCIDENT**;
(b) who made any statement at the scene of the **INCIDENT**;
(c) who heard any statements made about the **INCIDENT** by any individual at the scene;
(d) who **YOU OR ANYONE ACTING ON YOUR BEHALF** claims to have knowledge of the **INCIDENT** (except for expert witnesses covered by C.R.C.P. 26(a)(2) and (b)(4)).

☐ 12.2 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** interviewed any individual concerning the **INCIDENT**?

If so, for each individual state:

(a) the name, **ADDRESS**, and telephone number of the individual interviewed;

(b) the date of the interview;

(c) the name, **ADDRESS**, and telephone number of the **PERSON** who conducted the interview.

☐ 12.3 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** obtained a written or recorded statement from any individual concerning the incident?

If so, for each statement state:

(a) the name, **ADDRESS**, and telephone number of the individual from whom the statement was obtained;

(b) the name, **ADDRESS**, and telephone number of the individual who obtained the statement;

(c) the date the statement was obtained;

(d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original statement or a copy.

☐ 12.4 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any photographs, films, or videotapes depicting any place, object, or individual concerning the **INCIDENT** or plaintiff's injuries?

If so, state:

(a) the number of photographs or feet of film or videotape;

(b) the places, objects, or persons photographed, filmed, or videotaped;

(c) the date the photographs, films, or videotapes were taken;

(d) the name, **ADDRESS**, and telephone number of the individual taking the photographs, films, or videotapes;

(e) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy.

☐ 12.5 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** know of any diagram, reproduction, or model of any place or thing (except for items developed by expert witnesses covered by C.R.C.P. 26(a)(2) and (b)(4)) concerning the **INCIDENT**?

If so, for each item state:

(a) the type (i.e., diagram, reproduction, or model);

(b) the subject matter;

(c) the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

☐ 12.6 Was a report made by any **PERSON** concerning the **INCIDENT**?

If so, state:

(a) the name, title, identification number, and employer of the **PERSON** who

made the report;
(b) the date and type of report made;
(c) the name, **ADDRESS**, and telephone number of the **PERSON** for whom the report was made.

☐ 12.7 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** inspected the scene of the **INCIDENT**?

If so, for each inspection state:
(a) the name, **ADDRESS**, and telephone number of the individual making the inspection (except for expert witnesses covered by C.R.C.P. 26(a)(2) and (b)(4)).
(b) the date of the inspection.

13.0 Investigation - Surveillance

☐ 13.1 Have **YOU OR ANYONE ACTING ON YOUR BEHALF** conducted surveillance of any individual involved in the **INCIDENT** or any party to this action?

If so, for each surveillance state:
(a) the name, **ADDRESS**, and telephone number of the individual or party;
(b) the time, date, and place of the surveillance;
(c) the name, **ADDRESS** and telephone number of the individual who conducted the surveillance.

☐ 13.2 Has a written report been prepared on the surveillance?

If so, for each written report state:
(a) the time;
(b) the date;
(c) the name, **ADDRESS**, and telephone number of the individual who prepared the report;
(d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy.

14.0 Statutory or Regulatory Violations

☐ 14.1 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** contend that any **PERSON** involved in the **INCIDENT** violated any statute, ordinance, or regulation and that the violation was a legal (proximate) cause of the **INCIDENT**?

If so, identify each **PERSON** and the statute, ordinance, or regulation.

☐ 14.2 Was any **PERSON** cited or charged with a violation of any statute, ordinance, or regulation as a result of this **INCIDENT**?

If so, for each PERSON state:

(a) the name, **ADDRESS**, and telephone number of the **PERSON**;

(b) the statute, ordinance, or regulation allegedly violated;

(c) whether the **PERSON** entered a plea in response to the citation or charge and, if so, the plea entered;

(d) the name and **ADDRESS** of the court or administrative agency, names of the parties, and case number.

15.0 Affirmative Defenses

☐ 15.1 Identify each denial of a material allegation and each affirmative defense in your pleadings and for each:

(a) state all facts upon which you base the denial or affirmative defense;

(b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts;

(c) identify all **DOCUMENTS** and other tangible things which support your denial or affirmative defense, and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

16.0 Defendant's Contentions - Personal Injury

[See Instructions Section 2(c)]

☐ 16.1 Do you contend that any **PERSON**, other than you or plaintiff, contributed to the occurrence of the **INCIDENT** or the injuries or damages claimed by plaintiff?

If so, for each **PERSON**:

(a) state the name, **ADDRESS**, and telephone number of the **PERSON**;

(b) state all facts upon which you base your contention;

(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts;

(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☐ 16.2 Do you contend that plaintiff was not injured in the **INCIDENT**?

If so:

(a) state all facts upon which you base your contention;

(b) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts;

(c) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☐ 16.3 Do you contend that the injuries or the extent of the injuries claimed by plaintiff as disclosed in discovery proceedings thus far in this case were not caused by the **INCIDENT**?

If so, for each injury:

(a) identify it;

(b) state all facts upon which you base your contention;

(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts;

(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**. and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☐ 16.4 Do you contend that any of the services furnished by any **HEALTH CARE PROVIDER** claimed by plaintiff in discovery proceedings thus far in this case were not due to the **INCIDENT**?

If so:

(a) identify each service;

(b) state all facts upon which you base your contention;

(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts;

(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**. and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☐ 16.5 Do you contend that any of the costs of services furnished by any **HEALTH CARE PROVIDER** claimed as damages by plaintiff in discovery proceedings thus far in this case were unreasonable?

If so:

(a) identify each cost;

(b) state all facts upon which you base your contention;

(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts;

(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☐ 16.6 Do you contend that any part of the loss of earnings or income claimed by plaintiff in discovery proceedings thus far in this case was unreasonable or was not caused by the **INCIDENT**?

If so:

(a) identify each part of the loss;

(b) state all facts upon which you base your contention;

(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who

have knowledge of the facts;

(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☐ 16.7 Do you contend that any of the property damage claimed by plaintiff in discovery proceedings thus far in this case was not caused by the **INCIDENT**?

If so:

(a) identify each item of property damage;

(b) state all facts upon which you base your contention;

(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts;

(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☐ 16.8 Do you contend that any of the costs of repairing the property damage claimed by plaintiff in discovery proceedings thus far in this case were unreasonable?

If so:

(a) identify each cost item;

(b) state all facts upon which you base your contention;

(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts;

(d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

☐16.9 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** (for example, insurance bureau index reports) concerning claims for personal injuries made before or after the **INCIDENT** by a plaintiff in this case?

If so, for each plaintiff state:

(a) the source of each **DOCUMENT**;

(b) the date of each claim arose;

(c) the nature of each claim;

(d) the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

☐ 16.10 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** concerning the past or present physical, mental, or emotional condition of any plaintiff in this case from a **HEALTH CARE PROVIDER** not previously identified (except for expert witnesses covered by C.R.C.P. 26(a)(2) and (b)(4))?

If so, for each plaintiff state:

(a) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER**;

(b) a description of each **DOCUMENT**;

(c) the name, ADDRESS, and telephone number of the **PERSON** who has each **DOCUMENT**.

17.0 Responses to Request for Admissions

☐ 17.1 Is your response to each request for admission served with these interrogatories an unqualified admission?

If not, for each response that is not an unqualified admission:

(a) state the number of the request;

(b) state all facts upon which you base your response;

(c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts;

(d) identify all **DOCUMENTS** and other tangible things that support your response and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

18.0 (Reserved)

19.0 (Reserved)

20.0 How the Incident Occurred - Motor Vehicle

☐ 20.1 State the date, time, and place (closest street address, intersection, or highway) of the **INCIDENT**.

☐ 20.2 For each vehicle involved in the **INCIDENT**, state:

(a) the year, make, model, and license number;

(b) the name, **ADDRESS**, and telephone number of the driver;

(c) the name, **ADDRESS**, and telephone number of each occupant other than the driver;

(d) the name, **ADDRESS**, and telephone number of each registered owner;

(e) the name, **ADDRESS**, and telephone number of each lessee;

(f) the name, **ADDRESS**, and telephone number of each owner other than the registered owner or lien holder;

(g) the name of each owner who gave permission or consent to the driver to operate the vehicle.

☐ 20.3 State the **ADDRESS** and location where your trip began, and the **ADDRESS** and location of your destination.

☐ 20.4 Describe the route that you followed from the beginning of your trip to the location of the **INCIDENT**, and state the location of each stop, other than routine traffic stops, during the trip leading up to the **INCIDENT**.

☐ 20.5 State the name of the street or roadway, the lane of travel, and the direction of travel of each vehicle involved in the **INCIDENT** for the 500 feet of travel before the **INCIDENT**.

☐ 20.6 Did the **INCIDENT** occur at an intersection?
If so, describe all traffic control devices, signals, or signs at the intersection.

☐ 20.7 Was there a traffic signal facing you at the time of the **INCIDENT**?
If so, state:
(a) your location when you first saw it;
(b) the color;
(c) the number of seconds it had been that color;
(d) whether the color changed between the time you first saw it and the **INCIDENT**.

☐ 20.8 State how the **INCIDENT** occurred, giving the speed, direction, and location of each vehicle involved:
(a) just before the **INCIDENT**;
(b) at the time of the **INCIDENT**;
(c) just after the **INCIDENT**.

☐ 20.9 Do you have information that a malfunction or defect in a vehicle caused the **INCIDENT**?
If so:
(a) identify the vehicle;
(b) identify each malfunction or defect;
(c) state the name, **ADDRESS**, and telephone number of each **PERSON** who is a witness to or has information about each malfunction or defect;
(d) state the name, A**DDRESS**, and telephone number of each **PERSON** who has custody of each defective part.

☐ 20.10 Do you have information that any malfunction or defect in a vehicle contributed to the injuries sustained in the INCIDENT?
If so:
(a) identify the vehicle;
(b) identify each malfunction or defect;
(c) state the name, **ADDRESS**, and telephone number of each **PERSON** who is a witness to or has information about each malfunction or defect;
(d) state the name, **ADDRESS**, and telephone number of each **PERSON** who has

custody of each defective part.

☐ 20.11 State the name, **ADDRESS**, and telephone number of each owner and each **PERSON** who has had possession since the **INCIDENT** of each vehicle involved in the **INCIDENT**.

25.0 (Reserved)

30.0 (Reserved)

40.0 (Reserved)

50.0 Contract

☐ 50.1 For each agreement alleged in the pleadings:

(a) identify all **DOCUMENTS** that are part of the agreement and for each state the name, ADDRESS, and telephone number of each **PERSON** who has the **DOCUMENT**;

(b) state each part of the agreement not in writing, the name, **ADDRESS**, and telephone number of each **PERSON** agreeing to that provision, and the date that part of the agreement was made;

(c) identify all **DOCUMENTS** that evidence each part of the agreement not in writing and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;

(d) identify all **DOCUMENTS** that are part of each modification to the agreement, and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;

(e) state each modification not in writing, the date, and the name, **ADDRESS**, and telephone number of each **PERSON** agreeing to the modification, and the date the modification was made;

(f) identify all **DOCUMENTS** that evidence each modification of the agreement not in writing and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**.

☐ 50.2 Was there a breach of any agreement alleged in the pleadings?
If so, for each breach describe and give the date of every act or omission that you claim is the breach of the agreement.

☐ 50.3 Was performance of any agreement alleged in the pleadings excused?
If so, identify each agreement excused and state why performance was excused.

☐ 50.4 Was any agreement alleged in the pleadings terminated by mutual agreement, release, accord and satisfaction, or novation?

If so, identify each agreement terminated and state why it was terminated including dates.

☐ 50.5 Is any agreement alleged in the pleadings unenforceable?
If so, identify each unenforceable agreement and state why it is unenforceable.

☐ 50.6 Is any agreement alleged in the pleadings ambiguous?
If so, identify each ambiguous agreement and state why it is ambiguous.

60.0 (Reserved)

Form 20.2.
PATTERN INTERROGATORIES
(DOMESTIC RELATIONS)

Repealed September 30, 2004, effective for Domestic Relations Cases as defined in 16.2(a) filed on or after January 1, 2005, and for post-decree motions filed on or after January 1, 2005.

Form 21.
REQUESTS FOR ADMISSION UNDER RULE 36

[Moved - See Form 21B]

Form 21A.
MOTION FOR PRODUCTION OF DOCUMENTS, ETC., UNDER RULE 34

Plaintiff A.B. requests pursuant to C.R.C.P. 34 that defendant C.D.

1. Produce and permit plaintiff to inspect and to copy each of the following documents:
(Here list the documents individually or by category and describe each of them.)
(Here state the time, place, and manner of making the inspection and performance of any related acts.)

2. Produce and permit plaintiff to inspect and to copy, test, or sample each of the following objects:
(Here list the objects either individually or by category and describe each of them.)
(Here state the time, place, and manner of making the inspection and performance of any related acts.)

3. Permit plaintiff to enter (here describe property to be entered) and to inspect and to photograph, test or sample (here describe the portion of the real property and the objects to be inspected.)

Defendant C. D. has the possession, custody, or control of each of the foregoing documents and objects and of the above-mentioned real estate. Each of them constitutes or contains evidence relevant and material to a matter involved in this action, as is more fully shown in Exhibit A hereto attached.

Signed: _____
Attorney for Plaintiff.

Form 21B.
REQUEST FOR ADMISSION UNDER RULE 36

Plaintiff A.B. requests pursuant to C.R.C.P. 36 that defendant C.D. admit:

1. That each of the following documents, exhibited with this request, is genuine.
(Here list the documents and describe each document.)
2. That each of the following statements is true.
(Here list the statements.)

Signed: _____
Attorney for Plaintiff.

Form 21.2.
PATTERN REQUESTS FOR PRODUCTION OF DOCUMENTS (DOMESTIC RELATIONS)

Repealed September 30, 2004, effective for Domestic Relations Cases as defined in 16.2(a) filed on or after January 1, 2005, and for post-decree motions filed on or after January 1, 2005.

Form 22.
ALLEGATION OF REASON FOR OMITTING PARTY

When it is necessary, under Rule 19 (c), for the pleader to set forth in his pleading the names of persons who ought to be made parties, but who are not so made, there should be an allegation such as the one set out below:

John Doe named in this complaint is not made a party to this action (because he is not subject to the jurisdiction of this court) or (for reasons stated).

Form 23.
AFFIDAVIT, WRIT OF GARNISHMENT AND INTERROGATORIES (RULE 103)

Repealed November 5, 1984, effective January 1, 1985.

Form 24.
WRIT OF ASSISTANCE - PETITION FOR

[Insert caption A from page _____ with the following designation of parties]

Plaintiff:

v.

Defendant:

COMES NOW the Plaintiff, above-named, by and through its attorneys of record, and moves this Honorable Court issue a Writ of Assistance to the Sheriff of the County of , State of Colorado, enabling the Sheriff to call to his aid the powers of his County, in accordance with Rule 104 (h), in order that the Sheriff may execute the Writ of Replevin heretofore entered in the premises, and as grounds therefor, shows unto the Court:

That the property described in the Writ of Replevin is being concealed by the Defendant, or his agents; that the Sheriff has heretofore demanded the delivery of the property, and that despite such public demand the property has not been delivered.

Respectfully submitted:

_____
Attorney for the Plaintiff

Form 25.
REQUEST FOR PRODUCTION OF DOCUMENTS, ETC., UNDER RULE 34

[Moved to become Form 21A]

Form 26.
WRIT OF CONTINUING GARNISHMENT

☐County Court ☐District Court _____ County, Colorado Court Address: Plaintiff(s)/Petitioner(s): _____ v. Defendant(s)/Respondent(s): _____	▲ **COURT USE ONLY** ▲
Judgment Creditor's Attorney or Judgment Creditor (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom

WRIT OF CONTINUING GARNISHMENT

Judgment Debtor's name, last known address, other identifying information: _____

_____

1. Original or Revised Amount of Judgment Entered on _____ (date) for $_____

DATE SUIT WASCOMMENCED:
(Mark Appropriate Box)
☐Prior to May 1, 1991
☐On or After May 1, 1991

a. Effective Garnishment Period
- ☐ 90 days (Judgment entered prior to August 8, 2001)
- ☐ 180 days (Judgment entered on or after August 8, 2001)

2. Plus any Interest Due on Judgment (_____% per annum) $_____
3. Taxable Costs (including estimated cost of service of this Writ) $_____
4. Less any Amount Paid $_____
5. Principal Balance/Total Amount Due and Owing $_____

I affirm that I am authorized to act for the Judgment Creditor and this is a correct statement as of _____ (date).

Subscribed under oath before me on _____ (date)

_____
Notary Public or Deputy Clerk

My Commission Expires: _____

_____
Print Judgment Creditor's Name

Address: _____
_____

By: _____
Signature (Type Name, Title, Address and Phone)

WRIT OF CONTINUING GARNISHMENT

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County or to any person 18 years or older and who is not a party to this action:
You are directed to serve **TWO COPIES** of this Writ of Continuing Garnishment upon _____, Garnishee, with proper return of service to be made to the Court.

TO THE GARNISHEE: YOU ARE SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:

a. To answer the following questions under oath and mail your answers to the ☐Judgment Creditor named above ☐Judgment Creditor's Attorney or if the Judgment Creditor is not a licensed collection agency and has no attorney, to the ☐Clerk of the Court no less than 5 nor more than 10 days following the time you pay the Judgment Debtor for the first time following service of this Writ, or 40 days following service of this Writ upon you, whichever is less. **YOUR FAILURE TO ANSWER THIS WRIT OF CONTINUING GARNISHMENT MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.**

b. To pay any nonexempt earnings to the party designated in "e" below no less than 5 nor more than 10 days following each time you pay the Judgment Debtor during the effective Garnishment Period of this Writ and attach a copy of the Calculation of the Amount of Exempt Earnings used (the Calculation under "Questions to be Answered by Garnishee" should be used for the first pay period, and one of the multiple Calculation forms included with this Writ should be used for all subsequent pay periods).

c. To deliver a copy of this Writ, together with the Calculation of the Amount of Exempt Earnings and a blank Objection to Calculation of the Amount of Exempt Earnings form, the first time you pay the Judgment Debtor.

d. To deliver to the Judgment Debtor a copy of each subsequent Calculation of the Amount of Exempt Earnings each time you pay the Judgment Debtor for earnings subject to this Writ.

e. **MAKE CHECKS PAYABLE AND MAIL TO:** ☐Judgment Creditor named above; ☐Judgment Creditor's Attorney or if the Judgment Creditor is not a licensed collection agency and has no attorney; to the ☐Clerk of the _____ Court
Name: _____
Address: _____
PLEASE PUT THE CASE NUMBER (shown above) ON THE FRONT OF THE CHECK.

CLERK OF THE COURT By Deputy Clerk: _____

Date: _____

NOTICE TO GARNISHEE

a. This Writ applies to all nonexempt earnings owed or owing during the Effective Garnishment Period shown on Line 1a on the front of this Writ or until you have paid to the party, designated in paragraph "e" on the front of this Writ, the amount shown on Line 5 on the front of this Writ, whichever occurs first. **However, if you have already been served with a Writ of Continuing Garnishment for Child Support, this new Writ is effective for the Effective Garnishment Period after any prior Writ terminates.**

b. "**Earnings" includes all forms of compensation for Personal Services.** Also read "Notice to Judgment Debtor" below.

c. In no case may you withhold any amount greater than the amount on Line 5 on the front of this Writ.

QUESTIONS TO BE ANSWERED BY GARNISHEE

Judgment Debtor's Name: _____ **Case Number:** _____

The following questions MUST be answered by you under oath:

a. On the date and time this Writ of Continuing Garnishment was served upon you, did you owe or do you anticipate owing any of the following to the Judgment debtor within the Effective Garnishment Period shown on Line 1a on the front of this Writ? (Mark appropriate box(es)):

1. ☐ WAGES/SALARY/COMMISSIONS/BONUS/OTHER COMPENSATION FOR PERSONAL SERVICES (Earnings)

2. ☐ Health, Accident or Disability Insurance Funds or Payments

3. ☐ Pension or Retirement Benefits (for suits commenced prior to 5/1/91 ONLY - check front of Writ for date)

If you marked any box above, indicate how the Judgment debtor is paid: ☐weekly ☐bi-weekly ☐semi-monthly ☐monthly ☐other

The Judgment Debtor will be paid on the following dates during the Effective Garnishment Period shown on Line 1a (front of this Writ):

_____

b. Are you under one or more of the following writs of garnishment? (Mark appropriate box(es)):

4. ☐ Writ of Continuing Garnishment (Expected Termination Date: _____)

5. ☐Writ of Garnishment for Support (Expected Termination Date: _____)

c. If you marked Box 1 and you did NOT mark either Box 4 or 5, complete the Calculation below for the "First Pay Period" following receipt of this Writ. If you marked either Box 4 or 5, you must complete Calculations beginning with the first pay period following termination of the prior writ(s).

d. If you marked Box 2 or 3 and you did NOT mark either Box 4 or 5, complete the Calculation below for the "First Pay Period" following receipt of this Writ. If you marked either box 4 or 5, you must complete Calculations beginning with the first pay period following termination of the prior writ(s). However, there are a number of total exemptions, and you should seek legal advice about such exemptions. **If the earning are totally exempt, please mark box 6 below**:

6. ☐The earnings are totally exempt because: _____

CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS (First Pay Period)

Gross Earnings for the First Pay Period from _____ thru _____	$ _____
Less Deductions Required by Law (For Example, Withholding Taxes, FICA)	- $ _____
Disposable Earnings (Gross Earnings less Deductions)	= $ _____
Less Statutory Exemption (Use Exemption Chart Below)	- $ _____
Net Amount Subject to Garnishment	= $ _____
Less Wage/Income Assignment(s) During Pay Period (If Any)	- $ _____
Amount to be withheld and paid	= $ _____

EXEMPTION CHART ("Minimum Hourly Wage" means state or federal minimum wage, whichever is greater.)	**PAY PERIOD**	**AMOUNT EXEMPT IS THE GREATER OF:**
	Weekly	30 x Minimum Hourly Wage or 75% of Disposable Earnings
	Bi-weekly	60 x Minimum Hourly Wage or 75% of Disposable Earnings
	Semi-monthly	65 x Minimum Hourly Wage or 75% of Disposable Earnings
	Monthly	130 x Minimum Hourly Wage or 75% of Disposable Earnings

I certify that I am authorized to act for the Garnishee; that the above answers are true and correct; and that I have delivered a copy of this Writ, together with the Calculation of the Amount of Exempt Earnings and a blank Objection to Calculation of the Amount of Exempt Earnings form to the Judgment Debtor at the time earnings were paid for the "First Pay Period" (if earnings were paid).

Name of Garnishee (Print) _____
Address _____
Phone Number _____

Subscribed under affirmation or oath
before me on _____ (date)

_____
Notary Public/Deputy Clerk

My Commission Expires: _____

_____
Name of Person Answering (Print)

_____
Signature of Person Answering

NOTICE TO JUDGMENT DEBTOR

a. The Garnishee may only withhold nonexempt earnings from the amount due you, but in no event more than the amount on Line 5 on the front of this Writ, UNLESS YOUR EARNINGS ARE TOTALLY EXEMPT, in which case NO EARNINGS CAN BE WITHHELD. You may wish to contact a lawyer who can explain your rights.

b. If you disagree with the amount withheld, you must talk with the Garnishee within 5 days after being paid.

c. If you cannot settle the disagreement with the Garnishee, you may complete and file the attached Objection with the Clerk of the Court issuing this Writ within 10 days after being paid. YOU MUST USE THE FORM ATTACHED or a copy of it.

d. You are entitled to a court hearing on your written objection.

e. Your employer cannot fire you because your earnings have been garnished. If your employer discharges you in violation of your legal rights, you may, within 90 days, bring a civil action for the recovery of wages lost because you were fired and for an order requiring that you be reinstated. Damages will not exceed 6 weeks' wages and attorney fees.

RETURN OF SERVICE

Judgment Debtor's Name: _____ **Case Number:** _____

I certify that I am 18 years or older; that I am not a party to the action; and that I have served two copies of the Writ of Continuing Garnishment, together with a blank Objection to Calculation of the Amount of Exempt Earnings on _____ (name of party) in _____ (County) _____ (State) on _____ (date) _____ (time) at the following location:

_____

By (Check one):

☐ By handing it to a person identified to me as _____ (name of garnishee).

☐ By leaving it with _____ (Type or write name legibly), who is designated to receive service because of a legal relationship with _____ (name of garnishee) as provided for in C.R.C.P. 4(e).

☐ I attempted to serve _____ (name of garnishee) on _____ occasions but have not been able to locate him/her/it. Return to the Judgment Creditor is made on _____ (date).

☐ I attempted to leave it with _____ (name of person) who refused service.

☐ Private process server
☐ Sheriff, _____County
Fee $ _____ Mileage $ _____

_____
Signature of Process Server

_____
Name (Print or type)

Subscribed under affirmation or oath before me in the County of _____, State of _____, this _____ day of _____, 20 _____. **Note: Notarization is not required for service by a sheriff or deputy.**

My Commission Expires: _____

_____
Notary Public/Clerk

Form 27.
CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS

☐ County Court ☐ District Court _____ County, Colorado Court Address: _____ **Plaintiff(s)/Petitioner(s):** v. **Defendant(s)/Respondent(s):** _____ Garnishee's Attorney or Garnishee (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg.#:	▲ **COURT USE ONLY** ▲ Case Number: Division: Courtroom:

CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS

Gross Pay for ___ thru___	$___
Deductions Required by Law	- $___
Disposable Earnings	=$___
Less Statutory ExemptioN	- $___
Net Amount Subject to Garnishment	=$___
Less Wage/Income Assignment (If Any)	- $___
AMOUNT PAID	=$___

I affirm that I am authorized to act for the Garnishee, the above Calculation is true and correct, and I have delivered a copy of this Calculation to the Judgment Debtor at the time earnings were paid for the above period.

Date: _____ _____
Signature

MAIL WITH EACH CHECK
TO THE PARTY DESIGNATED IN PARAGRAPH 'e' ON
FRONT OF WRIT OF CONTINUING GARNISHMENT

Form 28.
OBJECTION TO CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS

☐ County Court ☐ District Court _____County, Colorado Court address: _____ Plaintiff(s):_____ v. Defendant(s):_____	▲ **COURT USE ONLY** ▲
Judgment Debtor's Attorney or Judgment Debtor (Name and Address): Phone Number: E-mail: FAX Number: Atty.Reg. #:	Case Number: Division Courtroom
OBJECTION TO CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS	

Instructions to Judgment Debtor: Use this form to object to the calculations of your exempt earnings.

Name: _____Phone Number: _____

Street Address: _____

Mailing Address, if different: _____

City: _____ State: _____ Zip Code: _____

1. I object to the Garnishee's Calculation of the Amount of Exempt Earnings because I believe that the correct calculation is:

Gross Earnings for My Pay Period from _____thru _____	$ _____
Less Deductions Required by Law (For Example, Withholding Taxes, FICA)	- $ _____
Disposable Earnings (Gross Earnings Less Deductions)	= $ _____
Less Statutory Exemption (Use Exemption Chart on Writ)	- $ _____
Net Amount Subject to Garnishment	= $ _____
Less Wage/Income Assignment(s) During Pay Period (If Any)	- $ _____
Amount which should be withheld	= $ _____

OR

2. The earnings garnished are pension or retirement benefits/deferred compensation/health, accident or disability insurance **and they are totally exempt because**:
_____

I understand that I must make a good faith effort to resolve my dispute with the Garnishee.

I ☐ **have** ☐ **have not** attempted to resolve this dispute with the Garnishee.

Name of Person I Talked to: _____

Position: _____ Phone Number: _____

Debtor's Notice to Garnishee: Even though I am filing this Objection, you are directed to send my nonexempt earnings to the Court at the address noted instead of to the party designated in paragraph "e" on the front of the Writ of Continuing Garnishment. The Court will hold my nonexempt earnings in its registry until my Objection is resolved.

I certify that the above is correct to the best of my knowledge and belief and that I sent a copy of this document by ☐certified mail (return receipt requested) to both the Garnishee and to the Judgment Creditor, or if the Judgment Creditor is represented by Counsel, ☐certified mail (return receipt requested) to the Judgment Creditor's Attorney or ☐E-Service to the Judgment Creditor's Attorney.

Garnishee

Address: _____

_____

Judgment Creditor or Attorney

Address: _____

_____

Subscribed under affirmation or oath
before me on _____(date)

_____
Signature of Judgment Debtor or
Judgment Debtor's Counsel and Reg. Number

My Commission Expires: _____

_____
Notary Public/Deputy Clerk

Form 29.
WRIT OF GARNISHMENT WITH NOTICE OF EXEMPTION AND PENDING LEVY

❑County Court ❑District Court _____ County, Colorado Court Address: Plaintiff(s)/Petitioner(s): v. Defendant(s)/Respondent(s):	▲ **COURT USE ONLY** ▲
Judgment Creditor's Attorney or Judgment Creditor (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom

WRIT OF GARNISHMENT WITH NOTICE OF EXEMPTION AND PENDING LEVY

Judgment Debtor's name, last known address, other identifying information: _____

_____

1. Original Amount of Judgment Entered _____(date) $ _____
2. Plus any Interest Due on Judgment (_____% per annum) + $_____
3. Taxable Costs (including estimated cost of service of this Writ) + $_____
4. Less any Amount Paid - $_____
5. Principal Balance/Total Amount Due and Owing = $_____

I affirm that I am authorized to act for the Judgment Creditor and this is a correct statement as of _____ (date).

Subscribed under oath before me on _____

_____
Notary Public or Deputy Clerk

My Commission Expires: _____

_____
Print Judgment Creditor's Name

Address: _____

_____

By: _____
Signature (Type Name, Title, Address and Phone No.)

WRIT OF GARNISHMENT WITH NOTICE OF EXEMPTION AND PENDING LEVY

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County, or to any person 18 years or older and who is not a party to this action:
You are directed to serve a copy of this Writ of Garnishment upon _____, Garnishee, with proper return of service to be made to the Court.

TO THE GARNISHEE:
YOU ARE HEREBY SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:

a. To answer the following questions under oath and file your answers with the Clerk of the Court (AND to mail a completed copy with your answers to the Judgment Creditor or attorney when a stamped envelope is attached) within 10 days following service of this Writ upon you. **YOUR FAILURE TO ANSWER THIS WRIT WITH NOTICE MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU**.

b. To hold pending court order the personal property of any kind (other than earnings of a natural person) in your possession or control, including the debts, credits, choses in action or money owed to the Judgment Debtor whether they are due at the time of the service of the writ or are to become due thereafter.

YOU ARE NOTIFIED:

a. This Writ with Notice applies to all personal property (other than earnings) owed to or owned by the Judgment Debtor and in your possession or control as of the date and time this Writ was served upon you.

b. In no case may you withhold any personal property greater than the amount on Line 5 on the front of this Writ unless the personal property is incapable of being divided.

c. If you are ordered to pay funds to the Court, tender your check for the amount ordered PAYABLE TO THE CLERK OF THE _____, COURT AT _____, COLORADO.

CLERK OF THE COURT By Deputy Clerk: _____

DATE: _____

QUESTIONS TO BE ANSWERED BY GARNISHEE

Judgment Debtor's Name: _____ **Case Number:** _____

The following questions MUST be answered by you under oath:

a. On the date and time this Writ was served upon you, did you possess or control any personal property of the Judgment Debtor or did you owe any rents, payments, obligations, debts or moneys other than earnings to the Judgment Debtor?

❑**YES** ❑**NO**

b. If **YES**, list all items of personal property and their location(s) and/or describe the nature and amount of the debt or obligation: (Attach additional pages if necessary): _____

_____

c. Do you claim any setoff against any property, debt or obligation listed above? ❑**YES** ❑**NO**

d. If you answered **YES** to question c, describe the nature and amount of the setoff claimed: (Attach additional pages if necessary): _____

_____

I affirm that I am authorized to act for the Garnishee and the above answers are true and correct.

Name of Garnishee (Print) _____

Subscribed under oath before me on _____ (date)

Address: _____

_____

_____

Phone Number _____

Notary Public/Deputy Clerk

My Commission Expires: _____

Name of Person Answering (Print) _____

Signature of Person Answering _____

NOTICE TO JUDGMENT DEBTOR OF EXEMPTION AND PENDING LEVY

This Writ with Notice is a Court order which may cause your property or money to be held and taken to pay a judgment entered against you. You have legal rights which may prevent all or part of your money or property from being taken. That part of the money or property which may not be taken is called "exempt property". A partial list of "exempt property" is shown below, along with the law which may make all or part of your money or property exempt. The purpose of this notice is to tell you about these rights.

PARTIAL LIST OF EXEMPT PROPERTY

1. All or part of your property listed in Sections 13-54-101 and 102, C.R.S., including clothing, jewelry, books, burial sites, household goods, food and fuel, farm animals, seed, tools, equipment and implements, military allowances, stock-in-trade and certain items used in your occupation, bicycles, motor vehicles (greater for disabled persons), life insurance, income tax refunds, including a refund attributed to an earned income tax credit or child tax credit, money received because of loss of property or for personal injury, equipment that you need because of your health, or money received because you were a victim of a crime.
2. All or part of your earnings under Section 13-54-104, C.R.S.
3. Worker's compensation benefits under Section 8-42-124, C.R.S.
4. Unemployment compensation benefits under Section 8-80-103, C.R.S.
5. Group life insurance benefits under Section 10-7-205, C.R.S.
6. Health insurance benefits under Section 10-16-212, C.R.S.
7. Fraternal society benefits under Section 10-14-403, C.R.S.
8. Family allowances under Section 15-11-404, C.R.S.
9. Teachers' retirement fund benefits under Section 22-64-120, C.R.S.
10. Public employees' retirement benefits (PERA) under Sections 24-51-212 and 24-54-111, C.R.S.
11. Social security benefits (OASDI, SSI) under 42 U.S.C. §407.
12. Railroad employee retirement benefits under 45 U.S.C. §231m.
13. Public assistance benefits (OAP, AFDC, TANF, AND, AB, LEAP) under Section 26-2-131, C.R.S.
14. Police Officer's and Firefighter's pension fund payments under Sections 31-30-1117 & 31-30.5-208 and 31-31-203, C.R.S.
15. Utility and security deposits under Section 13-54-102(1)(r), C.R.S.
16. Proceeds of the sale of homestead property under Section 38-41-207, C.R.S.
17. Veteran's Administration benefits under 38 U.S.C. §5301.
18. Civil service retirement benefits under 5 U.S.C. §8346.
19. Mobile homes and trailers under Section 38-41-201.6, C.R.S.
20. Certain retirement and pension funds and benefits under Section 13-54-102(1)(s), C.R.S.
21. A Court-ordered child support or maintenance obligation or payment under Section 13-54-102(1)(u), C.R.S.

22. Public or private disability benefits under Section 13-54-102(1)(v), C.R.S.

If the money or property which is being withheld from you includes any "exempt property", you must file within 10 days of receiving this notice a written Claim of Exemption with the Clerk of the Court describing what money or property you think is "exempt property" and the reason that it is exempt. YOU MUST USE THE APPROVED FORM attached to this Writ or a copy of it. When you file the claim, you must immediately deliver, by certified mail, return receipt requested, a copy of your claim to the Garnishee (person/place that was garnished) and to the Judgment Creditor's attorney, or if none, to the Judgment Creditor at the address shown on this Writ with Notice. Notwithstanding your right to claim the property as "exempt," no exemption other than the exemptions set forth in Section 13-54-104(3), C.R.S., may be claimed for a Writ which is the result of a judgment taken for arrearages for child support or for child support debt.

Once you have properly filed you claim, the court will schedule a hearing within 10 days. The Clerk of the Court will notify you and the Judgment Creditor or attorney of the date and time of the hearing, by telephone, by mail or in person.

When you come to your hearing, you should be ready to explain why you believe your money or property is "exempt property". If you do not appear at the scheduled time, your money or property may be taken by the Court to pay the judgment entered against you.

REMEMBER THAT THIS IS ONLY A PARTIAL LIST OF "EXEMPT PROPERTY"; you may wish to consult with a lawyer who can advise you of your rights. If you cannot afford one, there are listings of legal assistance and legal aid offices in the yellow pages of the telephone book.

You must act quickly to protect your rights. Remember, you only have 10 days after receiving this notice to file your claim of exemption with the Clerk of the Court.

RETURN OF SERVICE

Judgment Debtor's Name: _____ **Case Number:** _____

I declare under oath that I am 18 years or older and not a party to the action and have served a copy of this Writ of Garnishment on _____ (name of garnishee) in _____ (County) _____ (State) on _____ (date) _____ (time) at the following location:

_____

By (Check one):

- ❑ By handing it to a person identified to me as _____ (name of garnishee).
- ❑ By leaving it with _____ (Type or write name legibly), who is designated to receive service because of a legal relationship with _____ (name of garnishee) as provided for in C.R.C.P. 4(e).
- ❑ I attempted to serve _____ (name of garnishee) on _____ occasions but have not been able to locate him/her/it. Return to the Judgment Creditor is made on _____ (date).
- ❑ I attempted to leave it with _____ (name of person) who refused service.

- ❑ Private process server
- ❑ Sheriff, _____County
  Fee $ _____ Mileage $ _____

_____
Signature of Process Server

_____
Name (Print or type)

Subscribed and affirmed, or sworn to before me in the County of _____, State of _____, this _____ day of _____, 20 _____. **Note: Not required for service by a sheriff or deputy.**

My Commission Expires: _____

_____
Notary Public/Clerk

Form 30.
CLAIM OF EXEMPTION TO
WRIT OF GARNISHMENT WITH NOTICE

☐ County Court ☐ District Court _____County, Colorado Court Address: _____ Plaintiff(s)/Petitioner(s):_____ v. Defendant(s)/Respondent(s):_____	▲ **COURT USE ONLY** ▲
Judgment Debtor's Attorney or Judgment Debtor (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom
CLAIM OF EXEMPTION TO WRIT OF GARNISHMENT WITH NOTICE	

Instruction to Judgment Debtor: Use this form to claim your property is exempt from Garnishment.

Name: _____ Phone Number _____

Street Address: _____

Mailing Address, if different: _____

City:_____ State:_____ Zip Code:_____

I believe the following property is exempt:

Description of Property Being Held:_____

Value of Property Being Held: $ _____

Amount of Value I Claim is Exempt: $ _____

I claim the Property is Exempt because *(Please write the Exemption(s) listed in the Writ of Garnishment with Notice, if applicable):*

_____

_____

_____

I certify that the above is correct to the best of my knowledge and belief and that I sent a copy of this document by ☐ certified mail (return receipt requested) to both the Garnishee and to the Judgment Creditor, or if the Judgment Creditor is represented by Counsel, ☐ certified mail (return receipt requested) to the Judgment Creditor's Attorney or ☐ E-Service to the Judgment Creditor's Attorney.

The person/place that was garnished

Address: _____

_____

Judgment Creditor or Attorney

Address: _____

_____

Subscribed under affirmation or oath
before me on _____(date)

My commission expires: _____

_____

Notary Public/Deputy Clerk

_____

Signature of Judgment Debtor or
Judgment Debtor's Counsel and Reg. Number

Form 31.
WRIT OF GARNISHMENT FOR SUPPORT

❑District Court ❑Denver Juvenile Court _____County, Colorado Court Address: _____ In re ❑The Marriage of: ❑Parental responsibilities concerning: _____ Petitioner: and Co-Petitioner/Respondent:	▲ **COURT USE ONLY** ▲
Judgment Creditor's Attorney or Judgment Creditor (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom

WRIT OF GARNISHMENT FOR SUPPORT

Judgment Debtor's name, last known address, other identifying information: _____

_____

1. Original Amount of Judgment Entered _____ (date) $_____
2. Plus any Interest Due on Judgment (_____ % per annum) + $_____
3. Taxable Costs (including estimated cost of service of this Writ) + $_____
4. Less any Amount Paid - $_____
5. Principal Balance/Total Amount Due and Owing $_____

JUDGMENT FOR:
(Mark Appropriate Boxes)

❑Child Support ONLY
(Date of Order _____)

❑Maintenance ONLY

❑Child Support and Maintenance

❑Case commenced after 4/30/91

Mark the Appropriate Box Below to Determine the Amount of the Statutory Exemption (MARK ONLY ONE BOX)

❑The Judgment Debtor is supporting a spouse or a dependent child, and the judgment is for a period which is 12 weeks or older (Write "45" in the blank space on Line c, below).

❑The Judgment Debtor is supporting a spouse or dependent child, and the judgment is for a period which is less than 12 weeks old (Write "50" in the blank space on Line c, below).

❑The Judgment Debtor is not supporting a spouse or dependent child, and the judgment is for a period which is 12 weeks or older (Write "35" in the blank space on Line c, below).

❑The Judgment Debtor is not supporting a spouse or dependent child, and the judgment is for a period which is less than 12 weeks old (Write "40" in the blank space on Line c, below).

❑I do not know whether the Judgment Debtor is supporting a spouse or dependent child, but the judgment is for a period which is 12 weeks or older (Write "45" in the blank space on Line c, below).

❑I do not know whether the Judgment Debtor is supporting a spouse or dependent child, but the judgment is for a period which is less than 12 weeks old (Write "50" in the blank space on Line c, below).

I affirm that I am authorized to act for the Judgment Creditor and this is a correct statement as of _____ (date).

Subscribed under oath before me on _____

_____
Notary Public/ Deputy Clerk

My Commission Expires: _____

_____
Print Judgment Creditor's Name

Address: _____

_____

By: _____
Signature (Type Name, Title, Address and Phone)

WRIT OF GARNISHMENT FOR SUPPORT

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County, or to any person 18 years or older and who is not a party to this action:
You are directed to serve A COPY of this Writ of Garnishment for Support upon _____ Garnishee, with proper return of service to be made to the Court.

TO THE GARNISHEE:
YOU ARE HEREBY SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:

a. To answer the following questions under oath and file your answers with the Clerk of the Court (AND to mail a completed copy with your
answers to the Judgment Creditor or attorney when a stamped envelope is attached) no less than 5 nor more than 10 days following the time you pay the Judgment Debtor for the first time following service of this Writ, or 40 days following service of this Writ upon you, whichever is less. YOUR FAILURE TO ANSWER THIS WRIT OF GARNISHMENT FOR SUPPORT MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.

b. To pay any nonexempt earnings to the payee as indicated in section d below no less than 5 nor more than 10 days following each time you pay the Judgment Debtor during the effective period of this Writ and attach a copy of the Calculation of the Amount of Exempt Earnings used (the Calculation under "Questions to be Answered by Garnishee" should be used for the first pay period, and one of the multiple Calculation forms included with this Writ should be used for all subsequent pay periods).

c. The amount of the exemption is _____% of disposable earnings.

d. Payments shall be mailed to the:

❑ Family Support Registry
P. O. Box 2171
Denver, CO 80201-2171
Acct #: _____

❑ Judgment Creditor
_____
_____

CLERK OF THE COURT

By Deputy Clerk: _____

DATE: _____

NOTICE TO GARNISHEE

a. This Writ applies to all nonexempt earnings owed or owing until the Principal Balance/Total Amount Due and Owing (Line 5 on the front of this Writ) has been withheld or the garnishment is released by the court or in writing by the Judgment Creditor. If you are presently under a Writ of Continuing Garnishment or served with such Writ while this Writ of Garnishment for Support is in effect, this Writ takes priority over the other Writs, and this is the only one in force and effect.

b. "EARNINGS" INCLUDES ALL FORMS OF COMPENSATION FOR PERSONAL SERVICES.

c. The percentage of disposable earnings shown on Line c above is exempt from this Writ of Garnishment for Support.

d. In no case may you withhold any amount greater than the amount on Line 5 on the front of this Writ.

QUESTIONS TO BE ANSWERED BY GARNISHEE

Judgment Debtor's Name: _____ Case Number: _____

The following questions MUST be answered by you under oath:

a. On the date and time this Writ of Garnishment for Support was served upon you, did you owe or do you anticipate owing any of the following to the Judgment Debtor? (Mark appropriate box(es)).

1. ❑ WAGES/SALARY/COMMISSIONS/BONUS/OTHER COMPENSATION FOR PERSONAL SERVICES (Earnings)

2. ❑ Pension or Retirement Benefits or Health/Accident/Disability/Casualty Insurance Funds or Payments.

3. ❑ Workers' Compensation Benefits or Payments (For child support in cases filed after 4/30/91 ONLY)

4. ❑ Payments to an Independent Contractor for Labor or Services, Dividends, Severance Pay, Royalties, Monetary Gifts/Prizes, Interest, Trust Income, Annuities, Capital Gains, Rents, or Taxable Distributions from Certain Business Entities (For child support orders entered after 6/30/96 ONLY)
If you marked any box above, indicate how the Judgment Debtor is paid:
❑ WEEKLY ❑ BI-WEEKLY ❑ SEMI-MONTHLY ❑ MONTHLY ❑ OTHER

b. If you marked Box 1, complete the Calculation below for the "First Pay Period" following receipt of this Writ.

c. If you marked Box 2, 3 or 4, complete the Calculation below for the "First Pay Period" following receipt of this Writ; however, if the judgment includes maintenance (as indicated on the front of this Writ) the earnings may be totally exempt, and you should seek legal advice about such exemption. IF THE EARNINGS ARE TOTALLY EXEMPT, PLEASE MARK BOX 5 BELOW:

5. ❑THE EARNINGS ARE TOTALLY EXEMPT BECAUSE _____.

CALCULATION OF THE AMOUNT OF EXEMPT EARNINGS (First Pay Period)

Gross Earnings for the First Pay Period from _____ through _____	$_____
Plus Tips Reported or Imputed by Federal Law (Child Support Orders after 6/30/96)	+ $_____
Less Deductions Required by Law (e.g., Withholding Taxes, FICA)	- $_____
Disposable Earnings (Gross Earnings Plus Tips (where applicable) Less Deductions)	= $_____
Less Statutory Exemption (Use percentage shown on Line c in the Wirt portion above)	- $_____
Net Amount Subject to Garnishment	= $_____
Less Wage/Income Assignment(s) During Pay Period (If Any)	- $_____
Amount to be withheld	= $ _____

I affirm that I am authorized to act for the Garnishee and the above answers are true and correct.

Name of Garnishee (Print) _____

Subscribed under oath before me on _____ (date)

Address: _____

_____

Phone Number: _____

_____

Notary Public

Name of Person Answering (Print) _____

My Commission Expires: _____

Signature of Person Answering _____

RETURN OF SERVICE

Judgment Debtor's Name: _____ Case Number: _____

I declare under oath that I am 18 years or older and not a party to the action and have served a copy of this Writ of Garnishment for Support on _____ (name of party) in _____ (County) _____ (State) on _____ (date) _____ (time) at the following location:

_____

By (Check one):

- ❑ By handing it to a person identified to me as _____ (name of garnishee).
- ❑ By leaving it with _____ (Type or write name legibly), who is designated to receive service because of a legal relationship with _____(name of garnishee) as provided for in C.R.C.P. 4(e).
- ❑ I attempted to serve _____ (name of garnishee) on _____ occasions but have not been able to locate him/her/it. Return to the Judgment Creditor is made on _____ (date).
- ❑ I attempted to leave it with _____ (name of person) who refused service.

❑ Private process server

❑ Sheriff, _____County
Fee $ _____ Mileage $ _____

_____

Signature of Process Server

_____

Name (Print or type)

Subscribed and affirmed, or sworn to before me in the County of _____, State of _____, this _____ day of _____, 20 _____. **Note: Not required for service by a sheriff or deputy.**

My Commission Expires: _____

_____

Notary Public/Clerk

Form 32.
WRIT OF GARNISHMENT --
JUDGMENT DEBTOR OTHER THAN NATURAL PERSON

❑County Court ❑District Court _____County, Colorado Court Address: _____ Plaintiff(s)/Petitioner(s): v. Defendant(s)/Respondent(s):	▲ **COURT USE ONLY** ▲
Judgment Creditor's Attorney or Judgment Creditor (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom

WRIT OF GARNISHMENT – JUDGMENT DEBTOR OTHER THAN NATURAL PERSON

Judgment Debtor's name, last known address, other identifying information: _____
_____

1. Original Amount of Judgment Entered _____(date)	$ _____
2. Plus any Interest Due on Judgment (_____% per annum)	+ $_____
3. Taxable Costs (including estimated cost of service of this Writ)	+ $_____
4. Less any Amount Paid	- $_____
5. Principal Balance/Total Amount Due and Owing	= $_____

I affirm that I am authorized to act for the Judgment Creditor and this is a correct statement as of _____(date).

Subscribed under oath before me on _____ (date)

_____
Notary Public or Deputy Clerk

My Commission Expires: _____

_____
Print Judgment Creditor's Name

Address: _____

_____

By: _____
Signature (Type Name, Title, Address and Phone)

WRIT OF GARNISHMENT

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County, or to any person 18 years or older and who is not a party to this action:
You are directed to serve a copy of this Writ of Garnishment upon _____, Garnishee, with proper return of service to be made to the Court.

TO THE GARNISHEE:

YOU ARE HEREBY SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:

a. To answer the following questions under oath and file your answers with the Clerk of the Court (AND to mail a completed copy with your answer to the Judgment Creditor or attorney when a stamped envelope is attached) within 10 days following service of this Writ upon you. **YOUR FAILURE TO ANSWER THIS WRIT WITH NOTICE MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.**

b. To hold pending court order any personal property owed to or owned by the Judgment Debtor and in your possession or control on the date and time this Writ was served upon you.

YOU ARE NOTIFIED:

a. This Writ of Garnishment applies to all personal property owed to or owned by the Judgment Debtor and in your possession or control as of the date and time this Writ was served upon you.

b. In no case may you withhold any personal property greater than the amount on Line 5 on the front of this Writ unless the personal property is incapable of being divided.

c. If you are ordered to pay funds to the Court, tender your check for the amount ordered **PAYABLE TO THE CLERK OF THE** _____, **COURT AT** _____, COLORADO.

CLERK OF THE COURT

By Deputy Clerk: _____
Date: _____

QUESTIONS TO BE ANSWERED BY GARNISHEE

Judgment Debtor's Name: _____ Case Number: _____

The following questions MUST be answered by you under oath:

a. On the date and time this Writ was served upon you, did you possess or control any personal property of the Judgment Debtor or did you owe any rents, payments, obligations, debts or moneys to the Judgment Debtor?
❑**YES** ❑**NO**

b. If **YES,** list all items of personal property and their location(s) and/or describe the nature and amount of the debt or obligation: (Attach additional pages is necessary): _____

_____

_____

_____

c. Do you claim any setoff against any property, debt or obligation listed above?
❑**YES** ❑**NO**

d. If you answered **YES** to question c, describe the nature and amount of the setoff claimed:
(Attach additional pages if necessary): _____

_____

_____

_____

I affirm that I am authorized to act for the Garnishee and the above answers are true and correct.

Name of Garnishee (Print) _____

Subscribed under oath before me on _____ (date)

Address: _____

_____

Phone Number: _____

_____

_____
Notary Public

Name of Person Answering (Print) _____

My Commission Expires: _____

Signature of Person Answering _____

Judgment Debtor's Name: _____ **Case Number:** _____

RETURN OF SERVICE

I declare under oath that I am 18 years or older and not a party to the action and have served a copy of this Writ of Garnishment on _____ (name of party) in _____ (County) _____ (State) on _____ (date) _____ (time) at the following location:

_____

By (Check one):

- ❑ By handing it to a person identified to me as _____ (name of garnishee).
- ❑ By leaving it with _____ (Type or write name legibly), who is designated to receive service because of a legal relationship with _____ (name of garnishee) as provided for in C.R.C.P. 4(e).
- ❑ I attempted to serve _____ (name of garnishee) on _____ occasions but have not been able to locate him/her/it. Return to the Judgment Creditor is made on _____ (date).
- ❑ I attempted to leave it with _____ (name of person) who refused service.

❑ Private process server
❑ Sheriff, _____County
Fee $ _____ Mileage $ _____

_____
Signature of Process Server

_____
Name (Print or type)

Subscribed and affirmed, or sworn to before me in the County of _____, State of _____, this _____ day of _____, 20 _____. **Note: Not required for service by a sheriff or deputy.**

My Commission Expires: _____

_____
Notary Public/Clerk

Form 33.
WRIT OF GARNISHMENT
IN AID OF WRIT OF ATTACHMENT

❑County Court ❑District Court _____County, Colorado Court Address: _____ Plaintiff(s)/Petitioner(s): v. Defendant(s)/Respondent(s):	▲ **COURT USE ONLY** ▲
Attorney or Party without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom

WRIT OF GARNISHMENT IN AID OF WRIT OF ATTACHMENT

Defendant in Attachment's name, last known address, other identifying information: _____
_____

1.	Original Amount of Claim	$_____
2.	Plus any Interest Due on Claim (_____% per annum from _____(date))	+ $_____
3.	Taxable Costs (including estimated cost of service of this Writ)	+ $_____
4.	Less any Amount Paid	- $_____
5.	Principal Balance/Total Amount Due and Owing	= $_____

I affirm that I am authorized to act for the Plaintiff in Attachment and this is a true and correct statement as of _____ (date).

Subscribed under oath before me on _____ (date)

_____
Print Plaintiff in Attachment's Name

_____
Notary Public or Deputy Clerk

Address: _____

_____

My Commission Expires: _____

By: _____
Signature (Type Name, Title, Address and Phone)

WRIT OF GARNISHMENT

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County or to any person 18 years or older and not a party to this action:
You are directed to serve a copy of this Writ of Garnishment upon _____, Garnishee, with proper return of service to be made to the Court.

TO THE GARNISHEE:
YOU ARE HEREBY SUMMONED AS GARNISHEE IN THIS ACTION AND ORDERED:

a. To answer the following questions under oath and file your answers with the Clerk of the Court (**AND** to mail a completed copy with your answer to the Plaintiff in Attachment or attorney when a stamped envelope is attached) within 10 days following service of this Writ upon you. **YOUR FAILURE TO ANSWER THIS WRIT MAY RESULT IN THE ENTRY OF A DEFAULT AGAINST YOU.**

b. To hold pending court order any personal property (other than earnings of a natural person) owed to or owned by the Defendant in Attachment and in your possession or control on the date and time this Writ was served upon you.

YOU ARE NOTIFIED:

a. This Writ applies to all personal property (other than earnings of a natural person) owed to or owned by the Defendant in Attachment and in your possession or control as of the date and time this Writ was served upon you.

b. In no case may you withhold any personal property greater than the amount on Line 5 on the front of this Writ unless the personal property is incapable of being divided.

c. If you are ordered to pay funds to the Court, tender your check for the amount ordered **PAYABLE TO THE CLERK OF THE _____COURT AT _____, CO_____**

CLERK OF THE COURT

By Deputy Clerk: _____

Date: _____

QUESTIONS TO BE ANSWERED BY GARNISHEE

Defendant in Attachment's Name: _____ **Case Number:** _____

The following questions MUST be answered by you under oath:

a. On the date and time this Writ was served upon you, did you possess or control any personal property of the Defendant in Attachment or did you owe any rents, payments, obligations, debts or moneys other than earnings to the Defendant in Attachment? ❑**YES** ❑**NO**

b. If **YES to question a**, list all items of personal property and their location(s) and/or describe the nature and amount of the debt or obligation: (Attach additional pages if necessary): _____

_____

_____

_____

c. Do you claim any setoff against any property, debt or obligation listed above? ❑**YES** ❑**NO**

d. If you answered **YES** to question c, describe the nature and amount of the setoff claimed:

(Attach additional pages if necessary): _____

_____

_____

_____

I affirm that I am authorized to act for the Garnishee and the above answers are true and correct.

Name of Garnishee (Print) _____

Subscribed under oath before me on _____ (date)

Address: _____

_____

Phone Number: _____

_____

_____

Notary Public

Name of Person Answering (Print) _____

My Commission Expires: _____

Signature of Person Answering _____

RETURN OF SERVICE

Defendant in Attachment's Name: _____ **Case Number:** _____

I declare under oath that I am 18 years or older and not a party to the action and have served a copy of this Writ of Garnishment on _____ (name of party) in _____ (County) _____ (State) on _____ (date) _____ (time) at the following location:

_____

By (Check one):

❑ By handing it to a person identified to me as _____ (name of garnishee).

❑ By leaving it with _____ (Type or write name legibly), who is designated to receive service because of a legal relationship with _____ (name of garnishee) as provided for in C.R.C.P. 4(e).

❑ I attempted to serve _____ (name of garnishee) on _____ occasions but have not been able to locate him/her/it. Return to the Judgment Creditor is made on _____ (date).

❑ I attempted to leave it with _____ (name of person) who refused service.

❑ Private process server

❑ Sheriff, _____County
Fee $ _____ Mileage $ _____

_____
Signature of Process Server

_____
Name (Print or type)

Subscribed and affirmed, or sworn to before me in the County of _____, State of _____, this _____ day of _____, 20 _____. **Note: Not required for service by a sheriff or deputy.**

My Commission Expires: _____

_____
Notary Public/Clerk

Form 34.
NOTICE OF LEVY

❑District Court ❑County Court _____County, Colorado Court Address: Plaintiff(s): v. Defendant(s):	▲ **COURT USE ONLY** ▲ Case Number: Division: Courtroom:

NOTICE OF LEVY

TO THE JUDGMENT DEBTOR(S):

You are hereby notified that pursuant to and under the authority of a WRIT OF GARNISHMENT IN AID OF WRIT OF ATTACHMENT issued by the Clerk of the Court, certain personal property, owned by you, or owed to you, is being held or taken to pay the claim of the above Plaintiff(s).

The personal property being held or taken is:

_____

_____

_____

_____

You have legal rights that may prevent all or part of your money or property from being taken. That part of the money or property that may not be taken is called "exempt property." A partial list of "exempt property" is shown below, along with the law which may make all or part of your money or property exempt. Not withstanding your right to claim the property as "exempt", no exemption other than the exemptions set forth in Section 13-54-104(3), C.R.S., may be claimed for a Writ which is the result of a judgment taken for arrearages for child support or for child support debt. The purpose of this Notice of Levy is to tell you about these rights.

If the money or property which is being withheld from you includes any "exempt property", you must file within ten days of receiving this Notice of Levy a written claim of exemption with the Clerk of the Court, describing what money or property you think is "exempt property" and the reason that it is exempt.

You must act quickly to protect your rights. Remember, you only have 10 days after receiving this Notice of Levy to file your claim of exemption with the Clerk of Court. Your failure to file a claim of exemption with 10 days is a waiver of your right to file.

Dated: _____ _____

Clerk of Court/Deputy Clerk

PARTIAL LIST OF EXEMPT PROPERTY (Numbered statutory references are subject to change)

1. All or part of your property listed in Sections 13-54-101 and 102, C.R.S., including clothing jewelry, books, burial sites, household goods, food and fuel, farm animals, seed, tools, equipment and implements, military allowances, stock-in-trade, certain items used in your occupation, bicycles, motor vehicles (greater for disabled persons), life insurance, income tax refunds, money received because of loss of property or for personal injury, equipment that you need because of your health, or money received because you were a victim of a crime.
2. All or part of your earnings under Section 13-54-104, C.R.S.

3. Workers' compensation benefits under Section 8-42-124, C.R.S.
4. Unemployment compensation benefits under Section 8-80-103, C.R.S.
5. Group life insurance benefits under Section 10-7-205, C.R.S.
6. Health insurance benefits under Section 10-16-212, C.R.S.
7. Fraternal society benefits under Section 10-14-403, C.R.S.
8. Family allowances under Section 15-11-404, C.R.S.
9. Teachers' retirement fund benefits under Section 22-64-120, C.R.S.
10. Public employees' retirement benefits (PERA) under Sections 24-51-212 and 24-54-111, C.R.S.
11. Social security benefits (OASDI, SSI) under 42 U.S.C. §407.
12. Railroad employee retirement benefits under 45 U.S.C. §23.
13. Public assistance benefits (OAP, AFDC, TANF, AND, AB, LEAP) under Section 26-2-131, C.R.S.
14. Policemen's and firemen's pension fund payments under Sections 31-30-117, 31-30.5-208 and 31-31-203, C.R.S.
15. Utility and security deposits under Section 13-54-102(1)(r), C.R.S.
16. Proceeds of the sale of homestead property under Section 38-41-207, C.R.S.
17. Veteran's Administration benefits under 38 U.S.C. §5301.
18. Civil service benefits under 5 U.S.C. §8346.
19. Mobile homes and trailers under Section 38-41-201.6, C.R.S.
20. Certain retirement and pension funds and benefits under Section 13-54-102(2)(s), C.R.S.
22. A Court-ordered child support and maintenance obligation or payment under Section 13-54-102(1)(u), C.R.S.
23. Public or private disability benefits under Section 13-54-102(1)(v), C.R.S.

REMEMBER THAT THIS IS ONLY A PARTIAL LIST OF "EXEMPT PROPERTY"; you may wish to consult with a lawyer who can advise you of your rights. If you cannot afford one, there are listings of legal assistance and legal aid offices in the yellow pages of the telephone book.

RETURN OF SERVICE

Judgment Debtor's Name _____ Case Number: _____

I declare under oath that I am 18 years or older and not a party to the action and have served this Notice of Levy in this case on _____ (name of party) in _____ (County) _____ (State) on _____ (date) _____ (time) at the following location: _____

By (Check one):

- ❑ By handing it to a person identified to me as _____ (name of judgment debtor).
- ❑ By leaving it with _____ (Type or write name legibly), who is designated to receive service because of a legal relationship with _____ (name of judgment debtor) as provided for in C.R.C.P. 4(e).
- ❑ I attempted to serve _____ (name of judgment debtor) on _____ occasions but have not been able to locate him/her/it. Return to the Judgment Creditor is made on _____ (date).
- ❑ I attempted to leave it with _____ (name of person) who refused service.

❑ Private process server
❑ Sheriff, _____County
Fee $ _____ Mileage $ _____

_____
Signature of Process Server

_____
Name (Print or type)

Subscribed and affirmed, or sworn to before me in the County of _____, State of _____, this _____ day of _____, 20 _____. **Note: Not required for service by a sheriff or deputy.**

My Commission Expires: _____

_____
Notary Public/Clerk

Form 35.1.
MANDATORY DISCLOSURE

Mandatory Disclosure
FORM 35.1 - Reference to 16.2(e)(2)

These are not to be filed with the court, except as may be ordered pursuant to C.R.C.P. 16.2

Mandatory Disclosures. (Complete and accurate copies may replace originals. Children refers to minor children of both parties.)

(a) Financial Statement. Each party shall provide a complete and signed Sworn Financial Statement and (if applicable) Supplemental Schedule (JDF 1111 and/or JDF 1111SS) in the Supreme Court approved forms.

(b) Income Tax Returns (Most Recent 3 Years). Provide the personal and business federal income tax returns for the three years before filing of the petition or post decree motion. The business returns shall be for any business for which a party has an interest entitling the party to a copy of such returns. Provide all schedules and attachments including W-2's, 1099's and K-1. If a return is not completed at the time of disclosure, provide the documents necessary to prepare the return including W-2's, 1099's and K-1's, copies of extension requests and estimated tax payments.

(c) Personal Financial Statements (Last 3 Years). Provide all personal financial statements, statements of assets or liabilities, and credit and loan applications prepared during the last three years.

(d) Business Financial Statements (Last 3 Years). For every business for which a party has access to financial statements, provide the last three fiscal years' financial statements, all year-to-date financial statements, and the same periodic financial statements for the prior year.

(e) Real Estate Documents. Provide the title documents and all documents stating value of all real property in which a party has a personal or business interest. This section shall not apply to post decree motions unless so ordered by the court.

(f) Personal Debt. Provide all documents creating debt, and the most recent debt statements showing the balance and payment terms.

(g) Investments. Provide most recent documents identifying each investment, and stating the current value.

(h) Employment Benefits. Provide most recent documents identifying each employment benefit, and stating the current value.

(i) Retirement Plans. Provide most recent documents identifying each retirement plan, and stating the current value, and all Plan Summary Descriptions.

(j) Bank/Financial Institution Accounts. Provide most recent documents identifying each account at banks and other financial institutions, and stating the current value.

(k) Income Documentation. For each income source in the current and prior calendar year, including income from employment, investment, government programs, gifts, trust distributions, prizes, and income from every other source, provide pay stubs, a current income statement and the final income statement for the prior year. Each self-employed party shall provide a sworn statement of gross income, business expenses necessary to produce income and net income for the three months before filing of the petition or post decree motion.

(l) Employment and Education-Related Child Care Documentation. Provide documents that show average monthly employment-related child care expense including child care expense related to parents' education and job search.

(m) Insurance Documentation. Provide life, health and property insurance policies and current documents that show beneficiaries, coverage, cost including the portion payable to provide health insurance for children, and payment schedule.

(n) Extraordinary Children's Expense Documentation. Provide documents that show average monthly expense for all recurring extraordinary children's expenses.

Form 35.2.
SWORN FINANCIAL STATEMENT

❑District Court ❑Denver Juvenile Court _____ County, Colorado Court Address: In re: ❑The Marriage of: ❑Parental Responsibilities concerning: _____ Petitioner: and Co-Petitioner/Respondent:	▲ **COURT USE ONLY** ▲
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom

SWORN FINANCIAL STATEMENT

I, _____ (full name) ❑am ❑am not currently employed.

I am employed ____ hours per week. I am paid ❑weekly ❑bi-weekly ❑twice a month ❑monthly.

My pay is based on a ❑Monthly Salary ❑Hourly rate of $_____ ❑Other: _____

Date employment began _____.

My occupation is: _____ Name of employer: _____

Address of employer: _____

If unemployed, what date did you last work? _____

I am unemployed due to ❑disability ❑involuntary layoff at work ❑other: _____

This household consists of _____ adult(s), and _____ minor child(ren).

I believe the monthly gross income of the other party is $_____.

Annual gross income (last tax year) for Petitioner $ _____, ❑Co-Petitioner/Respondent $ _____

1. Monthly Income (Convert annual, bi-monthly, and weekly amounts to monthly amounts.)

Gross Monthly Income (before taxes and deductions) from salary and wages, including commissions, bonuses, overtime, self-employment, business income, other jobs, and monthly reimbursed expenses.	$	Social Security Benefits (SSA) ❑SSDI (Disability insurance – entitlement program) ❑SSI (supplemental income – need based)	$
Unemployment & Veterans' Benefits		Disability, Workers' Compensation	
Pension & Retirement Benefits		Interest & Dividends	
Public Assistance (TANF)		Other - _____	
		Total Monthly Income	**$**
Miscellaneous Income			
Royalties, Trusts, and Other Investments	$	Contributions from Others	$
Dependent Children's monthly gross income. Source of Income: _____		All other sources, i.e. personal injury settlement, non-reported income, etc.	
Rental Net Income		Expense Accounts	
Child Support from Others		Other - _____	
Spousal Support from Others		Other - _____	
		Total Monthly Miscellaneous Income	**$**
		Total Income	**$**

2. Monthly Deductions (Mandatory and Voluntary)

Mandatory Deductions	**Cost Per Month**		**Cost Per Month**
Federal Income Tax	$	State/Local Income Tax	$
PERA/Civil Service		Social Security Tax	
Medicare Tax		Other - _____	
		Total Mandatory Deductions	$
Voluntary Deductions	**Cost Per Month**		**Cost Per Month**
Life and Disability Insurance	$	Stocks/Bonds	$
Health, Dental, Vision Insurance Premium Total number of people covered on Plan ➔		Retirement & Deferred Compensation	
Child Care		Other - _____	
Flex Benefit Cafeteria Plan		Other - _____	
		Total Voluntary Deductions	**$**
		Total Monthly Deductions	**$**

3. Monthly Expenses

Note: List regular monthly expenses below that you pay on an on-going basis and that are not identified in the deductions above.

A. Housing

	Cost Per Month		**Cost Per Month**
1st Mortgage	$	2nd Mortgage	$
Insurance (Home/Rental) & Property Taxes (not included in mortgage payment)		Condo/Homeowner's/Maintenance Fees	
Rent		Other - _____	
		Total Housing	**$**

B. Utilities and Miscellaneous Housing Services

	Cost Per Month		**Cost Per Month**
Gas & Electricity	$	Water, Sewer, Trash Removal	$
Telephone (local, long distance, cellular & pager)		Property Care (Lawn, snow removal, cleaning, security system, etc.)	
Internet Provider, Cable & Satellite TV		Other - _____	
		Total Utilities and Miscellaneous Housing Services	**$**

C. Food & Supplies

	Cost Per Month		**Cost Per Month**
Groceries & Supplies	$	Dining Out	$
		Total Food & Supplies	**$**

D. Health Care Costs (Co-pays, Premiums, etc.)

	Cost Per Month		**Cost Per Month**
Doctor & Vision Care	$	Dentist and Orthodontist	$
Medicine & RX Drugs		Therapist	
Premiums (if not paid by employer)		Other - _____	
		Total Health Care	**$**

E. Transportation & Recreation Vehicles (Motorcycles, Motor Homes, Boats, ATV, Snowmobiles, etc.)

	Cost Per Month		Cost Per Month
Primary Vehicle Payment	$	Other Vehicle Payments	$
Fuel, Parking, and Maintenance		Insurance & Registration/Tax Payments (yearly amount(s)/12)	
Bus & Commuter Fees		Other - _____	
		Total Transportation	**$**

F. Children's Expenses and Activities

	Cost Per Month		Cost Per Month
Clothing & Shoes	$	Child Care	$
Extraordinary Expenses i.e. Special Needs, etc.		Misc. Expenses, i.e. Tutor, Books, Activities, Fees, Lunch, etc.	
Tuition		Other - _____	
		Total Children's Expenses and Activities	**$**

G. Education for you - Please identify status: ❑Full-time student ❑Part-time student

	Cost Per Month		Cost Per Month
Tuition, Books, Supplies, Fees, etc.		Other - _____	
		Total Education	**$**

H. Maintenance & Child Support (that you pay)

	Cost Per Month		Cost Per Month
Spousal Maintenance		Child Support	
❑This family	$	❑This family	$
❑Other family		❑Other family	
		Total Maintenance and Child Support	**$**

I. Miscellaneous (Please list on-going expenses not covered in the sections above)

	Cost Per Month		Cost Per Month
Recreation/Entertainment	$	Personal Care (Hair, Nail, Clothing, etc.)	$
Legal/Accounting Fees		Subscriptions (Newspapers, Magazines, etc.)	
Charity/Worship		Movie & Video Rentals	
Vacation/Travel/Hobbies		Investments (Not part of payroll deductions)	
Membership/Clubs		Home Furnishings	
Pets/Pet Care		Sports Events/Participation	
Other - _____		Other - _____	
Other - _____		Other - _____	
Other - _____		Other - _____	
Other - _____		Other - _____	
		Total Miscellaneous	**$**
		Total Monthly Expenses (Totals from A – I)	**$**

4. Debts (unsecured)

List unsecured debts such as credit cards, store charge accounts, loans from family members, back taxes owed to the I.R.S., etc. **Do not** list debts that are liens against your property, such as mortgages and car loans, because that payment is already listed as an expense above, and the total of the debt is shown elsewhere as a deduction from value where that asset is listed, such as under Real Estate or Motor Vehicles.

For name on account, "P" = Petitioner, "C/R" = Co-Petitioner or Respondent, "J" = Joint.

Name of Creditor	Account Number (last 4-digits only)	P	C/R	J	Date of Balance	Balance	Minimum Monthly Payment Required	Principal Purchase(s) for Which Debt Was Incurred
		❑	❑	❑		$	$	
		❑	❑	❑				
		❑	❑	❑				
		❑	❑	❑				
		❑	❑	❑				
		❑	❑	❑				
		❑	❑	❑				
		❑	❑	❑				
		❑	❑	❑				
		❑	❑	❑				
		❑	❑	❑				
		❑	❑	❑				
Unsecured Debt Balance						$	$	**→Total Minimum Monthly Payment**

SWORN FINANCIAL STATEMENT SUMMARY (INCOME/EXPENSES)

Total Income (from Page 1) $ _____ **A**

Total Monthly Deductions (from Page 2) $ _____ **B**

Total Monthly Net Income (A minus B) **$ _____**

Total Monthly Expenses (from Page 3) $ _____ **C**

Total Minimum Monthly Payment Required - Debts Unsecured (from Page 4) $ _____ **D**

Total Monthly Expenses and Payments (C plus D) **$ _____**

Net Excess or Shortfall **(Monthly Net Income less Monthly Expenses and Payments)** **(+/-)** **$ _____**

5. Assets

You MUST disclose all assets correctly. By indicating "None", you are stating affirmatively that you or the other party do not have assets in that category. Please attach additional copies of pages 5 & 6 to identify your assets, if necessary.

If the parties are married*,* check under the heading Joint (J) all assets acquired during the marriage but not by gift or inheritance. Under the headings of Petitioner (P) or Co-Petitioner/Respondent (C/R), check assets owned before this marriage and assets acquired by gift or inheritance.

If the parties were NEVER married **to each other** ***or are using this form to modify child support***, list all of each party's assets under the headings of Petitioner (P) or Co-Petitioner/Respondent (C/R).

"P" = Petitioner, "C/R" = Co-Petitioner or Respondent, "J" = Joint.

A. Real Estate (Name of Creditor/Lender) ❑**None**	**P**	**C/R**	**J**	**Amount Owed**	**Estimated Value as of Today.** Value = what you could sell it for in its current condition.	**Net Value/Equity**
	❑	❑	❑	$	$	$
	❑	❑	❑			
			Total	$	$	$
B. Motor Vehicles & Recreation Vehicles Including Motorcycles, ATV's, Boats, etc.) (Year, Make, Model) (Name of Creditor/Lender) ❑**None**	**P**	**C/R**	**J**	**Amount Owed**	**Estimated Value as of Today.** Value = what you could sell it for in its current condition.	**Net Value/Equity**
	❑	❑	❑			
	❑	❑	❑			
	❑	❑	❑			
	❑	❑	❑			
			Total	$	$	$
C. Cash on Hand, Bank, Checking, Savings, or Health Accounts (Name of Bank or Financial Institution) ❑**None**	**P**	**C/R**	**J**	**Type of Account**	**Account # (last 4-digits only)**	**Balance as of Today**
	❑	❑	❑			$
	❑	❑	❑			
	❑	❑	❑			
	❑	❑	❑			
					Total	$
D. Life Insurance (Name of Company/Beneficiary) ❑**None**	**P**	**C/R**	**J**	**Type of Policy**	**Face Amount of Policy**	**Cash Value today**
	❑	❑	❑		$	$
	❑	❑	❑			
	❑	❑	❑			
				Total	$	$

E. Furniture, Household Goods, and Other Personal Property, i.e. Jewelry, Antiques, Collectibles, Artwork, Power Tools, etc. Identify Items and report in total. ❑None	P	C/R	J	Current Possession Held by			Estimated Value as of Today. Value = what you could sell it for in its current condition.
				P	C/R	J	
	❑	❑	❑	❑	❑	❑	$
	❑	❑	❑	❑	❑	❑	
	❑	❑	❑	❑	❑	❑	
	❑	❑	❑	❑	❑	❑	
	❑	❑	❑	❑	❑	❑	
						Total	$
F. Stocks, Bonds, Mutual Funds, Securities & Investment Accounts ❑None ❑If owned please attach JDF 1111-SS.						Total	$
G. Pension, Profit Sharing, or Retirement Funds ❑None ❑ If owned please attach JDF 1111-SS.						Total	$

H. Miscellaneous Assets

❑None If you own any of the assets identified below, please check the appropriate box and attach JDF 1111-SS to report the value.

❑Business Interests	❑Stock Options	❑Money/Loans owed to you	❑IRS Refunds due to you
❑Country Club & Other Memberships	❑Livestock, Crops, Farm Equipment	❑Pending lawsuit or claim by you	❑Accrued Paid Leave (sick, vacation, personal)
❑Oil and Gas Rights	❑Vacation Club Points	❑Safety Deposit Box/Vault	❑Trust Beneficiary
❑Frequent Flyer Miles	❑Education Accounts	❑Health Savings Accounts	❑Mineral and Water Rights
❑Other - _____	❑Other - _____	❑Other - _____	❑Other - _____

	Total	$
I. Separate Property ❑None ❑If owned please attach JDF 1111-SS to identify the property and to report the value.	Total	$
Total Value/Balance of All Assets (A – I)		**$**

I swear or affirm under oath that this Sworn Financial Statement, attached schedules, and mandatory disclosures contain a complete disclosure of my income, expenses, assets, and debt as of the date of my signature. I understand that if the information I have provided changes or needs to be updated before a final decree or order is issued by the Court, that I have a duty to provide the correct or updated information. I understand that this oath is made under penalty of perjury. I understand that if I have omitted or misstated any material information, intentionally or not, the Court will have the power to enter orders to address those matters, including the power to punish me for any statements made with the intent to defraud or mislead the Court or the other party.

Date: _____ _____

Signature of ❑Petitioner or ❑Co-Petitioner/Respondent

Subscribed and affirmed, or sworn to before me in the County of _____, State of _____, this _____ day of _____, 20_____.

My Commission Expires: _____ _____

Notary Public/Deputy Clerk

Form 35.3.
SUPPORTING SCHEDULES
(SWORN FINANCIAL STATEMENT)

Case Name _____ **and** _____ **Case Number:** _____

Supporting Schedules for Assets in Section F, G, H, and I.

Attach this supporting schedule to JDF 1111 **ONLY** if you have assets in sections F & G, any additional assets to report in section H, and/or separate property to report in section I. In addition, report totals from this document to the appropriate sections on JDF 1111.

F. Stocks, Bonds, Mutual Funds, Securities & Investment Accounts (Name of Item or Fund)	P	C/R	J	# of Shares	Account # (last 4-digits only)	Current Value as of Today
	❑	❑	❑			
	❑	❑	❑			
	❑	❑	❑			
	❑	❑	❑			
	❑	❑	❑			
					Total	$

G. Pension, Profit Sharing, or Retirement Funds (Defined Contribution and/or Defined Benefit Plans)	P	C/R	J	Type of Plan (401K, IRA, 457, PERA, Military, etc.)	Account # (last 4-digits only, if applicable)	Current Value as of Today
	❑	❑	❑			
	❑	❑	❑			
	❑	❑	❑			
	❑	❑	❑			
					Total	$

H. Miscellaneous Assets (Identify Type of Asset)	P	C/R	J		Estimated Value as of Today
	❑	❑	❑		
	❑	❑	❑		
	❑	❑	❑		
	❑	❑	❑		
				Total	

I. Separate Property (Identify Type)	P	C/R	J		Estimated Value as of Today
	❑	❑	❑		
	❑	❑	❑		
	❑	❑	❑		
	❑	❑	❑		
				Total	$

Form 35.4.
PATTERN INTERROGATORIES
(DOMESTIC RELATIONS)

FORM 35.4 – Pattern Interrogatories (Domestic Relations)
[Reference to C.R.C.P. 16.2, 26 and 33. These are not to be filed with the court, except as may be ordered.]

The following Pattern Interrogatories are propounded to _____ pursuant to C.R.C.P. 16.2, 26 and 33.

Section 1. Instructions to All Parties

(a) These are general instructions. For time limitations, requirements for service on other parties, and other details, see C.R.C.P. 16.2, 26, 33, 121 §1-12, and the cases construing those Rules.

(b) These interrogatories do not change existing law relating to interrogatories nor do they affect an answering party's right to assert any privilege or objection.

Section 2. Instructions to the Asking Party

(a) These interrogatories are designed for optional use in domestic relations cases only.

(b) Use care in choosing those interrogatories that are applicable to the case.

(c) Subject to the limitations in C.R.C.P. Rules 16.2 and 33, additional interrogatories may be attached.

Section 3. Instructions to the Answering Party

(a) An answer or other appropriate response must be given to each interrogatory. Parties are to answer these interrogatories with the understanding that they stand in a fiduciary relationship with each other.

(b) As a general rule, within 30 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. See C.R.C.P. 33 for details.

(c) Each answer must be as complete and straightforward as the information reasonably available to you permits. If an interrogatory cannot be answered completely, answer it to the extent possible.

(d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party in which case state the identity, address and telephone number of the person in possession.

(e) Whenever an interrogatory may be answered by referring to a document**,** the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.

(f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.

(g) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers:

I declare under penalty of perjury under the laws of the State of Colorado that the foregoing answers are true and correct.

DATE _____ SIGNATURE _____

Section 4. Definitions

(a) You or your includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

(b) Person includes a natural person, firm, association, organization, partnership, business, trust, corporation, or public entity.

(c) Document means a writing, as defined in CRE 1001 and includes the original or a copy of handwriting, typewriting, printing, photostating, photographing, magnetic impulses, mechanical or electronic recording or other form of data compilation and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

(d) Address means the street address, including the city, state, and zip code.

Section 5. Pattern Interrogatories

The following interrogatories have been approved by the Colorado Supreme Court under C.R.C.P. 16.2 and 33.

1. If you are employed by any business or enterprise, for each state:
   a. Its name, address and telephone number;
   b. Your position;
   c. Your present gross monthly income;
   d. Your compensation arrangement including a complete description of draws, incentives, bonuses, perquisites and any other method of compensation;
   e. Your date of hire;
   f. The names of all documents fixing your compensation terms (contract, corporate minutes, memoranda, policy manual, etc.)
   g. If you have the use of company property, describe and explain your arrangement for use and payment;
   h. Whether you have any outstanding bonuses, commissions, or any other payment, benefit or perquisite due to you, and if so, please describe and state the amount and date due;
   i. The date of your next compensation review;
   j. The amount of compensation adjustment anticipated at your next compensation review.

2. Other than your present place of employment, list in detail all other places of employment during your marriage. With regard to each, state the following:
   a. The name, address and telephone number of your employer;
   b. The inclusive dates of employment;
   c. The type of work performed;
   d. The gross annual income from such employment in each of the years during the marriage.
   e. Any retirement benefits earned with that employer.

3. State, in detail, your level of education, and all professional or vocational training which you have received, dates you attended each institution or received training, and the date any degrees or certificates of completion were acquired. State with particularity any additional professional, vocational or artistic skills for which you have received compensation or public recognition.

4. If the expenses on your Affidavit with Respect to Financial Affairs include the support of any person other than yourself or your children, state the name of each person and the monthly expenses attributable to such person.

5. If you have disposed of any property with a value of $1,000.00 or more, including without limitation, stocks, bonds, debentures or other items of a similar nature in the last 12 months, for each item state:
   a. Description of the property;
   b. The date acquired and tax basis;

c. The date you disposed of the property;
d. The amount received by you;
e. The fair market value of the security on the date disposed of;
f. What you did with the sale proceeds;
g. The amount that is still due and owing to you.

6. If during the last three years you have sold or transferred any interest in real property, for each sale and/or transfer, state:
   a. The address and description of the property;
   b. The date of sale or transfer;
   c. The method of transfer;
   d. The name and address of each purchaser or person receiving title, and the interest received by such person;
   e. The purchase price or consideration;
   f. The amount of the purchase price that remains due and owing;
   g. The amount of the proceeds of the transfer received by you;
   h. The disposition of the proceeds;
   i. The interest you presently have in such property.

7. If any person or entity holds any property for your benefit, including, but not limited to bank accounts, IRAs, Keoghs, stocks, securities or investments of any kind, for each state:
   a. The name and address of each such person, firm or legal entity;
   b. A description of the item held for your benefit;
   c. The conditions under which the item is held for your benefit;
   d. The fair market value of the property.

8. If you are currently involved in any business or investment with others, for each set forth the particular details, including the following:
   a. A description of the business or investment;
   b. The name and address of the other parties involved;
   c. The purpose;
   d. Your contribution;
   e. The tax basis of your contribution;
   f. Your percentage of ownership;
   g. The fair market value of your share;
   h. Any agreement among the partners for ownership, management and sale.

9. If you have received any gifts of money, non-taxable income or assets from any source other than through your business or employment of $1,000.00 or more in the last three years, set forth the following:
   a. The amount of money or value of the asset received and date of receipt;
   b. The name and address of the person or entity from whom the amount is received;
   c. The consideration given by you or other reason for payment to you.

10. If you are a beneficiary of the estate of any person, state:
   a. The amount of the estate;
   b. Whether the estate is being probated or administrated;
   c. Whether distribution has been made to you from such estate;
   d. The amount of money or property you have received from such estate;
   e. The date(s) distribution was made; or if distribution has not been made, the date you anticipate receiving said distribution.

11. If you are a beneficiary of any current or terminated trust, state:
   a. The date of the creation of each trust;
   b. The name and address of the trustee;
   c. The amount of principal in the trust;
   d. The amount of income and other distributions you receive each year from the trust;
   e. The name and address of the grantor;
   f. If the trust has been terminated, the date and circumstances of the termination.

12. For any business operated by you alone or with others during the last three years, state the following:

a. The name and address of the business;
b. The form of the business organization;
c. The name and address of each officer and owner of the business;
d. The date when you obtained your interest in the business;
e. Your capital contribution to the business;
f. Your ownership interest (by percentage and number of shares);
g. The date and amount of all outstanding loans to which you are a party;
h. The annual gross profits of the business since you have been engaged in the business;
i. All payments to or for you from the business, whether salary, bonus, dividend, commission, draw, advance, loan or payment of personal expenses from three years to date;
j. All expenses reimbursed to or paid for you by each business, including but not limited to, insurance, supplies, food, travel, transportation, education, entertainment, and business gifts from three years to date;
k. The fair market value of the business;
l. The current fair market value of your interest, and your explanation of how you calculated same;
m. Whether or not you intend to sell your interest;
n. The tax basis of your interest.

13. If allocation of parental responsibilities (that is, decision-making and/or parenting time) is an issue:
a. State whether joint parental decision-making or sole parental decision-making is best for the child(ren) and why;
b. State which party should be designated primary residential care and why;
c. Outline a schedule of parenting time for each party, including a holiday/school break schedule and a summer schedule;
d. Outline the manner in which parental responsibilities have been shared with the other party, i.e., daily caretaking, participation in school/extracurricular events, financial support, choosing the child(ren)'s doctors and dentists, choosing school(s), etc.;
e. Describe any history of domestic violence, child abuse, or neglect (supporting documentation should be provided);
f. Describe any physical, psychological or addictive condition of either party which if untreated has a harmful effect on the best interest of the child(ren) and why;
g. Describe any special needs of any child (physical, psychological, educational, etc.);
h. Describe any history of counseling or therapy for either party or any child; include the names, addresses and telephone numbers of the person(s) providing same;
i. State whether regular contact with grandparents, extended family, and/or other significant adults is contrary to the best interests of the child(ren) and why;
j. Describe any extraordinary travel arrangements necessary for parenting time;
k. Describe current child support arrangements and state whether payments are current;
l. Describe the child care arrangements for the child(ren) for the last three years including the name, address and telephone number of each child care provider.

Form 35.5.
PATTERN REQUESTS FOR PRODUCTION OF DOCUMENTS (DOMESTIC RELATIONS)

FORM 35.5 - Pattern Requests for Production of Documents (Domestic Relations) [Reference to C.R.C.P. 16.2, 26 and 34. These are not to be filed with the court, except as may be ordered.]

The following Pattern Requests for Production of Documents to _____ are propounded pursuant to C.R.C.P. 16.2, 26 and 34.

Section 1. Instructions to All Parties

(a) These are general instructions. For time limitations, requirements for service on other parties, and other details, see C.R.C.P. 16.2, 34, 121 §1-12, and the cases construing those Rules.

(b) These requests for production of documents do not change existing law relating to requests for production of documents nor do they affect an answering party's right to assert any privilege or objection.

Section 2. Instructions to the Asking Party

(a) These requests for production of documents are designed for optional use in domestic relations cases only.

(b) Use care in choosing only those requests for production of documents that are applicable to the case. Documents should not be requested that have been provided by disclosure or other means.

(c) Subject to the limitations in C.R.C.P. Rules 16.2 and 34, additional requests for production of documents may be attached.

(d) Complete and accurate copies may replace originals.

Section 3. Instructions to the Answering Party

(a) An answer or other appropriate response must be given to each request for production of documents. Parties are to provide documents in response to these requests for production of documents with the understanding that they stand in a fiduciary relationship with each other.

(b) As a general rule, within 30 days after you are served with these requests for production of documents, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. See C.R.C.P. 34 for details.

(c) The response shall state with respect to each item or category that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated. If an objection is made to part of an item or category, the part shall be specified and an inspection permitted of the remaining parts.

(d) A party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.

Section 4. Definitions

(a) You or your includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

(b) Person includes a natural person, firm, association, organization, partnership, business, trust, corporation, or public entity.

(c) Document means a writing, as defined in CRE 1001 and includes the original or a copy of handwriting, typewriting, printing, photostating, photographing, magnetic impulses, mechanical or electronic recording or other form of data compilation and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

(d) Address means the street address, including the city, state, and zip code.

Section 5. Pattern Request for Production of Documents

The following requests for production of documents have been approved by the Colorado Supreme Court under C.R.C.P. 16.2, 26 and 34.

1. All balance sheets, and/or profit and loss statements for any business entity in which you have more than a 10 percent equity interest, which have been prepared in the last three years.

2. All passbooks, certificates of deposit, credit union deposits, money market accounts, NOW accounts, mutual funds, and other evidence of savings accounts in which you or the other party has an interest or appear of record thereon, for the last three years.

3. All monthly bank statements, deposit slips, canceled checks, and check registers of every checking or other money management account in which you or the other party has an interest or appear of record thereon, for the last three years.

4. Copies of all stock certificates, stock option plans, stock option certificates, vesting schedules, or warrants owned or in which either party has an interest, and copies of all documents establishing ownership and/or defining ownership value for all investments, or any other documents evidencing your interest in such stock, stock options, or investments.

5. All brokerage account statements and documents concerning any and all securities and investments owned by you or for your benefit during the last three years.

6. All appraisals, market analyses, records of purchase and sale, deeds, bills of sale, security agreements, promissory notes, and payment records for any property, including but not limited to, real estate, business interests or any kind of personal property either owned or sold within the last three years by you or the other party.

7. All trust agreements in which you or the other party is or has been grantor, trustee or beneficiary.

8. Monthly credit card and charge account statements for the last twenty-four months, from any credit card company or charge account on which you are a signator, either in a personal capacity or as an authorized signatory for any business or person.

9. All documentation evidencing any separate interest you claim in any real or personal property, including but not limited to gift and inheritance tax returns filed concerning such property.

Form 36.
NOTICE OF WITHDRAWAL AS ATTORNEY OF RECORD

❑District Court ❑County Court ❑Denver Juvenile Court _____ County, Colorado Court Address: Petitioner/Plaintiff: v. Respondent/Co-Petitioner/Defendant:	▲ **COURT USE ONLY** ▲
Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom

NOTICE OF WITHDRAWAL AS ATTORNEY OF RECORD

Undersigned attorney for the ❑Petitioner/Plaintiff **or** ❑Respondent/Co-Petitioner/Defendant provides this Notice of Withdrawal as attorney of record and affirms to the Court, the client and all other attorneys and parties of record:

1. That the attorney wishes to withdraw and has made reasonable efforts to give actual notice to the client prior to filing this Notice.
2. There are no unresolved matters currently pending before the Court. Any written orders have been submitted and entered by the Court and complied with by the withdrawing attorney.
3. The Clerk of the Court shall enter the withdrawal of counsel upon receipt of this Notice. No written Order shall be issued by the Court.
4. The client or opposing counsel may file an Objection to this Notice of Withdrawal within 15 days. If an Objection is filed the matter shall be referred to the Court.
5. Last known address and telephone number of client:

_____
Petitioner or Plaintiff or Respondent/Co-Petitioner or Defendant

_____
Address

_____
City, State, Zip Code

_____
(Area Code) Telephone Number (home and work)

Date: _____ _____
Attorney Signature

CERTIFICATE OF SERVICE

I certify that on _____ date) a true and accurate copy of the *Notice of Withdrawal as Attorney of Record* was served on the client and all other counsel or parties of record by ❑Hand Delivery, ❑E-filed, ❑Faxed to this number _____ or ❑by placing it in the United States mail, postage pre-paid, and addressed to the following:

To: _____

_____

_____

_____

_____ _____
Your signature)

CHAPTER 17B

Appointed Judges

Adopted by the

SUPREME COURT OF COLORADO

June 23, 2005,

Effective July 1, 2005

CHAPTER 17B

APPOINTED JUDGES

Rule 122. Case Specific Appointment of Appointed Judges Pursuant to C.R.S. § 13-3-111

(a) Appointed Judges.

(1) At any time after a civil action, excluding juvenile delinquency proceedings, is filed in a trial court of record, upon agreement of all parties that a specific retired or resigned justice of the Supreme Court, or a retired or resigned judge of any other court of record within the state of Colorado be appointed to hear the action and upon agreement that one or more of the parties shall pay the agreed upon compensation of the selected justice or judge, together with all other compensation and expenses incurred, the Chief Justice may appoint such justice or judge who consents to perform judicial duties for such action.

(2) The decision as to whether such justice or judge shall be appointed to judicial duties, pursuant to subsection (1) of this section, shall be entirely within the discretion of the Chief Justice. The Chief Justice has the authority to reject or approve any deviations from these rules agreed to by the parties. The Chief Justice may require such undertakings as in his or her opinion may be necessary to ensure that proceedings held pursuant to this section shall be without expense to the state of Colorado.

(3) The compensation and expenses paid to an Appointed Judge shall be at the rate agreed upon by the parties and the Appointed Judge and rate of compensation must be approved by the Chief Justice at the time of making the appointment.

(4) The Appointed Judge shall have the same authority as a full-time sitting judge. Orders, decrees, verdicts and judgments entered by an Appointed Judge shall have the same force and effect and may be enforced or appealed in the same manner as any other order, decree, verdict, or judgment.

(b) Qualifications. To be eligible to serve as an Appointed Judge, a person must be a Senior Judge, a retired or resigned justice of the Supreme Court, or a retired or resigned judge of the court of appeals, a district court, probate court, juvenile court or county court, who has served as a judge in one or more of said courts for a total of at least six years. If a judge has served in the Colorado State Court System and as a judge in the Federal Court System, those years of service may be combined for the purpose of meeting the six year requirement. Such person must be currently licensed to practice law in Colorado.

(c) Motion for Appointment. A request for the appointment of an Appointed Judge shall be made by a joint motion filed by all parties to a case and shall be signed as approved by the Appointed Judge. The original of such motion shall be filed with the Supreme Court with a copy filed in the originating court -- the court of record in which the case was originally filed. Such motion shall include:

(1) The name of the Appointed Judge;

(2) The rate of compensation agreed to be paid to the Appointed Judge;

(3) The Appointed Judge's agreement to be bound by Section II of the Colorado Code of Judicial Conduct, Applicability of Code to Senior and Retired Judges, and the Appointed Judge's agreement that the Chief Justice may ask the Office of Attorney Regulation Counsel and the Colorado Commission on Judicial Discipline for any record of his or her imposed discipline, or pending disciplinary proceeding, if any;

(4) A realistic estimate of all compensation and expenses for the Appointed Judge, any needed personnel, rental of an appropriate facility outside the courthouse, if needed, in which to hold the proceedings, payment for any requested jury, and all other anticipated compensation and expenses, including travel, lodging and meals, and provisions assuring that all such compensation and expenses will be paid by the parties; and

(5) An agreement as to who is responsible for initial payment of the compensation and expenses of the action, and who is responsible for payment of the compensation and expenses upon final judgment;

(6) The agreement of the parties and the Appointed Judge that none of the compensation and expenses shall be paid by the state of Colorado;

(7) A copy signed by the Appointed Judge of the following oath: "I, (name of Appointed Judge), do solemnly swear or affirm by the ever living God, that I will support the Constitution of the United States and of the State of Colorado, and faithfully perform the duties of the office upon which I am about to enter."

(8) Any other matters the parties desire to be considered by the Chief Justice in exercising his or her discretion.

(9) A form order approving the appointment.

(10) A statement acknowledging that the Chief Justice may approve or reject the order or, upon the agreement of all the parties and of the Appointed Judge, may change any of the provisions of the order.

The parties shall file the Chief Justice's ruling on the motion in the case file in the originating court.

(d) Duration of Appointment. The appointment shall last for so long as the parties specify in the motion and order of appointment. In the absence of such specification, the appointment shall last until entry of a final, appealable judgment, order or decree or, in dissolution actions, until the entry of Permanent Orders.

(e) Compensation and Expenses. Upon the appointment of an Appointed Judge by the Chief Justice, the parties shall forthwith deposit in an agreed escrow or trust account to be administered by the Appointed Judge or some other person acceptable to the parties and the Appointed Judge, sufficient funds to pay the estimated compensation and expenses of the case for the duration of the appointment. If, at any time, the Appointed Judge determines that the funds on deposit are insufficient to cover all further compensation and expenses, the Appointed Judge may order the parties promptly to deposit sufficient additional funds to cover such amount. An Appointed Judge may withdraw from the appointment after reasonable notice and with permission of the Chief Justice if this order is not complied with, and the case proceedings shall revert to the originating court. Within a reasonable time after the conclusion of the Appointed Judge's duties on the case, the parties shall file in the record

of the case in the originating court a report of the total compensation paid for the Appointed Judge's services and the total expenses paid by the parties in the case.

(f) Rules Applicable to Proceedings. Proceedings before an Appointed Judge shall be conducted pursuant to Rules applicable to the originating court. All filings shall be open records available for public review and inspection unless sealed upon motion and order, and all proceedings shall be open to the public in the same manner and pursuant to the same law applicable to the originating court.

(g) Record.

(1) The original of each filing in all proceedings before an Appointed Judge shall be filed with the clerk of the originating court and a copy shall be provided to the Appointed Judge.

(2) The parties and the Appointed Judge shall comply with all applicable rules and Chief Justice Directives relating to reporting, filing and maintaining the record.

(3) The originals of any reporter's notes or recording medium, along with any exhibits tendered, shall be filed with the clerk of the originating court pursuant to C.R.C.P. 80(d). The parties shall pay the costs of a court reporter or for any recording equipment that is acceptable to all parties.

(h) Location of Proceedings.

(1) Unless consented to by the parties and ordered by the Appointed Judge for good cause, the location of evidentiary proceedings and trial of a matter subject to this rule shall be pursuant to C.R.C.P. 98.

(2) The parties and the Appointed Judge shall arrange for an appropriate facility in which proceedings shall be held. If available, a room in the courthouse may be used for one or more proceedings in the case. Use of available court rooms, equipment or facilities within the courthouse shall not be considered an expense to the state that the parties are required to bear or reimburse;

(3) Whenever proceedings are scheduled in advance, the Appointed Judge shall timely file a Notice of Hearing with the clerk of the originating court giving notice of the date, time, nature and location of the proceedings.

(4) Except when proceedings are taking place in a courthouse, the parties shall arrange for or assure that there is sufficient premises liability insurance to assure that any injury to a party, other participant or spectator at the proceedings is covered without expense to the state of Colorado. Such insurance shall name the state of Colorado as an additional insured.

(i) Jury Trials.

(1) The Colorado Uniform Jury Selection and Service Act applies to jury trials conducted pursuant to this rule.

(2) When a trial by jury has been properly demanded, before setting the case for trial the Appointed Judge shall coordinate the start of the trial with the jury commissioner and the district administrator for the originating court so that jurors are selected and voir dire is held in the courthouse to which the prospective jurors are summoned.

(3) If the trial is held outside the courthouse, the parties shall be responsible for offering transportation from the courthouse to the location of the trial for the duration of the trial. Such transportation shall be at no cost to the jurors or the state of Colorado. The parties shall arrange for or assure that there is sufficient liability insurance to assure that any injury to a

juror related to such transportation is covered without expense to the state of Colorado. Such insurance shall name the state of Colorado as an additional insured.

(4) Not later than 3 business days following the conclusion of their service as jurors, the parties shall pay the jurors at the statutory rate pursuant to the Colorado Uniform Jury Selection and Service Act. The parties also shall pay all related expenses such as meals for the jurors and the costs of a bailiff. Payments made pursuant to this section should not be made through the court.

(5) If the trial is held outside the courthouse, jurors shall be instructed to the effect that such fact does not affect their responsibility and the importance of their service.

(6) In the event the jury is cancelled, postponed or a jury is waived, the Appointed Judge shall notify the jury commissioner as soon as possible.

(j) Removal. An Appointed Judge shall preside over all matters throughout the duration of the appointment unless the Appointed Judge recuses, is removed pursuant to C.R.C.P. 97, dies or becomes incapacitated. In any such circumstance, the case proceedings shall immediately revert to the originating court.

(k) Immunity. An Appointed Judge shall have immunity in the same manner and to the same extent as any other judge in the state of Colorado.

This Rule is hereby enacted and adopted by the Court, En Banc, this 23rd day of June, 2005 and shall be effective with regard to all cases pending in courts as of July 1, 2005 or filed in courts on or after July 1, 2005.

Rules 123 to 200.

[Note: There are at present no Colorado Rules of Civil Procedure 123 to 200.]

CHAPTER 18

Rules Governing Admission to the Bar

CHAPTER 18

RULES GOVERNING ADMISSION TO THE BAR

RULE 201

Rule 201.1. Supreme Court Jurisdiction

The Supreme Court exercises jurisdiction over all matters involving the licensing of persons to practice law in the State of Colorado. Accordingly, the Supreme Court has adopted the following rules governing admission to the practice of law.

Rule 201.2. Board of Law Examiners

(1) The "Colorado State Board of Law Examiners" (Board) shall consist of two committees, "the Law Committee" and "the Bar Committee."

(a) The Law Committee shall consist of eleven members of the Bar appointed by the Supreme Court for terms of five years. They serve at the pleasure of and may be dismissed at any time by the Supreme Court. A member of the Law Committee may resign at any time. The Supreme Court shall designate one of the members of the Law Committee to serve as its chair and also chair of the Board. The Law Committee shall conduct two written examinations each year, one in February and one in July, in the metropolitan Denver, Colorado area or at such other times and places as may be designated by the Court. The Supreme Court shall review and approve in advance the general standards of performance that must be met in order to pass the written examination.

(b) The Bar Committee shall consist of eleven members appointed by the Supreme Court for terms of five years. Nine of the members of the committee shall be registered attorneys and two shall be non-attorneys. They serve at the pleasure of and may be dismissed at any time by the Supreme Court. A member of the Bar Committee may resign at any time. The Supreme Court shall designate one of the members of the Bar Committee to serve as its chair. It shall be the duty of the Bar Committee to investigate applicants' mental stability, education, professional experience, and ethical and moral qualifications for admission to the Bar.

(2) The Board shall employ an executive director, subject to the approval of the Supreme Court, and such other staff as may be necessary to assist in performing its functions. The Board shall pay all expenses reasonably and necessarily incurred by it under an annual budget recommended by the Board and approved by the Supreme Court.

(3) The Board shall recommend to the Supreme Court proposed changes or additions to the rules of procedure governing admission to the practice of law. The Board may adopt guidelines to govern its internal operation and to provide guidance to the executive director.

(4) All fees required by Rule 201.4 (3) shall be paid by the executive director into a fund

kept in a depository designated by the Supreme Court and used to pay expenses incurred incident to the admission of attorneys. A portion of the fund, while held for future expenses, may be invested as the Supreme Court shall direct. The fund shall be audited annually.

(5) The Board of Law Examiners, and its members, employees and agents are immune from all civil liability for damages for conduct and communications occurring in the performance of and within the scope of their official duties relating to the examination, character and fitness qualification, and licensing of persons seeking to be admitted to the practice of law. Records, statements of opinion and other information regarding an applicant for admission to the bar communicated by any entity, including any person, firm or institution, without malice, to the Board of Law Examiners, or to its members, employees or agents, are privileged, and civil suits for damages predicated thereon may not be instituted.

Rule 201.3. Classification of Applicants

(1) Class A applicants are those applicants as determined by the Bar Committee:

(a) who have been admitted to the Bar of another state, territory, or district of the United States which allows admission to members of the Colorado Bar on motion without the requirement of taking that jurisdiction's bar examination,

(b) who have actively and substantially maintained a practice of law for five of the seven years immediately preceding application for admission to the Bar of Colorado in that state, territory or district of the United States which allows admission to members of the Colorado Bar on motion without the requirement of taking that jurisdiction's bar examination.

(2) For purposes of this rule, "practice of law" means:

(a) The private practice of law as a sole practitioner or as a lawyer employee of or partner or shareholder in a law firm, professional corporation, legal clinic, legal services office, or similar entity; or

(b) Employment as a lawyer for a corporation, partnership, trust, individual, or other entity with the primary duties of:

(i) Furnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law, and/or

(ii) Preparing, trying or presenting cases before courts, executive departments, administrative bureaus or agencies; or

(c) Employment as a lawyer in the law offices of the executive, legislative, or judicial departments of the United States, including the independent agencies thereof, or of any state, political subdivision of a state, territory, special district, or municipality of the United States, with the primary duties of

(i) Furnishing legal counsel, drafting documents and pleadings, and interpreting and giving advice with respect to the law, and/or

(ii) Preparing, trying or presenting cases before courts, executive departments, administrative bureaus or agencies; or

(d) Employment as a judge, magistrate, hearing examiner, administrative law judge, law clerk, or similar official of the United States, including the independent agencies thereof, or of any state, territory or municipality of the United States with the duties of hearing and

deciding cases and controversies in judicial or administrative proceedings, provided such employment is available only to a lawyer; or

(e) Employment as a teacher of law at a law school approved by the American Bar Association throughout the applicant's employment; or

(f) Any combination of subparagraphs (a) - (e) above.

(3) A full-time commissioned officer and judge advocate of the military services of the United States stationed in this state may be temporarily admitted to the Bar of Colorado, upon request of his or her commanding officer. Such admission shall be solely for the purpose of practice and court appearance in his or her capacity as a judge advocate and shall continue only as long as he or she is serving as a judge advocate in Colorado, except that the attorney shall also be allowed to act as a pro bono/emeritus attorney as described in C.R.C.P. 223(1) below without further application or fee.

(4) A law professor who, as determined by the bar committee, has been admitted to the bar of another state, territory, or district of the United States, may be temporarily admitted to the bar of Colorado, upon application supported by the certification of employment by his or her dean. Such admission shall be solely for so long as the professor shall serve as a full-time member of the faculty of such Colorado law school. As used here, "law professor" means a law school graduate who, as determined by the bar committee, is employed full-time as a tenured or tenure track teacher at a law school approved by the American Bar Association located within the state of Colorado. Such admission shall automatically terminate when the person no longer holds the full-time status at the law school, and the person admitted pursuant to this rule shall notify the bar committee of his or her change of status in this regard, including leaves of absence, as soon as practicable.

(5) Class B applicants are those applicants who have taken the Uniform Bar Examination (UBE) in another state or territory of the United States or in the District of Columbia within two years preceding application for admission to the Bar of Colorado and earned a score that is passing based upon standards set by the Colorado Supreme Court.

(a) A UBE score that was earned more than two years, but less than three years, preceding application for admission, may be valid if the applicant has actively and substantially maintained a practice of law, as defined by Rule 201.3(2), for at least one year in a state, territory, or district of the United States which allows admission to members of the Colorado bar on motion, without the requirement of taking that jurisdiction's bar examination.

(b) A UBE score that was earned more than two years, but less than four years, preceding application for admission, may be valid if the applicant has been admitted to the Bar of another state, territory, or district of the United States and has actively and substantially maintained a practice of law, as defined by Rule 201.3(2), and for at least two years in a state, territory, or district of the United States which allows admission to members of the Colorado bar on motion, without the requirement of taking that jurisdiction's bar examination.

(c) A UBE score that was earned more than three years, but less than five years, preceding application for admission, may be valid if the applicant has been admitted to the Bar of another state, territory, or district of the United States and has actively and

substantially maintained a practice of law, as defined by Rule 201.3(2), for at least three years in a state, territory, or district of the United States which allows admission to members of the Colorado bar on motion, without the requirement of taking that jurisdiction's bar examination.

(6) All other applicants are Class C applicants who shall take a written examination.

Rule 201.4. Applications

(1) All applications shall be made on forms furnished by the Board, requiring such information as is necessary to determine whether the applicant meets the requirements of these rules, together with such additional information as is necessary for the efficient administration of these rules. This information shall be deemed confidential and may be released only under the conditions for release of confidential information established by C.R.C.P. 201.11.

(2) All Class C applications shall be received or postmarked on or before the first day of December preceding the February Bar Examination or on or before the first day of May preceding the July Bar Examination or at such other times as may be designated by the court.

(3) Fees shall be required of all applicants in an amount fixed by the Court. Fees may be refunded in accordance with guidelines adopted by the Board. An application which is not accompanied by the applicable fee will not be accepted.

Rule 201.5. Educational Qualifications

(1) Every Class A and Class B applicant shall have obtained a first professional law degree from a law school accredited by the American Bar Association.

(2) Class C applicants shall meet the following educational requirements:

(a) Every Class C applicant shall have received at the time of the examination (i) a first professional law degree from a law school approved by the American Bar Association; or (ii) a first professional law degree from a state accredited law school, provided that such applicant shall have been admitted to the bar of another state, territory, or district of the United States and shall have been actively and substantially engaged in the practice of law, as defined by Rule 201.3(2), for five of the seven years immediately preceding application for admission to the Bar of Colorado; or (iii) a first professional law degree from a law school in a common law, English-speaking nation other than the United States provided that such applicant shall have been admitted to the bar of the nation where he/she received his/her first professional law degree and shall have been actively and substantially engaged in the practice of law, as defined by Rule 201.3(2), for five of the seven years immediately preceding application for admission to the bar of Colorado.

(3) Class A, Class B, and Class C applicants shall be required to take and pass the Multi-State Professional Responsibility Examination (MPRE). A passing score will be valid if it was achieved at an examination taken not more than two years prior to acceptance of application for admission in Colorado. The Supreme Court shall review and approve, in advance, the general standards of performance that must be met in order to pass the MPRE.

Rule 201.6. Moral and Ethical Qualifications

(1) Applicants must demonstrate that they are mentally stable and morally and ethically qualified for admission. Fingerprints may be required of all applicants.

(2) The Bar Committee may require further evidence of an applicant's mental stability and moral and ethical qualifications reasonably related to the standards for admission as it deems appropriate, including a current mental status examination. Costs for any mental status examination or for obtaining any additional information required by the Bar Committee shall be borne by the applicant.

(3) Applicants must certify that they are in compliance with any child support order as defined by § 26-13-123(a), C.R.S.

Rule 201.7. Review of Applications

The executive director, pursuant to guidelines developed by the Bar Committee, shall review all applications for information about the mental stability and ethical or moral qualifications of each applicant. The executive director shall certify to the Bar Committee the names of those applicants who, without further investigation, appear to be qualified for admission. After review and approval by the Bar Committee, the executive director shall certify to the Supreme Court the names of all qualified applicants. Those applicants not certified shall be referred for review by an inquiry panel of the Bar Committee.

Rule 201.8. Inquiry and Hearing Panels of the Bar Committee

The chair of the Bar Committee shall assign at least three members of the Bar Committee to one or more inquiry panels and at least three members of the Bar Committee to one or more hearing panels. Members of the Bar Committee may be assigned by the chair from one panel to another, but in no event shall a member who has conducted a preliminary screening or inquiry of an applicant take any part in the consideration of a formal hearing involving the same applicant. In the discharge of its duties, the Bar Committee may enlist the assistance of other persons admitted to practice law in Colorado. A quorum of either a hearing panel or an inquiry panel is three persons.

Rule 201.9. Review by Inquiry Panel

(1) If, after investigation conducted pursuant to guidelines developed by the Bar Committee, the executive director recommends that an inquiry panel be convened to determine whether there is probable cause to believe that an applicant is not mentally stable or ethically or morally qualified, the chair of the Bar Committee shall designate a member of the Bar Committee to review the director's recommendation. If the reviewing member concurs with the executive director's recommendation, the chair of the Bar Committee shall convene an inquiry panel which includes the reviewing member and designate one of the inquiry panel members as chair.

(2) The director shall notify the applicant in writing of the general matters in question and invite the applicant to appear for an interview with the inquiry panel. The applicant may be accompanied by counsel, and the notice shall so advise. The notice shall be sent by certified mail, at least 14 days before the interview is scheduled, to the address listed on the application or the address subsequently provided in writing to the Board by the applicant.

(3) If not satisfactorily explained, an applicant's failure to appear for an interview may be grounds to recommend denial of the application.

(4) Probable cause for denial exists under the following circumstances:

(a) The applicant has been convicted of a felony or a crime of moral turpitude, or any crime involving a breach of fiduciary duty, or accepted a deferred judgment which is pending as to such a charge in any jurisdiction;

(b) The applicant has been publicly disciplined in any jurisdiction for a violation of a code of professional responsibility or a comparable code of ethics;

(c) The applicant has been declared mentally ill or incompetent by a court having jurisdiction and the declaration has not been dissolved or rescinded;

(d) The applicant has been found not guilty of any crime by reason of insanity.

(e) The applicant is in arrears under a child support order as defined by § 26-13-123(a), C.R.S.

(5) In addition, probable cause for denial of an application may be established by any evidence which, in the judgment of the majority of the inquiry panel members, tends to show that the applicant is not mentally stable or morally or ethically fit to practice law. In making its probable cause determination, the inquiry panel is not bound by formal rules of evidence and may consider all documents, statements or other matters brought to its attention.

(6) If the inquiry panel determines that there is probable cause to believe that the applicant is unqualified,

(a) The panel shall set forth its findings in writing within 35 days after the panel meeting at which such determination is made;

(b) The findings shall state with particularity the specific matters indicating that the applicant is not qualified; and

(c) The executive director shall send a copy of the inquiry panel's findings to the applicant with a notice that these findings shall become the Bar Committee's recommendation to be filed with the Supreme Court, unless within 35 days after the notice is mailed, the applicant files with the Board a written request for a hearing. The request shall include the applicant's response to each of the specific matters in the inquiry panel findings.

(d) If an applicant files a written request for a hearing, but voluntarily withdraws that request before the hearing is held, the inquiry panel's findings shall become the Bar Committee's recommendation to be filed with the Supreme Court.

(7) If the reviewing member ascertains that an inquiry panel proceeding is not justified or the inquiry panel determines that there is not probable cause to believe that the applicant is unqualified, the executive director shall certify to the Supreme Court that the Bar Committee recommends the applicant's admission.

Rule 201.10. Formal Hearings

(1) If, under Rule 201.9, an inquiry panel finds probable cause to believe that an applicant is mentally unstable or ethically or morally unfit for admission to the Bar, a formal hearing shall be conducted by a hearing panel if the applicant makes a written request as specified in Rule 201.9 (6)(c). The issues at the formal hearing shall be limited to those in the inquiry panel findings and challenged in the applicant's request for a hearing unless, prior to the hearing, the attorney regulation counsel requests the inquiry panel to reopen the probable cause determination to consider additional information. The chair of the Bar Committee shall designate one member of the hearing panel as its chair who shall rule on all motions, objections and other matters presented in connection with a formal hearing.

(2) If the applicant files a written request for a formal hearing, the hearing shall be conducted under the following rules of procedure.

(a) The applicant shall be notified in writing of:

(i) The date, time and place of the hearing;

(ii) The names and addresses of persons on whom the inquiry panel relied to establish adverse matters concerning the applicant's fitness; and

(iii) The right of the applicant to be represented by counsel at such hearing, to examine and to cross-examine witnesses, to adduce evidence bearing upon the applicant's moral character and general fitness to practice law, and to make reasonable use of the subpoena powers of the Bar Committee.

(b) (i) The chair of the Bar Committee or the chair of the hearing panel may issue subpoenas to compel the attendance of witnesses and the production of pertinent books, papers, documents, or other evidence. Witnesses shall be entitled to receive fees for mileage as provided by law for witnesses in civil actions.

(ii) A subpoena shall indicate that it is issued in connection with a confidential proceeding and that it may be deemed contempt of the the Supreme Court to breach the confidentiality of the proceeding in any way. It shall not be deemed a breach of confidentiality for a person subpoenaed to consult with a lawyer.

(iii) Any challenge to the power to subpoena as exercised under this rule shall be directed to the chair of the Bar Committee or the chair of the hearing panel.

(iv) Any person who fails or refuses to comply with a subpoena issued by the chair of the Bar Committee or the chair of the hearing panel may be cited for contempt of the Supreme Court upon recommendation of the chair of the Bar Committee.

(v) Depositions may be taken by any party to a proceeding conducted under this rule and used in the same manner and to the same extent as in any civil action except all depositions shall be sealed and filed with the Supreme Court unless otherwise ordered. Subpoenas for attendance at depositions may be issued by the chair of the Bar Committee or the chair of the hearing panel on behalf of any party.

(c) A hearing before a hearing panel shall be confidential unless the applicant shall request that the hearing be public. An applicant may not be required to testify or produce records over his objection if to do so would be in violation of his constitutional privilege against self-incrimination. The hearing panel shall not be bound by the formal rules of evidence. The hearing panel in its discretion may take evidence other than in testimonial form, having the right to rely upon records and other material furnished to it in response to

its request for assistance in its inquiries or in response to its subpoena powers. The hearing panel in its discretion may determine whether evidence to be taken in testimonial form shall be taken in person or upon deposition, but in either event all testimonial evidence shall be taken under oath. A complete stenographic record of the hearing shall be kept, and a transcript thereof may be ordered by the applicant at the applicant's expense.

(d) Within 28 days after the conclusion of the hearing, the hearing panel shall prepare and file with the Supreme Court its report including findings of fact, conclusions of law and recommendations as to admission. Copies of the hearing panel's report shall be supplied to the attorney regulation counsel and the applicant. Within 14 days after service of the hearing panel's report, both the applicant and the attorney regulation counsel shall have the right to file with the Supreme Court and serve on the opposing party written exceptions to the report.

(e) The Supreme Court, after reviewing the report of the hearing panel and any exceptions filed thereto, may admit or decline to admit the applicant to the Bar. The Supreme Court reserves the authority to review any determination made in the course of an admission proceeding and to enter any order with respect thereto, including an order that the Bar Committee conduct further proceedings.

(3) The burden of proof shall be on the applicant to show by a preponderance of the evidence that the applicant is mentally stable and ethically and morally fit for admission to the Bar.

(4) At the formal hearing, the office of the attorney regulation counsel shall represent the inquiry panel and shall present evidence in support of the inquiry panel's findings. The hearing panel shall take evidence and make findings of fact and conclusions of law. With the permission of the chair of the panel and upon sufficient notice to the applicant, the attorney regulation counsel may file amendments made by the inquiry panel to its findings. The burden of going forward initially shall be on the attorney regulation counsel. On motion of the attorney regulation counsel, and upon a showing of good cause, the hearing panel may require the applicant to submit to a mental status examination conducted by a psychiatrist or psychologist, or to submit to a substance abuse evaluation conducted by a qualified professional of the attorney regulation counsel's choosing, the cost of which shall be borne by the applicant.

(5) A prima facie case of unfitness shall be deemed established, and the burden of going forward shall shift to the applicant, upon a showing of any of the following facts:

(a) The applicant has been convicted of a felony or a crime of moral turpitude, or any crime involving a breach of fiduciary duty, or accepted a deferred judgment which is pending as to such a charge in any jurisdiction.

(b) The applicant has been publicly disciplined in any jurisdiction for a violation of a code of professional responsibility or a comparable code of ethics.

(c) The applicant has participated personally, as an attorney or a party, in manifestly excessive and frivolous litigation or has been convicted of contempt of court.

(d) The applicant has been declared mentally ill or incompetent by a court having jurisdiction, and the declaration has not been dissolved or rescinded.

(e) The applicant has been found not guilty of any crime by reason of insanity.

(6) None of the facts sufficient to establish a prima facie case of unfitness, as set forth

in subsection (5), shall constitute an absolute prohibition to admission, and a prima facie showing of unfitness on any ground whether or not specified in subsection (5), may be rebutted by sufficient proof, by a preponderance of the evidence, that the applicant is mentally stable and ethically and morally fit for admission.

Rule 201.11. Request for Disclosure of Confidential Information

(1) Except as otherwise authorized by order of the Supreme Court, all proceedings conducted pursuant to these rules shall be confidential and the Bar Committee shall deny requests for confidential information unless the request is made by:

(a) An agency authorized to investigate the qualifications of persons for admission to practice law;

(b) An agency authorized to investigate the qualifications of persons for government employment;

(c) A lawyer discipline enforcement agency; or

(d) An agency authorized to investigate the qualifications of judicial candidates.

If the request is granted, information shall be released only upon certification by the requesting agency that the confidential information shall be used for authorized purposes only.

(2) If one of the above enumerated agencies requests confidential information, the Bar Committee shall give written notice to the applicant that the confidential information will be disclosed within 14 days unless the applicant obtains an order from the Supreme Court restraining such disclosure.

Rule 201.12. Reapplication for Admission

(1) An applicant who has been rejected by the Supreme Court as mentally unstable or ethically or morally unfit may reapply for admission five years after the date of the Supreme Court's ruling unless otherwise ordered by the Supreme Court. Upon reapplication, the applicant shall have the burden of showing to the Bar Committee by a preponderance of the evidence the applicant's fitness to practice as prescribed by these rules. Upon reapplication, the applicant also shall complete successfully the written examination for admission to practice, even though the applicant has previously passed such an examination in Colorado.

(2) An applicant for readmission to the Bar after disbarment will be considered a Class C applicant under Rule 201.3(5) and shall satisfy all requirements of Rule 251.29(a).

Rule 201.13. Inspection of Essay Examination Answers

Beginning 21 days after the date the results from an examination are mailed and ending on the 56th day (8th week) after such date, any unsuccessful applicant shall be entitled to a reasonable inspection of the applicant's answers to the essay portion of the examination. After that time, the decision that an applicant has passed or failed the examination shall be

final. This rule does not permit applicants to inspect the Multi-State Bar Examination.

Rule 201.14. Oath of Admission

(1) No applicant shall be admitted to the Bar of this State until such time as he or she has taken the oath of admission prescribed by the Supreme Court. No Class A or Class B applicant shall be permitted to take such oath later than eighteen months subsequent to the date upon which his or her application has been approved. No Class C applicant shall be permitted to take such oath later than eighteen months subsequent to the date of the announcement by the Supreme Court that he or she has passed the examination. Nothing herein shall preclude reapplication for admission.

(2) Admission of all applicants shall be by order of the Supreme Court, en banc, and certificates of admission issued to applicants shall be signed by the Clerk of the Supreme Court. Every applicant, before receiving a certificate of admission, shall pay a license fee to be set by the Supreme Court and sign an oath before the Clerk of the Supreme Court or other designated officer. The portion of the license fee necessary to cover the cost of the license shall be remitted to the Clerk of the Supreme Court.

(3) Every applicant, before taking the oath of admission, shall complete the required course on professionalism presented by the Office of Attorney Regulation Counsel in cooperation with the Colorado Bar Association. For applicants eligible for admission after July 1, 2003, the course shall satisfy 6 units of the 45 unit general requirement during each attorney's continuing legal education first compliance period pursuant to C.R.C.P. 260.2 (1). Attorneys admitted after July 1, 2000, but prior to July 1, 2003, who have not taken the 4 unit professionalism course by July 1, 2003, shall take the 6 unit professionalism course, and shall receive 4 units of the 7 unit ethics requirement and 2 of the general requirement, in that attorney's first continuing legal education compliance period, pursuant to C.R.C.P. 260.2(2). In the event that an applicant is unsuccessful on the Colorado bar examination, the professionalism course shall be valid for one full calendar year following completion of the course. Proceeds from the fee charged for the course shall be divided equally between the Colorado Bar Association, CLE in Colorado, Inc., and the Office of Attorney Regulation Counsel to pay for administering the course and to fund the attorney regulation system.

(4) Class A, Class B and single-client applicants who are certified pursuant to Rule 222 shall have six months following admission to take the required course on professionalism required by Rule 201.14(3).

APPENDIX TO RULE 201

Approval of Law Schools

American Bar Association Standards and Rules of Procedure

301 (a) The law school shall maintain an educational program that is designed to qualify its graduates for admission to the bar.

(b) A law school may offer an educational program designed to emphasize some aspects of the law or the legal profession and give less attention to others. If a school offers such a program, that program and its objectives shall be clearly stated in its publications, where appropriate.

(c) The educational program of the school shall be designed to prepare the students to deal with recognized problems of the present and anticipated problems of the future.

302 (a) The law school shall:

(i) Offer to all students instruction in those subjects generally regarded as the core of the law school curriculum;

(ii) Offer to all students at least one rigorous writing experience;

(iii) Offer instruction in professional skills;

(iv) Require of all candidates for the first professional degree, instruction in the duties and responsibilities of the legal profession. Such required instruction need not be limited to any pedagogical method as long as the history, goals, structure and responsibilities of the legal profession and its members, including the ABA Model Code of Professional Responsibility, are all covered. Each law school is encouraged to involve members of the bench and bar in such instruction.

(b) The law school may not offer to its students, for academic credit or as a condition to graduation, instruction that is designed as a bar examination review course.

303 (a) The educational program of the law school shall provide adequate opportunity for:

(i) Study in seminars or by directed research,

(ii) Small classes for at least some portion of the total instructional program.

(b) The law school may not allow credit for study by correspondence.

304 (a) The law school shall maintain and adhere to sound standards of legal scholarship, including clearly defined standards for good standing, advancement, and graduation.

(b) The scholastic achievement of students shall be evaluated from the inception of their studies. As part of the testing of scholastic achievement, a written examination of suitable length and complexity shall be required in every course for which credit is given, except clinical work, courses involving extensive written work such as moot court, practice court, legal writing and drafting, and seminars and individual research projects.

(c) A law school shall not, either by initial admission or subsequent retention, enroll or continue a person whose inability to do satisfactory work is sufficiently manifest that the person's continuation in school would inculcate false hopes, constitute economic exploitation, or deleteriously affect the education of other students.

305 (a) Subject to the qualifications and exceptions contained in this Chapter, the law school shall require, as a condition for graduation, the completion of a course of study

in residence of not less than 1200 class hours, extending over a period of not less than ninety weeks for full-time students, or not less than one hundred and twenty weeks for part-time students.

(i) "In residence" means attendance at classes in the law school.

(ii) "Class hours" means time spent in regularly scheduled class sessions in the law school, including time allotted for final examinations, not exceeding ten percent of the total number of class session hours.

(iii) "Full-time student" means a student who devotes substantially all working hours to the study of law.

(b) To receive residence credit for an academic period, a full-time student must be enrolled in a schedule requiring a minimum of ten class hours a week and must receive credit for at least nine class hours and a part-time student must be enrolled in a schedule requiring a minimum of eight class hours a week and must receive credit for at least eight class hours. If a student is not enrolled in or fails to receive credit for the minimum number of hours specified in this subsection, the student may receive residence credit only in the ratio that the hours enrolled in or in which credit was received, as the case may be, bear to the minimum specified.

(c) Regular and punctual class attendance is necessary to satisfy residence and class hours requirements.

306 If the law school has a program that permits or requires student participation in studies or activities away from the law school or in a format that does not involve attendance at regularly scheduled class sessions, the time spent in such studies or activities may be included as satisfying the residence and class hours requirements, provided the conditions of this section are satisfied.

(a) The residence and class hours credit allowed must be commensurate with the time and effort expended by and the educational benefits to the participating student.

(b) The studies or activities must be approved in advance, in accordance with the school's established procedures for curriculum approval and determination.

(c) Each such study or activity, and the participation of each student therein, must be conducted or periodically reviewed by a member of the faculty to insure that in its actual operation it is achieving its educational objectives and that the credit allowed therefor is, in fact, commensurate with the time and effort expended by, and the educational benefits to, the participating student.

(d) At least 900 hours of the total time credited towards satisfying the "in residence" and "class hours" requirements of this Chapter shall be in actual attendance in regularly scheduled class sessions in the law school conferring the degree, or, in the case of a student receiving credit for studies at another law school, at the law school at which the credit was earned.

308 The law school may admit with advanced standing and allow credit for studies at a law school outside the United States if the studies

(i) Either were "in residence" as provided in Section 305, or qualify for credit under

Section 306, and
(ii) The content of the studies was such that credit therefor would have been allowed towards satisfaction of degree requirements at the admitting school, and
(iii) The admitting school is satisfied that the quality of the educational program at the prior school was at least equal to that required for an approved school.
Advanced standing and credit allowed for foreign study shall not exceed one-third of the total required by the Standards for the first professional degree unless the foreign study related chiefly to a system of law basically followed in the jurisdiction in which the admitting school is located; and in no event shall the maximum advanced standing and credit allowed exceed two-thirds of the total required by the Standards for the first professional degree.

Rule 220. Out-of-State Attorney -- Conditions of Practice

(1) An attorney who meets the following conditions is an out-of-state attorney for the purpose of this rule:

(a) The attorney is licensed to practice law and is on active status in another jurisdiction in the United States;

(b) The attorney is a member in good standing of the bar of all courts and jurisdictions in which he or she is admitted to practice;

(c) The attorney has not established domicile in Colorado; and

(d) The attorney has not established a place for the regular practice of law in Colorado from which such attorney holds himself or herself out to the public as practicing Colorado law or solicits or accepts Colorado clients.

(2) An out-of-state attorney may practice law in the state of Colorado except that an out-of-state attorney who wishes to appear in any state court of record must comply with C.R.C.P. 221 concerning *pro hac vice* admission and an out-of-state attorney who wishes to appear before any administrative tribunal must comply with C.R.C.P. 221.1 concerning *pro hac vice* admission before state agencies.

(3) An out-of-state attorney practicing law under this rule is subject to the Colorado Rules of Professional Conduct and rules of procedure regarding attorney discipline and disability proceedings and those remedies set forth in C.R.C.P. 234(a).

(4) An out-of-state attorney who engages in the practice of law in Colorado pursuant to Rule 220 shall be deemed, for the purposes of Colorado Revised Statutes, Title 12, Article 5, Sections 101, 112, and 115, to have obtained a license for the limited scope of practice specified in this rule.

Rule 221. Out-of-State Attorney -- *Pro Hac Vice* Admission

An out-of-state attorney (as defined in Rule 220) may be permitted to appear on a particular matter in any state court of record under the following circumstances:

(1) Filing Requirements.

(a) In order to be permitted to appear as counsel in a state trial court, the attorney must

first:

(i) File a verified motion requesting permission to appear with the trial court;

(ii) Designate an associate attorney who is admitted and licensed to practice law in this state;

(iii) File a copy of the verified motion with the Clerk of the Colorado Supreme Court at the Attorney Registration Office at the same time the verified motion is filed with the trial court;

(iv) Pay a $250 fee to the Clerk of the Colorado Supreme Court collected by the Attorney Registration Office; and

(v) Obtain permission from the trial court for such appearance.

(b) In the verified motion requesting permission to appear, the attorney must include:

(i) A statement identifying all jurisdictions in which the attorney has been licensed;

(ii) A statement identifying by date, case name, and case number all other matters in Colorado in which *pro hac vice* admission has been sought in the preceding five years, and whether such admission was granted or denied;

(iii) A statement identifying all jurisdictions in which the attorney has been publicly disciplined, or in which the attorney has any pending disciplinary proceeding, including the date of the disciplinary action, the nature of the violation, and the penalty imposed;

(iv) A statement identifying the party or parties represented, and that the attorney has notified the party or parties represented of the verified motion requesting permission to appear;

(v) A statement that the attorney acknowledges he or she is subject to all applicable provisions of the Colorado Rules of Professional Conduct and the Colorado Rules of Civil Procedure, and that such rules have been read and will be followed throughout the *pro hac vice* admission, and that the verified motion complies with those rules;

(vi) The name, address, and membership status of the licensed Colorado attorney associated for purposes of the representation;

(vii) A certificate indicating service of the verified motion upon all counsel of record and the attorney's client in the matter in which leave to appear *pro hac vice* is sought; and

(viii) The signature of the licensed Colorado associate attorney, verifying that attorney's association on the matter.

(2) Names and Appearances. The name and address of the licensed Colorado associate attorney must be shown on all papers served and filed. The Colorado associate attorney shall appear personally and, unless excused, remain in attendance with the attorney in all appearances.

(3) Frequency of Appearances. A separate petition, fee, and order granting permission are required for each action in which an attorney appears in Colorado.

(4) Permission to Provide Information to Trial Court. The Colorado Supreme Court offices may provide information to the trial court that it believes relevant for the trial court's ruling on the pending motion to appear. The trial court nevertheless retains all authority to rule on the motion as it deems appropriate.

(5) Appellate Matters and Other Forms of Review.

(a) If an attorney wants to appear in a proceeding before a Colorado appellate court, and

the attorney obtained permission to appear in a proceeding involving the same action in a Colorado state trial court, the attorney only needs to file an updated affidavit with the Clerk of the Supreme Court at the Attorney Registration Office. No additional filing fee is required.

(b) If an attorney wants to appear in a proceeding before a Colorado appellate court and the attorney did not obtain permission to appear in a proceeding involving the same action in a Colorado state trial court or administrative agency, the attorney shall file motion and affidavit with the Clerk of the Colorado appellate court, with a copy sent to the Clerk of Supreme Court at the Attorney Registration Office requesting permission to appear. The motion, affidavit, and filing fee must be submitted as otherwise provided in subsection (1) of this rule.

(6) Discipline and Disability Jurisdiction. Any attorney who has received *pro hac vice* admission under this rule shall be subject to all applicable provisions of the Colorado Rules of Professional Conduct, except for the provisions of Colo. RPC 1.15 that require an attorney to have a business account and a trust account in a financial institution doing business in Colorado; and the Colorado Rules of Civil Procedure, except C.R.C.P. 227 (general registration fees) and C.R.C.P. 260 (mandatory continuing legal education).

Rule 221.1. Out-of-State Attorney -- *Pro Hac Vice* -- Admission Before State Agencies

An out-of-state attorney (as defined in Rule 220) may, in the discretion of an administrative hearing officer in this state, be permitted to appear on a particular matter before any state agency in the hearings or arguments of any particular cause in which, for the time being, he or she is employed, under the same filing requirements as is set forth in C.R.C.P. 221(1), except for (a)(ii); (b)(vi) and (b)(viii).

Rule 222. Single-Client Counsel Certification

(1) Single-Client Representation. An attorney who is not licensed to practice law in the state of Colorado may be certified to act as counsel for a single-client upon application to and approval by the Colorado Supreme Court if the following conditions are met:

(a) The attorney has established domicile in Colorado;

(b) The attorney is licensed to practice law and is in active status in another state in the United States;

(c) The attorney is a member in good standing of the bar of all courts and jurisdictions in which he or she is admitted to practice; and

(d) The attorney's practice of law is limited to acting as counsel for such single-client (which may include a business entity or an organization and its organizational affiliate.)

(2) Application. The application and payment of the $725 certification fee must be made payable to the Clerk of the Colorado Supreme Court and collected by the Attorney Registration Office. The application shall contain:

(a) a certification of the limited nature of such practice;

(b) a certification that the attorney has advised such single-client that the attorney is not

licensed in Colorado;

(c) a certification by the client that the client is aware the attorney is not a licensed Colorado attorney and that the attorney will be exclusively employed by that client; and

(d) a certificate of good standing from all courts and jurisdictions in which he or she is admitted to practice.

(3) Limitations. Approval under this rule shall be solely for so long as such attorney shall engage in such limited practice. The attorney may not act as counsel for the client until the application is accepted and approved. Such approval shall automatically terminate when the attorney ceases to be engaged in such limited practice. The attorney approved pursuant to this section shall notify the Clerk of the Colorado Supreme Court at the Attorney Registration Office of any change of status in this regard as soon as practicable, and shall not be authorized to represent any other client.

(4) Authority. An attorney approved under this rule has the authority to act on behalf of the single-client for all purposes as if licensed in Colorado. An attorney approved under this rule shall be deemed, for the purposes of Colorado Revised Statutes, Title 12, Article 5, Sections 101, 112, and 115, to have obtained a license for the limited scope of practice specified in this rule. Additionally, an attorney approved under this rule has the authority to provide voluntary pro bono public service to indigent persons and organizations serving indigent persons.

(5) Discipline and Disability Jurisdiction. An attorney approved under this rule is subject to the Colorado Rules of Professional Conduct and the Rules of Procedure Regarding Attorney Discipline and Disability Proceedings.

(6) Fees. An attorney approved under this rule shall also be required to pay annual registration fees and comply with all other provisions of C.R.C.P. 227, as well as comply with the mandatory legal education requirements of C.R.C.P. 260.

(7) Certification Number. An attorney approved under this rule shall be assigned a certification number which shall be used to identify that attorney's certification status in Colorado. Whenever an initial pleading is signed by an attorney authorized under this rule, it shall also include thereon the attorney's certification number. Whenever an initial appearance is made in court without a written pleading, the attorney shall advise the court of the attorney's certification number. The number need not be on any subsequent pleadings.

Rule 223. Pro Bono/Emeritus Attorney

Statement of Purpose. To provide a licensing status to allow retired or inactive attorneys to provide pro bono legal services to the indigent through nonprofit entities as defined in part 1, below.

(1) A pro bono/emeritus attorney may, under the auspices of a Colorado nonprofit entity whose purpose is or includes the provision of pro bono legal representation to indigent or near-indigent persons, act as legal counsel on behalf of a person seeking representation through such entity.

(2) To act in such a capacity the pro bono/emeritus attorney must be either:

(a) An attorney admitted to practice law in Colorado who:

(i) is now on inactive status;

(ii) is in good standing;

(iii) has no pending disciplinary proceeding; and

(iv) will not receive or expect compensation or other direct or indirect pecuniary gain for the legal services rendered; or

(b) An attorney not admitted to practice in Colorado who meets the following conditions:

(i) is licensed to practice law and is on active, inactive, or equivalent status in another jurisdiction in the United States;

(ii) is in good standing in all courts and jurisdictions in which he or she is admitted to practice;

(iii) has no pending disciplinary proceeding;

(iv) agrees to be subject to the Colorado Rules of Professional Conduct, the rules of procedure regarding attorney discipline and disability proceedings, and the remedies set forth in C.R.C.P. 234(a);

(v) limits his or her practice to acting as pro bono counsel as set forth in this rule and will not receive or expect compensation or other direct or indirect pecuniary gain for the legal services rendered hereunder; and

(vi) completes the application described herein and pays a one-time administrative fee of $50.00, payable to The Clerk of the Colorado Supreme Court and collected by the Attorney Registration Office. The application shall contain:

(A) A certification that the attorney agrees to the provisions of paragraphs (2)(b)(iv) & (v), above; and

(B) A certification that the attorney is in good standing in all courts and jurisdictions in which he or she is admitted to practice, and has no pending disciplinary proceeding in any jurisdiction.

(c) An attorney approved under this rule shall be assigned a certification number, which shall be used to identify the attorney's status as a pro bono/emeritus attorney.

(3) All fees collected by the Attorney Registration Office under this rule shall be used to fund the Attorney Regulation System.

(4) Pro bono/emeritus attorneys shall not be required to pay annual registration fees.

(5) All pro bono/emeritus attorneys shall annually file a registration statement on or before February 28 of each year identifying the organized nonprofit entity or entities, as described in section (1) of this rule, for which the attorney is currently volunteering at the time of filing the registration statement or volunteered in the prior calendar year. In lieu of filing such a registration statement, the attorney may pay the registration fee that was applicable in the prior calendar year for registered inactive attorneys pursuant to C.R.C.P. 227(A) and, thereby, avoid termination of her or his pro/bono emeritus status. Failure of a pro bono/emeritus attorney to file a registration statement or pay the applicable prior year's inactive attorney registration fee by February 28 of each year shall result in automatic termination of pro bono/emeritus status.

(6) This Rule shall not preclude a nonprofit entity from receiving court-awarded attorney fees for representation provided by a pro bono/emeritus attorney and shall not preclude a pro bono/emeritus attorney from receiving reimbursement for otherwise recoverable costs

incurred in representing a pro bono client.

Rule 224. Provision of Legal Services Following Determination of a Major Disaster

(1) Determination of Major Disaster. Solely for purposes of this rule, the Supreme Court shall determine when an emergency affecting the justice system, as a result of a natural or other major disaster, has occurred in:

(a) The state of Colorado, and whether the emergency caused by the major disaster affects the entirety or only a part of this state, or

(b) Another jurisdiction in the United States, but only after such a determination and its geographical scope have been made by the highest court of that jurisdiction.

(2) Temporary Practice in Colorado Following a Major Disaster in Colorado. Following the determination of an emergency in Colorado pursuant to paragraph (1) of this rule, an out-of-state attorney who meets the conditions of C.R.C.P. 220 (1)(a) and (b) may be allowed to establish a place for the temporary practice of law from which the attorney may provide legal services not otherwise authorized by Rule 220. The terms and conditions of such temporary practice will be set forth in the Supreme Court's emergency order, and will depend upon the nature and extent of the emergency affecting the justice system, and the needs for legal services resulting from such emergency.

(3) Temporary Practice in Colorado Following A Major Disaster in Another Jurisdiction. Following the determination of a major disaster in another jurisdiction in the United States, pursuant to paragraph (1) of this rule, an out-of-state attorney who meets the conditions of C.R.C.P. 220(1)(a) and (b) may establish a place for the temporary practice of law in Colorado not otherwise authorized by C.R.C.P. 220, from which such attorney may provide legal services related to that attorney's practice of law in the licensing jurisdiction or the area of such licensing jurisdiction where the major disaster occurred.

(4) Duration of Authority for Temporary Practice. The authority for an out-of-state attorney to maintain a place for the practice of law in Colorado as described in paragraphs (2) and (3) shall end when the Supreme Court determines that the conditions caused by the major disaster have ended. The Supreme Court may allow a winding down period for such temporary practice offices.

(5) Court Appearances. The authority granted by this rule does not include appearances in Colorado state courts of record or administrative tribunals, except:

(a) When the out-of-state attorney files a motion for *pro hac vice* admission pursuant to C.R.C.P. 221 and 221.1, and obtains permission from the trial court for such appearance (the Supreme Court may waive *pro hac vice* admission fees at the time of the determination of the major disaster as described in paragraph (1) or at any time thereafter while the determination remains in effect); or

(b) When the Supreme Court, in any determination made under paragraph (1), grants blanket permission to attorneys providing legal services pursuant to paragraph (2) to appear in all or designated Colorado courts or administrative tribunals, thereby suspending the *pro hac vice* application and fee requirements set forth in C.R.C.P. 221 and 221.1.

(6) Disciplinary Authority and Registration Requirement. Out-of-state attorneys who establish a place for the temporary practice of law in Colorado pursuant to paragraphs (2) or (3) are subject to this Supreme Court's disciplinary authority and the Colorado Rules of Professional Conduct as provided in C.R.C.P. 220(3) and Colo. RPC 8.5. Prior to opening such place for the temporary practice of law in Colorado, these out-of-state attorneys shall file a registration statement with the Colorado Supreme Court Office of Attorney Registration. The registration statement shall be in a form prescribed by the Supreme Court. Any out-of-state attorney who provides legal services pursuant to this rule shall not be considered to be engaged in the unauthorized practice of law in Colorado, and shall be deemed, for the purposes of Colorado Revised Statutes, Title 12, Article 5, Sections 101, 112 and 115, to have obtained a license for the limited scope of practice specified in this rule.

(7) Notification to Clients. Out-of-state attorneys who establish a place for the temporary practice of law in Colorado pursuant to paragraph (2) shall inform Colorado clients in writing, at the time the relationship commences, of the jurisdiction(s) in which the attorney is licensed or otherwise authorized to practice law, any limits on that authorization, and that the attorney is not authorized to practice law in Colorado except as permitted by this rule and the Court's emergency order.

Rule 226. Legal Aid Dispensaries; Law Students Practice

Repealed July 12, 2011, nunc pro tunc June 16, 2011, effective immediately.

Rule 226.5. Legal Aid Dispensaries and Law Student Externs

(1) Legal Aid Dispensaries.

Students of any law school that maintains a legal-aid dispensary where poor or legally underserved persons receive legal advice and services shall, when representing the dispensary and its clients, be authorized to advise clients on legal matters and appear in any court or before any administrative tribunals or arbitration panel in this state as if licensed to practice law.

(2) Law Student Externs.

A. Practice by law student extern (formerly section 12-5-116.1)

(1) An eligible law student extern, as specified in section 2B, may appear and participate in any civil proceeding in any municipal, county, or district court (including domestic relations proceedings) or before any administrative tribunal in this state, or in any county or municipal court criminal proceeding, except when the defendant has been charged with a felony, or in any juvenile proceeding in any municipal, county or district court, or before any magistrate in any juvenile or other proceeding or any parole revocation under the following circumstances:

(a) If the person on whose behalf the extern is appearing has provided written consent to that appearance and the law student extern is under the supervision of a supervising lawyer, as specified in section 2D.

(b) When representing the office of the state public defender and its clients, if the person

on whose behalf the extern is appearing has provided written consent to that appearance and the law student extern is under the supervision of the public defender or one of his deputies.

(c) On behalf of the state or any of its departments, agencies, or institutions, a county, a city, or a municipality, with the written approval and under the supervision of the attorney general, attorney for the state, county attorney, district attorney, city attorney, or municipal attorney. A general approval for the law student extern to appear, executed by the appropriate supervising attorney pursuant to this paragraph (c), shall be filed with the clerk of the applicable court/administrative tribunal and brought to the attention of the judge/presiding officer thereof.

(d) On behalf of a nonprofit legal services organization where poor or legally underserved persons receive legal advice and services if the person on whose behalf the student is appearing has provided written consent to that appearance and the law student extern is under the supervision of a supervising lawyer, as specified in Section 2D.

(2) The consent or approval referred to in subsection (1) of this section, except a general approval, shall be made in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

(3) In addition to the activities authorized in subsection (1) of this section, an eligible law student extern may engage in other activities under the general supervision of a supervising lawyer, including but not limited to the preparation of pleadings, briefs, and other legal documents which must be approved and signed by the supervising lawyer and assistance to indigent inmates of correctional institutions who have no attorney of record and who request such assistance in preparing applications and supporting documents for post conviction relief.

B. Eligibility requirements for law student extern practice (formerly section 12-5-116.2)

(1) In order to be eligible to make an appearance and participate pursuant to section 2A, a law student must:

(a) Be duly enrolled in an ABA accredited law school, or a recent graduate of such a law school who has applied for admission to the Colorado Bar. For purposes of this rule, the "law student's" eligibility continues after graduation from law school and until the announcement of the results of the first bar examination following the student's graduation, provided for anyone who passes that examination, eligibility shall continue in effect through the date of the first swearing in ceremony following the examination.

(b) Have completed a minimum of two years of legal studies;

(c) Have the certification of the dean of such law school that the dean has no personal knowledge of or knows of nothing of record that indicates that the student is not of good moral character and, in addition, that the law student has completed the requirements specified in paragraph (b) of this subsection (1) and is a student in good standing, or recently graduated. The dean of such law school has no continuing duty to certify the student's good moral character after the student has graduated from law school [at that point, the law student/applicant to the Colorado Bar has obligations to maintain the integrity of the profession pursuant to Colo. RPC 8.1].

(d) Be introduced to the court or administrative tribunal in which the extern is appearing as a law student extern by a lawyer authorized to practice law in this state;

(e) Neither ask nor receive any compensation or remuneration of any kind for the extern's services from the person on whose behalf the extern renders services; but such limitation shall not prevent the law student extern from receiving credit for participation in the law school externship program upon prior approval of the law school, nor shall it prevent the law school, the state, a county, a city, a municipality, or the office of the district attorney or the public defender from paying compensation to the law school extern, nor shall it prevent any agency from making such charges for its services as it may otherwise properly require; and

(f) State that the extern has read, is familiar with, and will be governed in the conduct of the extern's activities under section 2A by the Colorado Rules of Professional Conduct.

C. Certification of law student extern by laws school dean-filing-effective period-withdrawal by dean or termination (formerly section 12-5-116.3)

(1) The certification by the law school dean, pursuant to section 2B(1)(c), required in order for a law student extern to appear and participate in proceedings:

(a) Shall be filed with the clerk of the Colorado Supreme Court Office of Attorney Registration, and unless it is sooner withdrawn, shall remain in effect until the student's graduation.

(b) May be withdrawn by the dean at any time by mailing a notice to that effect to the clerk of the Colorado Supreme Court Office of Attorney Registration, and such withdrawal may be without notice or hearing and without any showing of cause; and

(c) May be terminated by the supreme court at any time without notice or hearing and without any showing of cause.

D. Qualifications and requirements of supervising lawyer (formerly section 12-5-116.4)

(1) A supervising lawyer, under whose supervision an eligible law student extern appears and participates pursuant to section 2A, shall be authorized to practice law in this state and:

(a) Shall be a lawyer working for or on behalf of an organization identified in sections 2A(1)(b)-(d);

(b) Shall assume personal professional responsibility for the conduct of the law student extern; and

(c) Shall assist the law student extern in the extern's preparation to the extent the supervising lawyer considers it necessary.

Rule 227. Registration Fee

A. Registration Fee of Attorneys and Attorney Judges

(1) General Provisions.

(a) Fees. On or before February 28 of each year, every attorney admitted to practice in Colorado (including judges, those admitted on a provisional or temporary basis and those admitted as judge advocate) shall annually file a registration statement and pay a fee as set by the Colorado Supreme Court. As of 2008, the fees set by the court are as follows: the fee for active attorneys is $225.00; the fee of any attorney whose first admission to practice is within the preceding three years is $180.00; the fee for attorneys on inactive status is $95.00.

All persons first becoming subject to this rule shall file a statement required by this rule at the time of admission, but no annual fee shall be payable until the first day of January following such admission. As necessary to defray the costs of disciplinary administration and enforcement, the costs incurred with respect to unauthorized practice of law matters, and expenses incurred in the administration of this rule, the Supreme Court will authorize periodic increases to the annual fee for every Colorado attorney.

(b) Collection of Fee. The annual fee shall be collected by the Clerk of the Supreme Court of Colorado, who shall send and receive the notices and statements provided for hereafter.

(c) Application of Fees. The fee shall be divided. Nine dollars shall be used to pay the costs of establishing and administering the mandatory continuing legal education requirement. A portion of the fee, to be determined and adjusted periodically by the Supreme Court, shall be used to support designated providers that have been selected by the Advisory Committee to provide assistance to attorneys needing help in dealing with physical, emotional, or psychological problems which may be detrimental to their ability to practice law. Forty dollars shall be used to maintain an Attorneys' Fund for Client Protection. The remaining portion of the fee, and the entire fee of those on inactive status, shall be used only to defray the costs of disciplinary administration and enforcement, the costs incurred with respect to unauthorized practice matters, and the expenses incurred in the administration of this rule.

(d) Initial Registration of Non-Registered Attorneys. Every attorney admitted to practice in Colorado before January 1, 1974 who has not previously complied with the provisions of C.R.C.P. 227 may apply for registration with the Clerk of the Supreme Court of Colorado by filing a registration statement and paying a fee of $100.00.

(2) Statement.

(a) Contents. The annual registration statement shall be on a form prescribed by the Clerk, setting forth:

(1) date of admission to the Bar of the Colorado Supreme Court;

(2) registration number;

(3) current residence and office addresses and, if applicable, a preferred mailing address for the Colorado Courts;

(4) certification as to (a) whether the attorney has been ordered to pay child support and, if so, whether the attorney is in compliance with any child support order, (b) whether the attorney or the attorney's law firm has established one or more interest-bearing accounts for client funds as provided in Colo. RPC 1.15, and if so, the name of the financial institution, account number and location of the financial institution, or, if not, the reason for the exemption, and (c) with respect to attorneys engaged in the private practice of law, whether the attorney is currently covered by professional liability insurance and, if so, whether the attorney intends to maintain insurance during the time the attorney is engaged in the private practice of law; and

(5) such other information as the Clerk may from time to time direct.

(b) Notification of Change. Every attorney shall file a supplemental statement of change in the information previously submitted, including home and business addresses, within 28

days of such change. Such change shall include, without limitation, the lapse or termination of professional liability insurance without continuous coverage.

(c) Availability of Information. The information provided by the lawyer regarding professional liability insurance shall be available to the public through the Supreme Court Office of Attorney Registration and on the Supreme Court Office of Attorney Registration website.

(3) Compliance.

(a) Late Fee. Any attorney who pays the annual fee or files the annual registration statement after February 28 but on or before March 31 shall pay a late fee of $50.00 in addition to the registration fee. Any attorney who pays the annual fee or files the annual registration statement after March 31 shall pay a late fee of $150.00 for each such year, in addition to the registration fee.

(b) Receipt - Demonstration of Compliance. Within 28 days of the receipt of each fee and of each statement filed by an attorney in accordance with the provisions of this rule, receipt thereof shall be acknowledged on a form prescribed by the Clerk in order to enable the attorney on request to demonstrate compliance with the requirement of registration pursuant to this rule.

(c) Initial Pleading Must Contain Registration Number. Whenever an initial pleading is signed by an attorney, it shall also include thereon the attorney's registration number. Whenever an initial appearance is made in court without a written pleading, the attorney shall advise the court of the registration number. The number need not be on any subsequent pleadings.

(4) Suspension.

(a) Failure to Pay Fee or File Statement - Notice of Delinquency. An attorney shall be summarily suspended if the attorney either fails to pay the fee or fails to file a complete statement or supplement thereto as required by this rule prior to May 1, provided a notice of delinquency has been issued by the Clerk and mailed to the attorney addressed to the attorney's last known mailing address at least 28 days prior to such suspension, unless an excuse has been granted on grounds of financial hardship.

(b) Failure of Judge to Pay Fee or File Statement. Any judge subject to the jurisdiction of the Commission on Judicial Qualifications or the Denver County Court Judicial Qualifications Commission who fails to timely pay the fee or file a complete statement or supplement thereto as required by this rule shall be reported to the appropriate commission, provided a notice of delinquency has been issued by the Clerk and mailed to the judge addressed to the judge's last known business address at least 28 days prior to such reporting, unless an excuse has been granted on grounds of financial hardship.

(5) Reinstatement.

(a) Application - Reinstatement Fee. Any attorney suspended under the provisions of section (4)(a) above shall not be reinstated until application for reinstatement is made in writing and the Clerk acts favorably on the application. Each application for reinstatement shall be accompanied by a reinstatement fee of $100.00 and payment of all arrearages and late fees to the date of the request for reinstatement.

(b) Report Judge's Payment. If any judge who is reported to a commission under the

provisions of section (4)(b) above subsequently makes payment of all arrearages, such payment shall be reported to the commission by the Clerk.

(6) Inactive Status.

(a) Notice. An attorney who has retired or is not engaged in practice shall file a notice in writing with the Clerk that he or she desires to transfer to inactive status and discontinue the practice of law.

(b) Payment of Fee - Filing of Statement. Upon the filing of the notice to transfer to inactive status, the attorney shall no longer be eligible to practice law but shall continue to pay the fee required under section (1)(a) above and file the statements and supplements thereto required by this rule on an annual basis.

(c) Exemption - Age 65. Any registered inactive attorney over the age of 65 is exempt from payment of the annual fee.

(7) Transfer to Active Status.

Upon the filing of a notice to transfer to inactive status and payment of the fee required under section (1)(a) above and any arrearages, if owed, an attorney shall be removed from the roll of those classified as active until and unless a request for transfer to active status is made and granted. Transfer to active status shall be granted, unless the attorney is subject to an outstanding order of suspension or disbarment, upon the payment of any assessment in effect for the year the request is made and any accumulated arrearages for non-payment of inactive fees.

(8) Resignation.

An attorney may resign from the practice of law in Colorado upon order of the Supreme Court and thereby be excused from paying the annual registration fee provided that no disciplinary or disability matter or order is pending against the attorney. Any attorney who wishes to resign must petition the Supreme Court pursuant to this Rule and tender the attorney's certificate of admission with the petition. Any attorney who so resigns is not eligible for reinstatement or transfer to active or inactive status and may be admitted to the practice of law in Colorado only by complying with Rule 201 regarding admission to the practice of law. Any attorney who so resigns remains subject to the jurisdiction of the Supreme Court as set forth in Rule 241.1(b) with respect to the attorney's practice of law in Colorado.

B. Registration Fee of Nonattorney Judges

(1) Every nonattorney judge who is subject to the jurisdiction of the Commission on Judicial Qualifications shall pay an annual fee of $10.00. The annual fee shall be collected by the Clerk of the Supreme Court of Colorado, who shall send and receive. or cause to be sent and received, the notices and fees provided for hereafter. The ten-dollar fee shall be used to pay the costs of establishing and administering the mandatory continuing legal education requirement. On or before March 1 of each year, the Chief Justice shall prepare, certify and file with the Clerk a written report of the receipts and disbursements under this rule during the preceding calendar year. These reports shall be public documents.

(2) Any nonattorney judge who fails to timely pay the fee required under subparagraph

(1) above shall be reported to the Commission on Judicial Qualifications, provided a notice of delinquency has been issued by the Clerk and mailed to the nonattorney judge by certified mail addressed to the county court in the respective county seat at least 28 days prior to such reporting, unless an excuse has been granted on grounds of financial hardship.

(3) If any nonattorney judge who is reported to the Commission on Judicial Qualifications under the provisions of subparagraph (2) above subsequently makes payment of arrearages, such payment shall be reported to the Commission by the Clerk.

(4) On or before January 31 of each year, all nonattorney judges shall file any affidavit required by Rule 260.5 and shall pay the annual fee required by this rule.

(5) Within 21 days after the receipt of each fee in accordance with the provisions of subparagraph (4) above, receipt thereof shall be acknowledged on a form prescribed by the Clerk.

COMMENT

The Supreme Court sets the annual attorney registration fee. The annual attorney registration fee includes both attorneys on active status and attorneys on inactive status. Attorneys admitted under C.R.C.P. 222 (Single-Client Certification) annually pay the active attorney fee. The Supreme Court apportions the active attorney fee to the various attorney regulation and registration offices; the continuing legal education office; the Attorneys' Fund for Client Protection; and the Colorado Attorney Assistance Program.

To cover the operating costs of the various programs the court increased the annual attorney registration fee every six to eight years. In 2006, the court increased the active attorney registration fee fifteen percent. In 1998, to fund major changes to the attorney regulation system the court increased the fee seventy percent. The infrequent increases resulted in a surplus in the attorney registration/regulation fund for a period of years. In an effort to reduce the impact of a substantial fee increase every six to eight years the court adopted a more modest and consistent way of determining attorney registration fees. The court will authorize smaller but more frequent fee increases as necessary to cover operating expenses related to the costs of the Attorneys' Fund for Client Protection, attorney regulation, unauthorized practice of law matters, and administration of this rule.

CHAPTER 19

Unauthorized Practice of Law Rules

CHAPTER 19

UNAUTHORIZED PRACTICE OF LAW RULES

Rule 228. Jurisdiction

The Supreme Court of Colorado, in the exercise of its exclusive jurisdiction to define the practice of law and to prohibit the unauthorized practice of law within the State of Colorado, adopts the following rules, which shall govern proceedings concerning the unauthorized practice of law.

Rule 229. Appointment and Organization of Unauthorized Practice of Law Committee

(a) There is hereby established a committee to be known as the Unauthorized Practice of Law Committee of the Supreme Court of the State of Colorado (Committee) and which shall be an adjunct to the Supreme Court. The Committee shall be composed of nine members, six of whom shall be members of the Bar of Colorado. The members of the Committee shall be appointed by the Supreme Court for terms of three years, beginning on the 1st day of January, and the terms of three members shall commence each year; provided, that terms may be for shorter periods to accommodate changes in the size of the Committee by amendments to this rule. Membership on the Committee may be terminated by the Supreme Court at its pleasure, and members may resign at any time. Any vacancies shall be filled by appointment by the Supreme Court for the unexpired term. The Committee and members thereof shall be entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in the performance of their official duties.

(b) The Supreme Court shall designate a member of the Committee as Chair.

(c) The Committee may adopt rules providing for the time and place of its meetings, the selection of a Vice-Chair and other officers, and such other rules not in conflict with the rules of the Supreme Court as may be deemed necessary or expedient for the conduct of the Committee's business. The Clerk of the Supreme Court shall have copies of the rules for interested persons.

(d) The Committee may enlist the assistance of other duly licensed members of the Bar of Colorado in the performance of the activities of the Committee.

Rule 230. Committee Jurisdiction

(a) The Committee shall have jurisdiction over and inquire into and consider complaints or reports made by any person, including Regulation Counsel, or other entities alleging the unauthorized practice of law. Moreover, the Committee, on its own motion, may inquire into any matter pertaining to the unauthorized practice of law.

(b) Nothing contained in these rules shall be construed as a limitation upon the authority or jurisdiction of any court or judge thereof to punish for contempt any person or legal entity not having a license from this court who practices law or attempts or purports to practice law in any matter which comes within the jurisdiction of that court nor shall these rules be construed as a limitation upon any civil remedy or criminal proceeding which may otherwise exist with respect to the unauthorized practice of law.

Rule 231. Regulation Counsel; Duties and Powers

Regulation Counsel, appointed by the Supreme Court pursuant to C.R.C.P. 251.3, shall have the following duties and powers, in addition to those set forth in C.R.C.P. 251.3:

(a) (1) To investigate and to assist with the investigation of all matters within the jurisdiction of the Committee, upon the request and at the direction of members of the Committee; to dismiss allegations as provided in C.R.C.P. 232.5(c); and to report to the Committee as provided in C.R.C.P. 232.5(d).

(2) To prepare and prosecute, or assist in the preparation and prosecution of, civil-injunction proceedings as provided in C.R.C.P. 234 to 237.

(3) To prepare and prosecute, or assist in the preparation and prosecution of, contempt proceedings as provided in C.R.C.P. 238 and 239.

(b) To maintain records in the office of the Committee, in an appropriately cataloged manner, of all matters coming within the jurisdiction of the Committee.

(c) To provide facilities for the administration of proceedings under these rules and for receiving and filing all requests of investigation and all complaints concerning matters within the jurisdiction of the Committee.

(d) To employ such staff, including investigative and clerical personnel, subject to approval of the Committee, as may be necessary to carry out the duties under these rules.

(e) To perform such other duties as the Chair or the Supreme Court may require.

Rule 232. Investigations; General, Subpoenas

Repealed, effective October 29, 2001.

Rule 232.5. Investigation; Procedure; Subpoenas

(a) All matters within the jurisdiction of the Committee shall be referred to the Regulation Counsel who shall either conduct an investigation or, if the Chair concurs, refer the matter to a member of the Committee pursuant to this rule or to an enlisted member of the Bar pursuant to C.R.C.P. 229(d) for investigation. Unless excused by the Regulation Counsel, the complainant shall be required to submit the complaint in writing and subscribe the same.

(b) (1) Promptly after receiving a written request for investigation or complaint, the Regulation Counsel shall determine whether to proceed with an investigation. In making such determination, the Regulation Counsel may make such inquiry regarding the underlying

facts as the Regulation Counsel deems appropriate.

(2) If the Regulation Counsel determines to proceed with an investigation or refers the matter to a member of the Committee or an enlistee for investigation pursuant to C.R.C.P. 232.5(a), the respondent shall be: notified that the investigation is underway; provided with a copy of the complaint and of the rules governing the investigation; and asked to file with the Regulation Counsel or the person conducting the investigation a written answer to the complaint within 21 days after notice of the investigation is given.

(c) When the investigation is concluded, the Regulation Counsel shall either dismiss the allegations or report to the Committee for a determination as provided in paragraph (d) of this rule. If the Regulation Counsel dismisses the allegations, the person making the allegations may request review of the Regulation Counsel's decision by the Committee. If such review is requested, the Committee shall review the matter and make a determination as provided in paragraph (d). The Committee shall sustain the dismissal unless it finds that the Regulation Counsel's action constituted an abuse of discretion. If the Committee sustains a dismissal, it shall furnish the person making the allegations with a written explanation of its decision.

(d) If, after conducting an investigation, the Regulation Counsel believes that the Committee should authorize an informal disposition, civil-injunction proceedings, or contempt proceedings, the Regulation Counsel shall submit a report of the investigation and a recommendation to the Committee. The Committee shall then decide whether to:

(1) dismiss the matter; provided that the dismissal may be either with or without a finding of the unauthorized practice of law, and the letter of dismissal may contain cautionary language if appropriate; and provided that the person making the allegation shall be furnished a written explanation of the Committee's decision;

(2) conduct further investigation;

(3) enter into an informal disposition with the respondent consisting of a written agreement by the respondent to refrain from the conduct in question, to refund any fees collected, to make restitution and/or to pay a fine that may range from $100 to $250 per incident; such informal dispositions are to be encouraged;

(4) commence civil-injunction proceedings as provided in C.R.C.P. 234 to 237; or

(5) commence contempt proceedings as provided in C.R.C.P. 238 and 239.

(e) At least three Committee members must be present for the Committee to act upon said reports, findings, and recommendations.

(f) In connection with an investigation of the unauthorized practice of law, the Chair or the Regulation Counsel may issue subpoenas to compel the attendance of respondents and other witnesses or to compel the production of books, papers, documents, or other evidence. All such subpoenas are subject to the provisions of C.R.C.P. 45.

(g) Any person subpoenaed to appear and give testimony, or to produce books or records, who refuses to appear and give testimony, or to produce the books or records; and any person having been sworn to testify and who refuses to answer any proper questions, may be cited for contempt of the Supreme Court, as provided in C.R.C.P. 107.

(h) Any person investigating a matter pursuant to these rules shall have the power to administer oaths and affirmations, and to take and have transcribed the testimony and

evidence of witnesses.

(i) Any person who knowingly obstructs the Regulation Counsel or the Committee, or any part thereof, in the performance of their duties may be cited for contempt of the Supreme Court, as provided in C.R.C.P. 107.

Rule 233. Investigation; Procedure

Repealed, effective October 29, 2001.

Rule 234. Civil Injunction Proceedings; General

(a) If the Committee determines that civil injunction proceedings shall be instituted against a respondent, such proceedings may be commenced in the name of the People of the State of Colorado by a petition filed in the Supreme Court by the Regulation Counsel or by a member of the Bar appointed by the Supreme Court for the purpose of conducting such proceedings.

(b) The petition shall be in writing and shall set forth the facts and charges in plain language and with sufficient particularity to inform the respondent of the acts complained of. The petition shall specify requested relief which may include, without limitation, injunction, refund, restitution, a fine, and assessment of costs of the proceeding.

(c) The Supreme Court, upon consideration of the petition so filed, may issue its order directed to the respondent commanding the respondent to show cause why the respondent should not be enjoined from the alleged unauthorized practice of law, and further requiring the respondent to file with the Supreme Court within 21 days after service of the petition and show cause order, a written answer admitting or denying the matter stated in the petition. The show cause order, together with a copy of the petition, shall be served upon the respondent. Service of process shall be sufficient when made either personally upon the respondent or by certified mail sent to the respondent's last known address.

(d) If no response or defense is filed within the time permitted, the Supreme Court, upon its motion or upon motion of any party, shall decide the case, granting such relief and issuing such other orders as may be appropriate.

(e) If a response or defense raises no genuine issue of material fact, any party by motion may request a judgment on the pleadings and the Supreme Court may decide the case as a matter of law, granting such relief and issuing such orders as may be appropriate.

(f) Upon the Supreme Court's motion or upon motion of any party, questions of fact raised in proceedings under this rule shall be referred to a hearing master for determination.

Rule 235. Civil Injunction Proceedings; Hearing Master, Powers, Procedure

(a) Civil injunction proceedings before a hearing master shall be held in any county designated by the hearing master that is convenient to the participants.

(b) The People of the State of Colorado may be represented in proceedings before the

hearing master by the Regulation Counsel, or by a member of the Bar appointed pursuant to Rule 234. Upon receipt of the order of reference, the hearing master shall set a date, time, and place for a first meeting of the parties which shall be within 28 days after the date notice thereof is given and notify the parties accordingly. At such meeting, a date, time, and place for hearing shall be set, and any matters which may expedite the proceedings shall be considered. A complete record of this meeting shall be made unless jointly waived by the parties. After the first meeting, the hearing master shall issue a notice of hearing to the parties. The notice shall be in writing and shall designate the date, time, and place of the hearing. The notice shall also advise the respondent that the respondent is entitled to be represented by counsel at the hearing, to cross-examine witnesses, and to present evidence in the respondent's own behalf. The giving of notice shall be sufficient when made by certified mail sent to the respondent at the respondent's last known address.

(c) The parties may procure the attendance of witnesses before the hearing master by the issuance of subpoenas which shall run in the name of the Supreme Court and may be issued by the hearing master or Clerk of the Supreme Court upon the request of a party. All such subpoenas shall be subject to the provisions of C.R.C.P. 45. Failure or refusal, without adequate excuse, to comply with any such subpoena shall be a contempt of the Supreme Court and may be punished accordingly.

(d) The Colorado Rules of Civil Procedure shall be applicable when not inconsistent with these rules. Subject to any limitations in the order of reference, the hearing master shall have the powers generally reposed in a "Court" under the Colorado Rules of Civil Procedure. At all hearings before a hearing master witnesses shall be sworn and a complete record made of all proceedings had and testimony taken.

Rule 236. Civil Injunction Proceedings; Report of Hearing Master; Objections

(a) After the hearing, the hearing master shall report in writing to the Supreme Court in accordance with the order of reference, setting forth findings of fact, conclusions of law, and recommendations for final disposition of the case. If the hearing master makes a finding of unauthorized practice of law in the report, then the hearing master shall also recommend that a fine be imposed for each incident of unauthorized practice of law; the minimum fine for each incident shall be not less than $250 and not more than $1000. A report from the Presiding Disciplinary Judge approving the parties' stipulation to injunction, may be exempt from a fine. Promptly after the report is filed with the Supreme Court, the Clerk shall mail copies thereof to all parties.

(b) Objections to the report of the hearing master may be filed with the Supreme Court by any party, within 28 days after copies of the report have been mailed to the parties.

(c) If no objections are filed, the case shall stand submitted upon the hearing master's report.

(d) If objections are filed, the objecting party shall within 14 days thereafter request the reporter to prepare a transcript of the proceedings before the hearing master, or any portion of such transcript thereof as is deemed necessary for the consideration of the case. The

objecting party shall file with the Supreme Court and serve on the opposing party a designation of those portions of the transcript and of the record before the hearing master which the party wishes added to the record before the Supreme Court.

The opposing party may within 14 days after service of the designation file and serve a cross-designation of any additional portions of the transcript and additional parts of the record before the hearing master as is deemed necessary for a proper consideration of the case. The objecting party is responsible for the expense of preparing the record, including the transcript or portions thereof.

The reporter shall prepare the transcript and file it, properly certified, with the Supreme Court within 63 days (9 weeks) after the filing of the objections.

(e) An objecting party shall have 28 days after the filing with the Supreme Court of the transcript and other additions to the record within which to file an opening brief. The opposing party shall have 28 days after the filing of the objecting party's opening brief within which to file an answer brief. The objecting party shall have 14 days after the filing of the answer brief within which to file a reply brief.

(f) A brief of an amicus curiae may be filed only by leave of the Supreme Court granted on motion or by the request of the Court. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Any amicus curiae shall file its brief within the time allowed the party whose position the amicus brief will support unless the Court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer.

Rule 237. Civil Injunction Proceedings; Determination by Court

(a) After review of the report of the hearing master, together with any objections and briefs, the Supreme Court may adopt the report or modify or reject it in whole or in part and shall determine as a matter of law whether the respondent has been engaged in the unauthorized practice of law. If the Supreme Court finds that the respondent was engaged in the unauthorized practice of law, the Supreme Court may enter an order enjoining the respondent from further conduct found to constitute the unauthorized practice of law, and make such further orders as it may deem appropriate, including restitution and the assessment of costs.

(b) Nothing in this rule shall be construed to limit the power of the Supreme Court, upon proper application, to issue an injunction at any stage of the proceeding in order to prevent public harm.

Rule 238. Contempt Proceedings; General

(a) If the Committee determines that contempt proceedings shall be instituted against a respondent, such proceedings shall be commenced in the name of the People of the State of Colorado by a petition filed in the Supreme Court by the Regulation Counsel or by a member

of the Bar appointed by the Supreme Court for the purpose of conducting such proceedings.

(b) The petition shall allege facts indicating that the respondent is engaged in the unauthorized practice of law and shall contain a prayer for the issuance of a contempt citation.

(c) Upon the filing of a petition, the Supreme Court may issue a citation directing the respondent to show cause why he should not be held in contempt of the Supreme Court for the unauthorized practice of law, or the Supreme Court may, in the alternative, issue a show cause order in civil injunctive proceedings which shall be governed by Rules 234 to 237. If a citation is issued, the citation shall state that a fine of not less than $2000 per incident or imprisonment may be imposed to vindicate the dignity of the Supreme Court.

(d) If a contempt citation is issued, it shall be served upon the respondent, together with a copy of the petition, as provided in Rule 4, C.R.C.P., and the citation shall specify the time for response. If a response is filed, the Supreme Court shall appoint a hearing master who shall set a date, time, and place for the appearance of the respondent, and shall give notice thereof. The notice shall be in writing. The notice shall designate the date, time, and place of the appearance. The notice shall also advise the respondent that the respondent is entitled to be represented by counsel at the appearance, to cross-examine witnesses, and to present evidence in the respondent's own behalf. The giving of notice shall be sufficient when made by certified mail sent to the respondent at the respondent's last known address.

(e) Proceedings for the hearing of a contempt citation before a hearing master shall be held in any county designated by the hearing master that is convenient to the participants.

(f) If the respondent has been served with a citation and fails to respond to the citation or appear before the hearing master at the time and place designated in the notice issued by the hearing master, a warrant for the arrest of the respondent may be issued by the hearing master without prior approval of the Supreme Court. The warrant shall fix the time and place for the production of the respondent before the hearing master. The hearing master shall direct by endorsement on the warrant the amount of bail required, and the respondent shall be discharged upon the delivery to and approval by the sheriff or the Clerk of the Supreme Court of a written undertaking executed by a sufficient surety, to the effect that the respondent will appear at the time and place designated in the warrant and at any time thereafter to which the hearing on the citation may be continued, or pay the sum specified. Any funds surrendered as bail shall be deposited with the Clerk of the Supreme Court or with the Clerk of the District court in the county where the proceedings are to be held. If the respondent fails to appear at the time designated in the warrant, or at any time to which the hearing may be continued, the undertaking may be forfeited upon order of the hearing master. If the respondent fails to make bond, the sheriff shall keep the respondent in custody and produce the respondent before the hearing master at the time and place fixed by the warrant.

(g) At all hearings before the hearing master, witnesses shall be sworn and a complete record made of all proceedings had and testimony taken. The citation shall be prosecuted by the Regulation Counsel of the State of Colorado or by such duly licensed and registered members of the Bar as may be designated by this Court.

(h) The Colorado Rules of Civil Procedure shall be applicable when not inconsistent with

these rules. Subject to any limitations in the order of reference, the hearing master shall have the powers generally reposed in a "court" under the Colorado Rules of Civil Procedure.

(i) The parties may procure the attendance of witnesses before the hearing master by the issuance of subpoenas in the name of the Supreme Court, which may be issued by the hearing master or Clerk of the Supreme Court upon the request of a party. All such subpoenas shall be subject to the provisions of C.R.C.P. 45. Failure or refusal, without adequate excuse, to comply with any such subpoena shall be a contempt of the Supreme Court and may be punished accordingly. The parties shall have the right to be present at all times during the hearings before the hearing master and to examine and cross-examine witnesses.

Rule 239. Contempt Determination by Court Proceedings; Report of Hearing Master; Objections

(a) After the conclusion of the hearing, the hearing master shall report in writing to the Supreme Court, setting forth the hearing master's findings of fact, conclusions of law, and, upon a finding of contempt, recommendations for punishment. If the matter proceeds to trial and the hearing master makes a finding of contempt but does not recommend imprisonment, then the hearing master shall recommend that a fine be imposed for each incident of contempt; the minimum fine for each incident shall be not less than $2000 and not more than $5000. Promptly after the report is filed with the Supreme Court, the Clerk of the Supreme Court shall mail copies thereof to the parties.

(b) Objections to the report of the hearing master may be filed with the Supreme Court by either party within 28 days after the filing of the report.

(c) If no objections are filed, the case shall stand submitted upon the hearing master's report.

(d) If objections are filed, the objecting party shall within 14 days thereafter request the reporter to prepare a transcript of the proceedings before the hearing master, or any portion of such transcript thereof as is deemed necessary for the consideration of the case. The objecting party shall file with the Supreme Court and serve on the opposing party a designation of those portions of the transcript and of the record before the hearing master which the party wishes added to the record before the Supreme Court.

The opposing party may within 14 days after service of the designation file and serve a cross-designation of any additional portions of the transcript and additional parts of the record before the hearing master as is deemed necessary for a proper consideration of the case. The objecting party is responsible for the expense of preparing the record, including the transcript or portions thereof.

The reporter shall prepare the transcript and file it, properly certified, with the Supreme Court within 63 days (9 weeks) after the filing of the objections.

(e) An objecting party shall have 28 days after the filing with the Supreme Court of the transcript and other additions to the record within which to file an opening brief. The opposing party shall have 28 days after the filing of the objecting party's opening brief within which to file an answer brief. The objecting party shall have 14 days after the filing of the

answer brief within which to file a reply brief.

(f) A brief of an amicus curiae may be filed only by leave of the Supreme Court granted on motion or by the request of the Court. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Any amicus curiae shall file its brief within the time allowed the party whose position the amicus brief will support unless the Court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer.

(g) After review of the report of the hearing master any objections thereto and briefs, the Supreme Court may adopt the report or modify or reject it in whole or in part and shall determine whether the respondent is guilty of contempt of the Supreme Court and shall, by order, prescribe the punishment therefor, including the assessment of costs, expenses and reasonable attorney's fees.

(h) Nothing in this rule shall be construed to limit the power of the Supreme Court, upon proper application, to issue an injunction at any stage of contempt proceedings in order to prevent public harm, or to limit the power of the Supreme Court to issue an injunction in lieu of or in addition to the imposition of a fine or any other remedy under these rules.

Rule 240. General Provisions; Qualifications of Hearing Master; Access to Information Concerning Proceedings Under these Rules

(a) A hearing master to whom matters are referred pursuant to these rules shall be a person who is duly licensed to practice law in Colorado.

(b) All civil injunction proceedings and contempt proceedings filed in the Supreme Court pursuant to Rules 234 and 238, including proceedings before a hearing master, shall be public proceedings.

(c) Except as otherwise provided by these rules or by order of the Supreme Court, all proceedings conducted pursuant to these rules shall be confidential, and the files and records of the Committee shall be confidential and shall not be made public.

Except as otherwise provided by these rules, any person who wishes to disclose or to make public the pendency, subject matter, or status of proceedings which are otherwise confidential or to disclose or to make public the files and records of the Committee which are otherwise confidential or to gain access to the files and records of the Committee which are otherwise confidential shall file a petition with the Supreme Court setting forth the specific reasons why the existence of the particular proceedings should not remain confidential or the specific reasons why the disclosure of particular files and records or access to them should be permitted.

Upon final determination of any proceedings conducted pursuant to these rules, notice of the disposition of the matter shall be given by Regulation Counsel or the Clerk of the Supreme Court to the respondent, the complainant, and their counsel of record. Any person having received notice that a written agreement has been entered pursuant to C.R.C.P. 232.5(d)(3) shall treat such information as confidential and shall not disclose such information to anyone, except by order of the Supreme Court. Any person who makes a

disclosure other than as permitted by these rules or by order of the Supreme Court may be subject to punishment for contempt of the Supreme Court.

(d) Exceptions to Confidentiality. The pendency, subject matter, and status of the proceedings conducted pursuant to these rules may be disclosed by the Committee or Regulation Counsel to:

(1) An entity authorized to investigate the qualifications of persons for admission to practice law;

(2) An entity authorized to investigate the qualifications of judicial candidates;

(3) A lawyer discipline enforcement agency;

(4) Any person or agency requesting such information, provided that the respondent has waived confidentiality and the request is within the scope of the waiver;

(5) An enlistee who, pursuant to Rule 229(d), was enlisted to assist the Committee;

(6) An agency authorized to investigate violations of the criminal laws or the consumer protection laws of this state or any other state, or of the United States; or

(7) Any person or agency, provided the proceeding is predicated either upon allegations that have become generally known to the public through printed or broadcast news accounts or upon acts of the respondent which are public or generally known.

(d.5) Access to the files and records of the Committee may be granted by the Committee or the Regulation Counsel, provided a request for disclosure or access is made in writing by:

(1) An entity authorized to investigate the qualifications of persons for admission to practice law;

(2) An entity authorized to investigate the qualifications of persons for government employment;

(3) An agency authorized to investigate allegations of unauthorized practice of law;

(4) An entity authorized to investigate the qualifications of judicial candidates;

(5) A lawyer discipline enforcement agency;

(6) An agency authorized to investigate violations of the criminal laws or the consumer protection laws of this state or any other state, or of the United States; or

(7) A state or federal judicial or administrative court or agency with which the respondent has had previous contact.

If the Regulation Counsel discloses confidential information to a judicial nominating commission of the State of Colorado or grants a judicial nominating commission access thereto, the Regulation Counsel shall give written notice to the respondent that specified confidential information has been so disclosed or that access has been granted.

(e) Repealed.

Rule 240.1. Immunity

Persons performing official duties under the provisions of this chapter, including but not limited to members of the Committee and its staff; the Regulation Counsel and the Regulation Counsel's staff; the members of the Bar and enlistees working under the direction of the Committee; and the hearing masters, shall be immune from suit for all conduct in the course and scope of their official duties.

Rule 240.2. Expunction of Records

(a) Expunction -- Self-Executing. Except for records relating to proceedings that have 1) become public pursuant to C.R.C.P 234, et seq., 2) resulted in a finding of unauthorized practice of law, or 3) resulted in agreements, all records relating to proceedings that were dismissed without a finding of unauthorized practice of law shall be expunged from the files of the committee, the Presiding Disciplinary Judge, and Regulation Counsel three years after the end of the year in which the dismissal occurred.

(b) Definition. The terms "expunge" and "expunction" shall mean the destruction of all records or other evidence of any type, including but not limited to, the request for investigation, the response, the investigator's notes, and the report of investigation.

(c) Notice to Respondent. If proceedings conducted pursuant to these Rules (or their predecessor) were commenced, the attorney in question shall be given prompt notice of the expunction.

(d) Effect of Expunction. After expunction, the proceedings shall be deemed never to have occurred. Upon either general or specific inquiry concerning the existence of proceedings which have been expunged, the committee or the Regulation Counsel shall respond by stating that no record of the proceedings exists. The respondent in question may properly respond to any general inquiry about proceedings which have been expunged by stating that no record of the proceedings exists. The respondent in question may properly respond to any inquiry requiring reference to a specific proceeding which has been expunged by stating only that the proceeding was dismissed with no finding of unauthorized practice of law and that the record of the proceeding was expunged pursuant to this Rule. After a response is provided and is given to an inquirer, no further response to an inquiry into the nature or scope of the proceedings which have been expunged needs be made.

(e) Retention of Records. Upon written application to the committee, for good cause and with written notice to the respondent in question and opportunity to such respondent to be heard, the Regulation Counsel may request that records which would otherwise be expunged under this Rule be retained for such additional period of time, not to exceed three years, as the committee deems appropriate. The Regulation Counsel may seek further extensions of the period for which retention of the records is authorized whenever a previous application has been granted.

CHAPTER 20

Colorado Rules of Procedure Regarding Attorney Discipline and Disability Proceedings, Colorado Attorneys' Fund for Client Protection, and Mandatory Continuing Legal Education and Judicial Education

CHAPTER 20

COLORADO RULES OF PROCEDURE REGARDING ATTORNEY DISCIPLINE AND DISABILITY PROCEEDINGS, COLORADO ATTORNEYS' FUND FOR CLIENT PROTECTION, AND MANDATORY CONTINUING LEGAL EDUCATION AND JUDICIAL EDUCATION

ORDER

The Supreme Court of the State of Colorado has adopted a series of changes to the attorney grievance system. Most of the reforms are incorporated into Rules that have been adopted effective January 1, 1999. However, a number of the reforms will come into effect over the course of the next six months. Hence, the Court enters this Order to permit immediate implementation of some programs and to insure an orderly transition to the new system.

IT IS ORDERED:

1. The following reorganization of the attorney regulation system has been adopted and will be implemented as set forth in this order;

a. We hereby adopt an alternatives to discipline program to permit the diversion of certain cases of minor misconduct to various agencies that will provide concrete assistance to attorneys and better protect the public. Therefore, C.R.C.P. 251.9, 251.10, 251.11, 251.12, and 251.13, shall become effective July 1, 1998, and shall be applicable to all cases pending in the Office of Disciplinary Counsel or before an Inquiry Panel, a Hearing Board, or a Hearing Panel of the Grievance Committee as of June 30, 1998, and to all cases initiated July 1, 1998 and thereafter;

b. Probation may be considered for all cases after a hearing pursuant to C.R.C.P. 251.7, which Rule shall become effective July 1, 1998, and which shall be applicable to all cases pending before the Hearing Board or Hearing Panel of the Grievance Committee on July 1, 1998, and to all cases considered after that date;

c. An attorneys' peer assistance program will be established and funded as part of the attorney regulation process pursuant to C.R.C.P. 227, which shall become effective June 30, 1998, and C.R.C.P. 251.34, which shall become effective July 1, 1998;

d. Immunity shall be granted to those individuals and entities providing assistance through the alternatives to discipline and peer assistance programs, as provided in C.R.C.P. 251.32, which shall become effective July 1, 1998;

e. The Office of the Presiding Disciplinary Judge is established by C.R.C.P. 251.16, which shall become effective January 1, 1999. The court will attempt to appoint the Presiding Disciplinary Judge on or before December 1, 1998, following an application and review process to be established by the court. After December 31, 1998, the Presiding Disciplinary Judge shall be substituted for the Presiding Officer of all Hearing Boards in which a hearing has not been held. The Presiding Officer so replaced shall then act as one of the other members of that Hearing Board in the event that case goes to trial. In those cases in which the Presiding Disciplinary Judge cannot sit, the Grievance Committee member who was appointed Presiding Officer will continue to act as Presiding Officer of the Hearing Board;

f. All conditional admissions of misconduct and deferral agreements entered into prior to January 1, 1999, shall be reviewed by the Inquiry Panel at a final meeting or meetings in 1999. Conditional admissions of misconduct and alternatives to discipline agreements entered into on or after January 1, 1999, shall be considered by the Presiding Disciplinary Judge or the Attorney Regulation Committee as provided by C.R.C.P. 251.1 et seq.

g. All attorney discipline cases in which trial has occurred prior to January 1, 1999 before a Hearing Board of the Grievance Committee prior to the appointment of the Presiding Disciplinary Judge, shall be reviewed by the applicable, existing Hearing Panel at a final meeting to be held in 1999;

h. All reinstatement and readmission cases in which hearing has been held by a Hearing Board of the Grievance Committee prior to the establishment of the officer of the Presiding Disciplinary Judge shall be reviewed by the applicable, existing Hearing Panel at a final meeting to be held in 1999.

i. An Advisory Committee shall be appointed to assist the court with administrative oversight of the attorney regulation system pursuant to C.R.C.P. 251.34, which shall become effective July 1, 1998. Therefore, the following individuals are hereby appointed to the Advisory Committee: John Lebsack, Bethiah Crane, Erika Schafer, David Stark, Justice Rebecca Love Kourlis, Justice Michael L. Bender and William C. McClearn, who shall serve as chair.

2. Rules implementing federal and state statutorily mandated procedures regarding licensing of attorneys who are in arrears in child support, C.R.C.P. 201.6, C.R.C.P. 201.9, C.R.C.P. 251.8, and C.R.C.P. 227 are hereby adopted and shall be effective July 1, 1998. Between July 1 and December 30, 1998, any hearings requested shall be held before a member of the Grievance Committee designated by the chairman.

3. C.R.C.P. 227 is hereby amended to raise late fees and reinstatement fees effective July 1, 1998.

4. The readmission process after disbarment shall be amended to provide for one hearing

by amendment of C.R.C.P. 201.12 and 259.29, adopted and effective on July 1, 1998.

5. Any references in those rules adopted herein and made effective June 30, 1998, and July 1, 1998, to Regulation Counsel, the Attorney Regulation Committee, the Presiding Disciplinary Judge, the Appellate Discipline Commission, and Appellate Discipline Commission Counsel shall, in fact, refer to the Disciplinary Counsel, Committee Counsel, and the Grievance Committee between now and January 1, 1999.

6. C.R.C.P. 251.1 through 251.34 shall become effective January 1, 1999. In order to avoid confusion, Rules 241.1, et seq., have been repealed and re-enacted as C.R.C.P. 251.1, et seq., as set forth in this order.

7. Amendments to Colo. RPC 1.15 establishing an attorney trust account overdraft notification rule shall become effective July 1, 1999.

8. Rules establishing a Client Protection Fund, C.R.C.P. 252.1 through 252.16, shall become effective on January 1, 1999.

DONE at Denver, Colorado, this 30th day of June, 1998.

ANTHONY F. VOLLACK, Chief Justice

Rule 251.1. Discipline and Disability; Policy -- Jurisdiction

(a) Statement of Policy. All members of the Bar of Colorado, having taken an oath to support the Constitution and laws of this state and of the United States, are charged with obedience to those laws at all times. As officers of the Supreme Court of Colorado, attorneys must observe the highest standards of professional conduct. A license to practice law is a proclamation by this Court that its holder is a person to whom members of the public may entrust their legal affairs with confidence; that the attorney will be true to that trust; that the attorney will hold inviolate the confidences of clients; and that the attorney will competently fulfill the responsibilities owed to clients and to the courts.

In order to maintain the highest standards of professional conduct, attorneys who have demonstrated that they are unable, or are likely to be unable, to discharge their professional responsibilities shall be subject to appropriate disciplinary or disability proceedings.

(b) Jurisdiction. Every attorney licensed to practice law in the State of Colorado is subject to the disciplinary and disability jurisdiction of the Supreme Court in all matters relating to the practice of law. Every attorney practicing law in this state pursuant to C.R.C.P. 220, or admitted *pro hac vice* pursuant to C.R.C.P. 221 or 221.1, or certified to represent a single-client pursuant to C.R.C.P. 222 is subject to the disciplinary and disability jurisdiction of the Supreme Court when practicing law pursuant to such rules. Every attorney serving as a magistrate pursuant to Colorado Rules for Magistrates, Chapter 35, vol. 12, C.R.S., is subject to the disciplinary and disability jurisdiction of the Supreme Court for conduct performed as a magistrate as provided by C.R.M. 5(h).

(c) Standards of Conduct. Any reference contained in these Rules to the Code of Professional Responsibility pertains to conduct occurring prior to January 1, 1993. On January 1, 1993, and thereafter, the conduct of attorneys licensed to practice law in the State of Colorado shall be governed by the Colorado Rules of Professional Conduct and the other Rules or Standards of Professional Conduct adopted from time to time by this Court.

(d) Plenary Power of the Supreme Court. The Supreme Court reserves the authority to review any determination made in the course of a disciplinary proceeding and to enter any order with respect thereto, including an order directing that further proceedings be conducted as provided by these Rules.

Rule 251.2. Attorney Regulation Committee

(a) Attorney Regulation Committee. The Attorney Regulation Committee of the Supreme Court of Colorado (hereinafter committee) is hereby established. The Committee shall serve as a permanent committee of the Supreme Court.

(1) Committee. The Committee shall be composed of seven members, a Chair and Vice-Chair.

(2) Members. The members shall be composed of four members of the Bar of Colorado and three public members. Diversity shall be a consideration in making the appointment. The Supreme Court, with the assistance of the Advisory Committee, shall appoint the members. The members shall serve one term of seven years but may be dismissed from the Committee at any time by order of the Supreme Court. The terms of the members of the Committee shall be staggered to provide, so far as possible, for the expiration each year of the term of one member. Members of the Committee may resign at any time. In the event of a vacancy on the Committee, the Supreme Court shall appoint a successor to serve the remainder of the unexpired term.

(3) Chair and Vice-Chair. The Chair and Vice-Chair shall be members of the Bar of Colorado. The Supreme Court, with the assistance of the Advisory Committee, shall appoint the Chair and Vice-Chair. The Chair and Vice-Chair shall serve an unspecified term at the pleasure of the Supreme Court. The Chair and Vice-Chair of the Committee may resign at any time. The Chair shall exercise overall supervisory control of the Committee. The Vice-Chair shall assist the Chair and shall serve as Chair in the Chair's absence.

(4) Reimbursement of Committee Members. The members of the Committee shall be entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in the performance of their official duties.

(b) Powers and Duties of the Committee. The committee shall be authorized and empowered to act in accordance with these Rules and to:

(1) Enlist the assistance of members of the Bar to conduct investigations, or assist with investigations;

(2) Periodically report to the Advisory Committee and the management committee on the operation of the committee;

(3) Recommend to the Advisory Committee proposed changes or additions to the rules of procedure for attorney discipline and disability proceedings; and

(4) Adopt such practices as may from time to time become necessary to govern the internal operation of the committee, as approved by the Supreme Court.

(c) Abstention of Committee Members. Committee members shall refrain from taking part in any proceedings in which a judge, similarly situated, would be required to abstain. No partner or associate in the law firm of a member of the committee, or any attorney in any way affiliated with a committee member or the member's law firm, may accept or continue in employment connected with any matter pending before the committee, the Presiding Disciplinary Judge, a Hearing Board, or the Supreme Court as long as the member is serving on the committee.

(d) Disqualification. Members of the committee shall not represent an attorney in any matter as provided in these Rules during their terms of service. Former members of the committee shall not represent an attorney in any matter that was being investigated or prosecuted as provided in these rules during their terms of service.

Rule 251.3. Attorney Regulation Counsel

(a) Attorney Regulation Counsel. The Supreme Court shall appoint a Regulation Counsel. The Regulation Counsel shall serve at the pleasure of the Supreme Court.

(b) Qualifications. The Regulation Counsel shall be an attorney, duly admitted to the Bar of Colorado, with no less than five years experience in the practice of law. The Regulation Counsel, while serving in that capacity, shall not hold any other public office or engage in the private practice of law.

(c) Powers and Duties. The Regulation Counsel shall act in accordance with these Rules and:

(1) Maintain and supervise a permanent office to serve as a central office for the filing of requests for investigation and for the coordination of such investigations; the filing of claims with the Colorado Attorneys' Fund for Client Protection as provided in C.R.C.P. 252 and the consideration of such claims; the administration of all disciplinary and disability enforcement proceedings carried on pursuant to these Rules; and, the administration of all proceedings conducted pursuant to C.R.C.P. 252, et seq., under a budget approved by the Supreme Court;

(2) Appoint and supervise a staff as necessary to carry out the duties of the Regulation Counsel;

(3) Conduct investigations as provided by C.R.C.P. 251.9 and C.R.C.P. 251.10, dismiss the allegations as provided in C.R.C.P. 251.11, and report to the committee as provided in C.R.C.P. 251.12;

(4) Prepare and prosecute disciplinary and disability actions against attorneys as provided by these Rules;

(5) In appropriate cases, negotiate dispositions of pending matters as authorized in C.R.C.P. 251.10(b)(4) and C.R.C.P. 251.22;

(6) Prepare and prosecute petitions for immediate suspension in conformity with C.R.C.P. 251.8;

(7) Prosecute contempt proceedings for violations of these Rules;

(8) Prosecute contempt proceedings for violations of orders of the Supreme Court relating to suspended and disbarred attorneys and attorneys placed on disability inactive status;

(9) Participate in and present recommendations reflecting the public interest in all proceedings for reinstatement held pursuant to C.R.C.P. 251.29 and C.R.C.P. 251.30;

(10) Maintain permanent records of matters processed by the committee, and the disposition thereof;

(11) Participate in the management and supervision of the bar mediation process established by the Supreme Court, implemented by the Colorado Bar Association, and administered by the mediation committee of the association in conjunction with the committee; and,

(12) Perform such other duties as the Supreme Court may direct.

Mediators shall be appointed by the Supreme Court. The mediation committee and the Regulation Counsel shall jointly recommend attorneys to the Court for appointment as mediators. The Regulation Counsel shall forward the names of those recommended to the Court together with a proposed order making the appointment of the mediators.

(d) Disqualification. A former member of the Regulation Counsel's staff shall not represent an attorney in any proceeding that was being investigated and/or prosecuted during the member's association with the Regulation Counsel's staff.

Rule 251.4. Duty of Judge to Report Misconduct or Disability

A judge has a duty to report unprofessional conduct by an attorney to Regulation Counsel pursuant to Rule 2.15 of the Colorado Code of Judicial Conduct. No action taken by any judge pursuant to Rule 2.15 shall in any way limit the power of the reporting judge to exercise the power of contempt against an attorney, nor should the reporting of such matters to the Regulation Counsel be used in lieu of contempt proceedings.

Rule 251.5. Grounds for Discipline

Misconduct by an attorney, individually or in concert with others, including the following acts or omissions, shall constitute grounds for discipline, whether or not the act or omission occurred in the course of an attorney-client relationship:

(a) Any act or omission which violates the provisions of the Code of Professional Responsibility or the Colorado Rules of Professional Conduct;

(b) Any criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; provided that conviction thereof in a criminal proceeding shall not be a prerequisite to the institution of disciplinary proceedings, and provided further that acquittal in a criminal proceeding shall not necessarily bar disciplinary action;

(c) Any act or omission which violates these Rules or which violates an order of discipline or disability; or

(d) Failure to respond without good cause shown to a request by the committee, the Regulation Counsel, or the Board of Trustees of the Colorado Attorneys' Fund for Client Protection or obstruction of the committee, the Regulation Counsel, or the Board or any part thereof in the performance of their duties. Good cause includes, but is not limited to, an assertion that a response would violate the respondent's constitutional privilege against self-incrimination.

This enumeration of acts and omissions constituting grounds for discipline is not exclusive, and other acts or omissions amounting to unprofessional conduct may constitute grounds for discipline.

Rule 251.6. Forms of Discipline

Any of the following forms of discipline may be imposed in those cases where grounds for discipline have been established:

(a) Disbarment. Disbarment is the revocation of an attorney's license to practice law in this state, subject to readmission as provided by C.R.C.P. 251.29(a). Disbarment shall be for at least eight years;

(b) Suspension. Suspension is the temporary suspension of an attorney's license to practice law in this state, subject to reinstatement as provided in C.R.C.P. 251.29(b). Suspension, which may be stayed in whole or in part, shall be for a definite period of time not to exceed three years;

(c) Public Censure. Public censure is a reproach published with other grievance decisions and made available to the public; and

(d) Private Admonition. Private admonition is an unpublished reproach. An attorney who has been admonished by the committee and who wishes to challenge the order of admonition may, by written petition filed with the Regulation Counsel within 21 days after the date the letter of admonition was mailed to the admonished attorney or personally read to the attorney, demand as a matter of right that imposition of the admonition be vacated, that a complaint be filed against the attorney, and that disciplinary proceedings continue in the manner prescribed by these rules.

Rule 251.7. Probation

(a) Eligibility. When an attorney has demonstrated that the attorney:

(1) Is unlikely to harm the public during the period of probation and can be adequately supervised;

(2) Is able to perform legal services and is able to practice law without causing the courts or profession to fall into disrepute; and,

(3) Has not committed acts warranting disbarment, then the attorney may be placed on probation. Probation shall be imposed for a specified period of time in conjunction with a suspension which may be stayed in whole or in part. Such an order shall be regarded as an order of discipline. The period of probation shall not exceed three years unless an extension is granted upon motion by either party. A motion for an extension must be filed prior to the

conclusion of the period originally specified.

(b) Conditions. The order placing an attorney on probation shall specify the conditions of probation. The conditions shall take into consideration the nature and circumstances of the attorney's misconduct and the history, character, and health status of the attorney and shall include no further violations of the Colorado Rules of Professional Conduct. The conditions may include but are not limited to the following:

(1) Making periodic reports to the Regulation Counsel or to the attorneys' peer assistance program as provided in subsection (d) of this Rule;

(2) Monitoring the attorney's practice or accounting procedures;

(3) Establishing a relationship with an attorney-mentor, and regular reporting with respect to the development of that relationship;

(4) Satisfactory completion of a course of study;

(5) Successful completion of the multi-state professional responsibility examination;

(6) Refund or restitution;

(7) Medical evaluation or treatment;

(8) Mental health evaluation or treatment;

(9) Evaluation or treatment in a program that specializes in treating disorders related to sexual misconduct;

(10) Evaluation or treatment in a program that specializes in treating matters relating to perpetration of family violence, including but not limited to domestic partner, elder, and child abuse;

(11) Substance abuse evaluation or treatment;

(12) Abstinence from alcohol and drugs; and

(13) No further violations of the Colorado Rules of Professional Conduct.

(c) Costs. The attorney shall also be responsible for all costs of evaluation, treatment and supervision. Failure to pay these costs prior to termination of probation shall constitute a violation of probation.

(d) Monitoring. The Regulation Counsel shall monitor the attorney's compliance with the conditions of probation imposed under these rules. When appropriate, the Regulation Counsel may delegate its monitoring role to the attorneys' peer assistance program. In cases in which the attorneys' peer assistance program is the designated monitor, regular reports regarding the progress of the attorney shall be submitted by the attorneys' peer assistance program to the Regulation Counsel.

(e) Violations. If, during the period the attorney is on probation, the Regulation Counsel receives information that any condition may have been violated, the Regulation Counsel may file a motion with the Presiding Disciplinary Judge specifying the alleged violation and seeking an order requiring the attorney to show cause why the stay should not be lifted and the sanction activated for violation of the condition. The filing of such a motion shall toll any period of suspension until final action. A hearing shall be held upon motion of either party before the Presiding Disciplinary Judge. At the hearing, the Regulation Counsel has the burden of establishing by a preponderance of the evidence the violation of a condition of probation. When, in a revocation hearing, the alleged violation of a condition is the attorney's failure to pay restitution or costs, the evidence of the failure to pay shall constitute prima

facie evidence of a violation. Any evidence having probative value shall be received regardless of its admissibility under the rules of evidence if the attorney is accorded a fair opportunity to rebut hearsay evidence. At the conclusion of a hearing, the Presiding Disciplinary Judge shall prepare a report setting forth findings of fact and decision.

(f) Termination. Unless otherwise provided in the order of suspension, within 28 days and no less than 14 days prior to the expiration of the period of probation, the attorney shall file an affidavit with the Regulation Counsel stating that the attorney has complied with all terms of probation and shall file with the Presiding Disciplinary Judge notice and a copy of such affidavit and application for an order showing successful completion of the period of probation. Upon receipt of this notice and absent objection from the Regulation Counsel, the Presiding Disciplinary Judge shall issue an order showing that the period of probation was successfully completed. The order shall become effective upon the expiration of the period of probation.

(g) Independent Charges. A motion for revocation of an attorney's probation shall not preclude the Regulation Counsel from filing independent disciplinary charges based on the same conduct as alleged in the motion.

Rule 251.8. Immediate Suspension

(a) Immediate Suspension. Immediate suspension is the temporary suspension by the Supreme Court of an attorney's license to practice law for a definite or indefinite period of time while proceedings conducted pursuant to this Rule and these Rules are pending against the attorney.

Although an attorney's license to practice law shall not ordinarily be suspended during the pendency of such proceedings, the Supreme Court may order the attorney's license to practice law immediately suspended when there is reasonable cause to believe that:

(1) the attorney is causing or has caused immediate and substantial public or private harm and the attorney:

(A) has been convicted of a serious crime as defined by C.R.C.P. 251.20(e);

(B) has converted property or funds;

(C) has abandoned clients; or

(D) has engaged in conduct which poses an immediate threat to the effective administration of justice.

(b) Petition for Immediate Suspension.

(1) When it is believed that an attorney should be immediately suspended, the committee or Regulation Counsel shall file a petition with the Presiding Disciplinary Judge. The petition shall be supported by an affidavit setting forth sufficient facts to give rise to reasonable cause that the alleged conduct has in fact occurred. A copy of the petition shall be served on the attorney pursuant to these Rules.

(2) The Presiding Disciplinary Judge, or the Supreme Court, by any justice thereof, may order the issuance of an order to show cause directing the attorney to show cause why the attorney should not be immediately suspended, which order shall be returnable within 14 days. After the issuance of an order to show cause, and after the period for response has

passed without a response having been filed, or after consideration of any response and reply, the Presiding Disciplinary Judge shall prepare a report setting forth findings of fact and recommendation and file the report with the Supreme Court. After receipt of the report the Supreme Court may enter an order immediately suspending the attorney from the practice of law, or dissolve the order to show cause.

(3) If a response to the order to show cause is filed and the attorney requests a hearing on the petition, said hearing shall be held within 14 days before the Presiding Disciplinary Judge. Thereafter, the Presiding Disciplinary Judge shall submit a transcript of the hearing and a report setting forth findings of fact and a recommendation to the Supreme Court within 7 days after the conclusion of the hearing. Upon the receipt of the recommendation and the record relating thereto, the Supreme Court may enter an order immediately suspending the attorney from the practice of law or dissolve the order to show cause.

(4) When the Supreme Court enters an order immediately suspending the attorney, the Regulation Counsel shall promptly prepare and file a complaint against the attorney as provided in C.R.C.P. 251.14, notwithstanding the provisions of C.R.C.P. 251.10 and C.R.C.P. 251.12. Thereafter the matter shall proceed as provided by these Rules.

(5) An attorney who has been immediately suspended pursuant to this Rule shall have the right to request an accelerated disposition of the allegations which form the bases for the immediate suspension by filing a notice with the Regulation Counsel requesting accelerated disposition. After the notice has been filed, the Regulation Counsel shall promptly file a complaint pursuant to these Rules and the matter shall be docketed by the Presiding Disciplinary Judge for accelerated disposition. Thereafter the matter shall proceed and be concluded without appreciable delay.

(c) [Transferred to Rule 251.8.5]

Rule 251.8.5. Suspension for Nonpayment of Child Support, or for Failure to Comply with Warrants Relating to Paternity or Child Support Proceedings

(a) Application. The provisions of this rule shall apply to an attorney licensed or admitted to practice law in Colorado who is in arrears in payment of child support or who is in arrears under a child support order as defined by section 26-13-123 (a), C.R.S., or who fails to comply with a warrant relating to paternity or child support proceedings.

Proceedings commenced against an attorney under the provisions of this rule are not disciplinary proceedings. Suspension of an attorney's license to practice law under the provisions of this rule is not a form of discipline, and shall not necessarily bar disciplinary action.

(b) Petition for Suspension.

(1) Upon receipt of reliable information that an attorney is in arrears in payment under a child support order, or has failed to comply with subpoenas or warrants relating to paternity or child support proceedings, regulation counsel may file a petition for suspension with the presiding disciplinary judge. The petition shall be supported by an affidavit setting forth sufficient facts to give rise to reasonable cause to believe that the attorney is in arrears on a

child support order, or has failed to comply with a subpoena or a warrant relating to paternity or child support proceedings. A copy of the petition shall be served on the attorney pursuant to these rules.

(2) The presiding disciplinary judge shall order the issuance of an order to show cause directing the attorney to show cause why the attorney's license to practice law should not be immediately suspended, which order shall be returnable within 28 days. After the issuance of an order to show cause, and after the period for response has passed without a response having been filed, or after consideration of any response and reply, the presiding disciplinary judge shall enter an order immediately suspending the attorney from the practice of law, unless within the 28-day period: the attorney has paid the past-due obligation, negotiated a payment plan approved by the court or the state child support enforcement agency or agency having jurisdiction over the child support order, requested a hearing before the presiding disciplinary judge, or complied with the warrant or subpoena.

(3) If a response to the order to show cause is timely filed and the attorney or the regulation counsel requests a hearing before the presiding disciplinary judge on the petition, the hearing shall be held within 14 days of the request, or as soon thereafter as is practicable. At the hearing, the burden is initially on the regulation counsel to prove the allegations in the petition by a preponderance of the evidence. If the presiding disciplinary judge has determined that the regulation counsel has proved the allegations in the petition by a preponderance of the evidence, he or she shall issue an order immediately suspending the attorney, unless the attorney proves by a preponderance of the evidence that: (1) there is a mistake in the identity of the attorney; (2) there is a bona fide disagreement currently before a court or an agency concerning the amount of the child support debt, arrearage balance, retroactive support due, or the amount of the past-due child support when combined with maintenance; (3) all child support payments were made when due; (4) the attorney has complied with the subpoena or warrant; (5) the attorney was not served with the subpoena or warrant; or (6) there was a technical defect with the subpoena or warrant. No evidence with respect to the appropriateness of the underlying child support order or ability of the attorney in arrears to comply with such order shall be received or considered by the presiding disciplinary judge. Upon conclusion of the hearing, the presiding disciplinary judge shall promptly prepare an opinion setting forth his or her findings of facts and decision.

(c) Appeal. For purposes of this rule, the decision of the presiding disciplinary judge shall be final, and an appeal may be commenced as set forth in C.R.C.P. 251.26.

(d) Reinstatement.

(1) If, after an attorney's license has been suspended, the attorney has paid the past-due obligations, entered into a payment plan approved by the court or the agency having jurisdiction over the child support order, or complied with the warrant or subpoena, the attorney may seek reinstatement by filing a verified petition, with evidence of compliance, with the presiding disciplinary judge.

(2) Immediately upon receipt of a petition for reinstatement, the regulation counsel shall have 28 days or, upon a showing of good cause, such greater time as authorized by the presiding disciplinary judge within which to conduct any investigation deemed necessary. The attorney shall cooperate in any such investigation. At the end of the period of time

allowed for the investigation, the regulation counsel shall file an answer. Based on the petition and answer, the presiding disciplinary judge may order reinstatement or hold a hearing to determine whether the attorney shall be reinstated. The attorney shall bear the burden of establishing the right to be reinstated by a preponderance of the evidence.

(3) If the petition for reinstatement is denied by the presiding disciplinary judge, the attorney may proceed pursuant to C.R.C.P. 251.26.

Rule 251.8.6. Suspension for Failure to Cooperate

(a) Application. The provisions of this rule shall apply in all cases where there is a request for investigation pending against an attorney under these rules, alleging serious misconduct. If the attorney fails to cooperate either by failing to respond to the request for investigation or by failing to produce information or records requested by Regulation Counsel, then Regulation Counsel may file a petition for suspension of the attorney's license to practice law. Proceedings commenced against an attorney under the provisions of this rule are not disciplinary proceedings. Suspension of an attorney's license to practice law under the provisions of this rule is not a form of discipline, and shall not necessarily bar disciplinary action.

(b) Petition for Suspension. Regulation Counsel may file a petition for suspension with the supreme court alleging that the attorney has not responded to requests for information, has not responded to the request for investigation, or has not produced records or documents requested by Regulation Counsel and has not interposed a good-faith objection to producing the records or documents. The petition shall be supported by an affidavit setting forth sufficient facts to give rise to reasonable cause to believe that the serious misconduct alleged in the request for investigation has in fact occurred. The affidavit shall also include the efforts undertaken by Regulation Counsel to obtain the attorney's cooperation. A copy of the petition shall be served on the attorney pursuant to C.R.C.P. 251.32(b). The failure of the attorney to file a response in opposition to the petition within 14 days may result in the entry of an order suspending the attorney's license to practice law until further order of the court. The attorney's response shall set forth facts showing that the attorney has complied with the requests, or the reasons why the attorney has not complied and may request a hearing.

Upon consideration of a petition for suspension and the attorney's response, if any, the supreme court may suspend the attorney's license to practice law for an indefinite period pending further order of the court; it may deny the petition; or it may issue any other appropriate orders. If a response to the petition is filed and the attorney requests a hearing on the petition, the supreme court may conduct such a hearing or it may refer the matter to the presiding disciplinary judge for resolution of contested factual matters. The presiding disciplinary judge shall submit a report setting forth findings of fact and a recommendation to the supreme court within 7 days of the conclusion of the hearing.

(c) Reinstatement. An attorney suspended under this rule may apply to the supreme court for reinstatement upon proof of compliance with the requests of Regulation Counsel as alleged in the petition, or as otherwise ordered by the court. A copy of the application must be delivered to Regulation Counsel, who may file a response to the application within

two business days after being served with a copy of the application for reinstatement. The supreme court will summarily reinstate an attorney suspended under the provisions of this Rule upon proof of compliance with the requests of Regulation Counsel.

COMMENT

This rule addresses problems caused by relatively few attorneys who fail to cooperate with the regulation counsel after a request for investigation has been filed against the attorney. In general, it would not apply after formal proceedings have been commenced against the attorney by the filing of a complaint. The rule would still apply, however, even after formal proceedings have begun, with respect to matters outside of the complaint.

Suspension under the rule is not discipline. In this sense, it is similar to a summary administrative suspension for failing to pay the attorney registration fee or to file a registration statement, see C.R.C.P. 227(A)(4), or for noncompliance with mandatory continuing legal education requirements, see C.R.C.P. 260.6. It is also similar to a suspension for nonpayment of child support, see C.R.C.P. 251.8.5, except resort in the first instance is made to the supreme court rather than the presiding disciplinary judge. Like those other rules, the intent of this rule is to ensure that an attorney complies with the requirements of the rules governing the legal profession, in this case the attorney's duty to cooperate with regulation counsel in the investigation of a request for investigation. See C.R.C.P. 251.1(a); C.R.C.P. 251.5(d); Colo. RPC 8.4(d). By this rule, the supreme court intends to facilitate communication between the attorney and regulation counsel. The rule is not designed to threaten or punish lawyers who have a good reason for not complying with regulation counsel's request, such as an inability to comply or possession of a good-faith objection to production. For example, an attorney will not be suspended under this rule merely because the attorney is out of the office on vacation.

Rule 251.9. Request for Investigation

(a) Commencement. Proceedings as provided in these Rules shall be commenced:

(1) Upon a request for investigation made by any person and directed to the Regulation Counsel; or

(2) Upon a report made by a judge of any court of record of this state and directed to the Regulation Counsel, as provided in C.R.C.P. 251.4;

(3) By the committee upon its own motion; or

(4) By the Regulation Counsel with the concurrence of the Chair or Vice-Chair of the committee.

(b) Determination to Proceed. Immediately upon receipt of a request for investigation, a report made by a judge, or a motion made by the committee, as provided in subsection (a) of this Rule, the matter shall be referred to the Regulation Counsel to determine:

(1) If the attorney in question is subject to the disciplinary jurisdiction of the Supreme

Court;

(2) If there is an allegation made against the attorney in question which, if proved, would constitute grounds for discipline; and

(3) If the matter should be investigated as provided by C.R.C.P. 251.10 or addressed by means of an alternative to discipline as provided by C.R.C.P. 251.13.

In making a determination whether to proceed, the Regulation Counsel may make inquiry regarding the underlying facts and consult with the Chair of the committee. The decision of the Regulation Counsel shall be final, and the complaining witness shall have no right to appeal.

Rule 251.10. Investigation of Allegations

(a) When Commenced. If, pursuant to C.R.C.P. 251.9, the Regulation Counsel makes a determination to proceed with an investigation, the Regulation Counsel shall give the attorney in question written notice that the attorney is under investigation and of the general nature of the allegations made against the attorney. The attorney in question shall file with the Regulation Counsel a written response to the allegations made against the attorney within 21 days after notice of the investigation is given.

Upon receipt of the attorney's response, or at the expiration of the 21-day period if no response is received, the matter shall be assigned to an Investigator for investigation and report.

(b) Procedures for Investigation.

(1) The Investigator. A member of the committee, the Regulation Counsel, a member of the Regulation Counsel's staff, or an attorney enlisted pursuant to C.R.C.P. 251.2(b)(1) may act as Investigator. The Investigator shall expeditiously conduct an investigation of the allegations made against the attorney in question.

(2) Procurement of Evidence During Investigation. In the course of an investigation conducted pursuant to these Rules, the Investigator, acting pursuant to and in conformity with these Rules, shall have the power to administer oaths and affirmations.

In connection with an investigation of allegations made against an attorney, the Chair of the committee or the Regulation Counsel may issue subpoenas to compel the attendance of witnesses, including the attorney in question, and the production of pertinent books, papers, documents, or other evidence in proceedings before the Investigator. All such subpoenas shall be subject to the provisions of C.R.C.P. 45. Any challenge to the power to subpoena as exercised pursuant to this Rule shall be directed to the Presiding Disciplinary Judge.

Any person who fails or refuses to comply with a subpoena issued pursuant to this Rule may be cited for contempt of the Supreme Court.

Any person who knowingly obstructs the Regulation Counsel or the committee or any part thereof in the performance of their duties may be cited for contempt of the Supreme Court.

Any person having been duly sworn to testify who refuses to answer any proper question may be cited for contempt of the Supreme Court.

A contempt citation may be issued by the Supreme Court upon recommendation of the

Presiding Disciplinary Judge. A copy of the recommendation, together with the findings of fact made by the Presiding Disciplinary Judge surrounding the contemptuous conduct, shall be filed with the Supreme Court. The Supreme Court shall then determine whether to impose contempt.

(3) Investigator's Report. When the Investigator is not a member of the Regulation Counsel's staff, the Investigator shall submit a written report of investigation and recommendation to the committee for a determination as provided in C.R.C.P. 251.12. If the Investigator is a member of the Regulation Counsel's staff, the matter shall be submitted as provided in C.R.C.P. 252.11.

(4) Conditional Admission. While the matter is under investigation, the attorney in question and the Regulation Counsel may tender an agreed upon conditional admission of misconduct as provided in C.R.C.P. 251.22 to the committee when the form of discipline is no greater than a private admonition. When the form of discipline is greater than a private admonition or, if a range of disciplinary measures is specified in the conditional admission, then the conditional admission shall be tendered to the Presiding Disciplinary Judge. When a conditional admission is tendered pursuant to this Rule, the person acting as Investigator may forego submitting a written report of investigation and recommendation to the committee as provided in subsection (3) of this Rule.

Rule 251.11. Determination by the Regulation Counsel

During the investigation or at the conclusion thereof, the Regulation Counsel may determine that the matter should be diverted to the alternatives to discipline program as provided in C.R.C.P. 251.13.

At the conclusion of an investigation of a matter that has not been diverted, the Regulation Counsel shall either dismiss the allegations or report to the committee for a determination as provided in C.R.C.P. 251.12. If the Regulation Counsel dismisses the allegations as provided herein, the person making the allegations against the attorney in question may request review of the Regulation Counsel's decision. If review is requested, the committee shall review the matter and make a determination as provided by C.R.C.P. 251.12; provided, however, that the committee shall sustain the dismissal unless it determines that the Regulation Counsel's determination constituted an abuse of discretion. When the committee sustains a dismissal, it shall furnish the person making the allegations with a written explanation of its determination.

Rule 251.12. Determination by the Committee

If, at the conclusion of an investigation, the Regulation Counsel believes that the committee should order private admonition imposed or authorize the Regulation Counsel to prepare and file a complaint, the Regulation Counsel shall submit a report of investigation and recommendation to the committee, which shall determine whether there is reasonable cause to believe grounds for discipline exist and shall either:

(a) Direct the Regulation Counsel or other investigator appointed pursuant to C.R.C.P.

251.2(b)(1) to conduct further investigation;

(b) Dismiss the allegations and furnish the person making the allegations with a written explanation of its determination;

(c) Divert the matter to the alternatives to discipline program as provided by C.R.C.P. 251.13;

(d) Order private admonition imposed; or

(e) Authorize the Regulation Counsel to prepare and file a complaint against the attorney.

In determining whether to authorize the Regulation Counsel to file a complaint, the committee shall consider the following:

(1) Whether it is reasonable to believe that misconduct warranting discipline can be proved by clear and convincing evidence;

(2) The level of injury;

(3) Whether the attorney previously has been disciplined; and

(4) Whether the conduct in question is generally considered to warrant the commencement of disciplinary proceedings because it involves misrepresentation, conversion or commingling of funds, acts of violence, or criminal or other misconduct that ordinarily would result in public censure, suspension or disbarment.

Rule 251.13. Alternatives to Discipline

(a) Referral to Program. The Regulation Counsel, the committee, the Presiding Disciplinary Judge, a Hearing Board, or the Supreme Court may offer diversion to the alternatives to discipline program to the attorney. The alternatives to discipline program may include, but is not limited to, diversion or other programs such as mediation, fee arbitration, law office management assistance, evaluation and treatment through the attorneys' peer assistance program, evaluation and treatment for substance abuse, psychological evaluation and treatment, medical evaluation and treatment, monitoring of the attorney's practice or accounting procedures, continuing legal education, ethics school, the multistate professional responsibility examination, or any other program authorized by the Court.

(b) Participation in the Program. As an alternative to a form of discipline, an attorney may participate in an approved diversion program in cases where there is little likelihood that the attorney will harm the public during the period of participation, where the Regulation Counsel can adequately supervise the conditions of diversion, and where participation in the program is likely to benefit the attorney and accomplish the goals of the program. A matter generally will not be diverted under this Rule when:

(1) The presumptive form of discipline in the matter is likely to be greater than public censure;

(2) The misconduct involves misappropriation of funds or property of a client or a third party;

(3) The misconduct involves a serious crime as defined by C.R.C.P. 251.20(e);

(4) The misconduct involves family violence;

(5) The misconduct resulted in or is likely to result in actual injury (loss of money, legal rights, or valuable property rights) to a client or other person, unless restitution is made a

condition of diversion;

(6) The attorney has been publicly disciplined in the last three years;

(7) The matter is of the same nature as misconduct for which the attorney has been disciplined in the last five years;

(8) The misconduct involves dishonesty, deceit, fraud, or misrepresentation; or

(9) The misconduct is part of a pattern of similar misconduct.

(c) Diversion Agreement. If an attorney agrees to an offer of diversion as provided by this rule, the terms of the diversion shall be set forth in a written agreement. If the agreement is entered prior to a determination to proceed is made pursuant to C.R.C.P. 251.9, the agreement shall be between the attorney and Regulation Counsel. If diversion is offered and entered after a determination to proceed is made pursuant to C.R.C.P. 251.9 but before authorization to file a complaint, the diversion agreement between the attorney and Regulation Counsel shall be submitted to the committee for consideration. If the committee rejects the diversion agreement, the matter shall proceed as otherwise provided by these Rules. If diversion is offered and entered after a complaint has been filed pursuant to C.R.C.P. 251.14, the diversion agreement shall be submitted to the Presiding Disciplinary Judge or Supreme Court, whichever body before which the matter is pending for consideration. If the diversion agreement is rejected, the matter shall proceed as provided by these Rules.

The agreement shall specify the program(s) to which the attorney shall be diverted, the general purpose of the division, the manner in which compliance is to be monitored, and any requirement for payment of restitution or cost.

(d) Costs of the Diversion. The attorney shall pay all the costs incurred in connection with participation in any diversion program. The attorney shall also pay the administrative cost of the proceeding as set by the Supreme Court.

(e) Effect of Diversion. When the recommendation for diversion becomes final, the attorney shall enter into the diversion program(s) and complete the requirements thereof. Upon the attorney's entry into the diversion programs(s), the underlying matter shall be placed in abeyance, indicating diversion. Diversion shall not constitute a form of discipline.

(f) Effect of Successful Completion of the Diversion Program. If diversion is entered prior to a determination to proceed is made pursuant to C.R.C.P. 251.9(b)(3), and if Regulation Counsel determines that the attorney has successfully completed all requirements of the diversion program, the Regulation Counsel shall close the file. If diversion is successfully completed in a matter that was determined to warrant investigation or other proceedings pursuant to these Rules, the matter shall be dismissed and expunged pursuant to C.R.C.P. 251.33(d). After the file is expunged, the attorney may respond to any general inquiry as provided in C.R.C.P. 251.33(d).

(g) Breach of Diversion Agreement. The determination of a breach of a diversion agreement will be as follows:

(1) If the Regulation Counsel has reason to believe that the attorney has breached the diversion agreement, and the diversion agreement was entered prior to a decision to proceed pursuant to C.R.C.P. 251.9(b), and after the attorney has had an opportunity to respond, Regulation Counsel may elect to modify the diversion agreement or terminate the diversion

agreement and proceed with the matter as provided by these rules.

(2) If Regulation Counsel has reason to believe that the attorney has breached the diversion agreement after a determination to proceed has been made, then the matter shall be referred to the Presiding Disciplinary Judge or Supreme Court, whichever body approved the diversion agreement, with an opportunity for the attorney to respond. The Regulation Counsel will have the burden by a preponderance of the evidence to establish the materiality of the breach, and the attorney will have the burden by a preponderance of the evidence to establish justification for the breach. If after consideration of the information presented by the Regulation Counsel and the attorney's response, if any, it is determined that the breach was material without justification, the agreement will be terminated and the matter will proceed as provided for by these rules. If a breach is established but determined to be not material or to be with justification, the diversion agreement may be modified in light of the breach. If no breach is found, the matter shall proceed pursuant to the terms of the original diversion agreement.

(3) If the matter has been referred for determination to the committee, Presiding Disciplinary Judge, or the Supreme Court as provided for in section (g)(2) of this rule, upon motion of either party, the Presiding Disciplinary Judge shall hold a hearing on the matter. Upon conclusion of the hearing, the Presiding Disciplinary Judge shall prepare written findings of fact and conclusions and enter an appropriate order in those matters in which the Presiding Disciplinary Judge originally approved the diversion agreement. If the hearing is requested in a matter pending before the committee or Supreme Court for consideration, the Presiding Disciplinary Judge shall prepare findings of fact and recommendations and forward them to the body which originally approved the diversion agreement for its determination of the matter.

(h) Effect of Rejection of Recommendation for Diversion. If an Attorney rejects a diversion recommendation, the matter shall proceed as otherwise provided in these Rules.

(i) Confidentiality. All the files and records resulting from the diversion of a matter shall not be made public except by order of the Supreme Court. Information of misconduct admitted by the attorney to a treatment provider or a monitor while in a diversion program is confidential if the misconduct occurred before the attorney's entry into a diversion program.

Rule 251.14. Complaint -- Contents, Service

(a) Contents of Complaint. Complaints seeking to establish grounds for discipline of an attorney shall be filed as provided by these Rules with the Presiding Disciplinary Judge. An original and three copies of the complaint shall be filed.

The complaint shall set forth clearly and with particularity the grounds for discipline with which the respondent is charged and the conduct of the respondent which gave rise to those charges. All disciplinary and disability proceedings filed as herein provided shall be conducted in the name of the People of the State of Colorado and shall be prosecuted by the Regulation Counsel.

(b) Service of Complaint. The Regulation Counsel shall promptly serve upon the

respondent, as provided in C.R.C.P. 251.32(b), a citation and a copy of the complaint filed against the respondent. The citation shall require the respondent within 21 days after service thereof to file an original and three copies of a written answer to the complaint, in compliance with C.R.C.P. 251.15.

Rule 251.15. Answer -- Filing, Failure to Answer, Default

(a) Answer. Within 21 days after service of the citation and complaint, or within such greater period of time as may be approved by the Presiding Disciplinary Judge, the respondent shall file an original and three copies of an answer to the complaint with the Presiding Disciplinary Judge and one copy with the Regulation Counsel. In the answer the respondent shall either admit or deny every material allegation contained in the complaint, or request that the allegation be set forth with greater particularity. In addition, the respondent shall set forth in the answer any affirmative defenses. Any objection to the complaint which a respondent may assert, including a challenge to the complaint for failure to charge misconduct constituting grounds for discipline, must also be set forth in the answer.

(b) Failure to Answer, and Default. If the respondent fails to file an answer within the period provided by subsection (a) of this Rule, the Regulation Counsel shall file a motion for default with the Presiding Disciplinary Judge. Thereafter, the Presiding Disciplinary Judge shall enter a default and the complaint shall be deemed admitted; provided, however, that a respondent who fails to file a timely answer may, upon a showing that the failure to answer was the result of mistake, inadvertence, surprise, or excusable neglect, obtain leave of the Presiding Disciplinary Judge to file an answer.

Notwithstanding the entry of a default, the Regulation Counsel shall give the respondent notice of the final hearing, at which the respondent may appear and present arguments to the Hearing Board regarding the form of discipline to be imposed.

Thereafter, the Hearing Board shall review all pleadings, arguments, and the report of investigation and shall prepare a report setting forth its findings of fact and its decision as provided in C.R.C.P. 251.19.

If, however, after the entry of default neither the respondent nor Regulation Counsel timely requests a hearing before the Hearing Board, then the sanctions hearing shall be held solely before the Presiding Disciplinary Judge.

Rule 251.16. Presiding Disciplinary Judge

(a) Presiding Disciplinary Judge. The office of the Presiding Disciplinary Judge of the Supreme Court of Colorado is hereby established. The Supreme Court shall appoint a Presiding Judge to serve at the pleasure of the Supreme Court.

(b) Qualifications. The Presiding Disciplinary Judge shall be an attorney, duly admitted to the Bar of Colorado, with more than five years experience in the practice of law. The Presiding Disciplinary Judge, while serving in that capacity, may hold any other public office.

(c) Powers and Duties of the Presiding Disciplinary Judge. The Presiding Disciplinary

Judge shall be authorized and empowered to act in accordance with these Rules and to:

(1) Maintain and supervise a permanent office in the Denver metropolitan area to serve as the central office in which disciplinary and disability proceedings shall be conducted as provided in these Rules, under a budget approved by the Supreme Court;

(2) Select counsel and appoint a staff as necessary to assist the Presiding Disciplinary Judge in the administration of the judge's office and in the performance of the judge's duties;

(3) Order the parties in disciplinary proceedings to attend a settlement conference;

(4) Impose discipline on an attorney or transfer an attorney to disability inactive status as provided in these Rules;

(5) Periodically report to the Advisory Committee and the management committee on the operation of the office of the Presiding Disciplinary Judge;

(6) Recommend to the Advisory Committee proposed changes or additions to the rules of procedure for attorney discipline and disability proceedings; and

(7) Adopt such practices as may from time to time become necessary to govern the internal operation of the office of the Presiding Disciplinary Judge, as approved by the Supreme Court.

(8) Preside over contempt proceedings initiated under these Rules and C.R.C.P. 107 when appropriate.

(9) Preside over sanctions hearings pursuant to C.R.C.P. 251.15(b) and C.R.C.P. 251.19(c).

(d) Abstention. The Presiding Disciplinary Judge shall refrain from taking part in any proceedings in which a judge, similarly situated, would be required to abstain. No partner or associate in the law firm of the Presiding Disciplinary Judge, or any attorney in any way affiliated with the Presiding Disciplinary Judge or the Judge's law firm, may accept or continue in employment connected with any matter pending before the committee, the Judge, or a Hearing Board as long as the Judge is serving as the Presiding Disciplinary Judge.

(e) Disqualification. Presiding Disciplinary Judges shall not represent an attorney in any matter as provided in these Rules during their terms of service. Former presiding disciplinary judges shall not represent an attorney in any matter that was being investigated or prosecuted as provided in these rules during their terms of service.

Rule 251.17. Hearing Board

(a) Hearing Board. Hearing Boards are hereby established and empowered to act in accordance with these Rules.

(1) Members. The Supreme Court shall appoint a diverse pool of members of the Bar of Colorado and members of the public to serve as members of Hearing Boards. Persons appointed shall serve terms of six years. Terms shall be staggered to provide, so far as possible, for the expiration each year of the terms of an equal number of persons.

Persons appointed shall serve at the pleasure of the Supreme Court and may be dismissed from service at any time by order of the Supreme Court. Persons appointed may resign at any time.

(2) Vacancy. In the event of vacancies on the list of Hearing Board members, the

Supreme Court shall, with the assistance of the Advisory Committee, appoint new persons to the list to serve on Hearing Boards.

(3) Reimbursement. Members of Hearing Boards shall be entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in the performance of their official duties.

(b) Abstention of Members. Members of Hearing Boards shall refrain from taking part in any proceedings in which a judge, similarly situated, would be required to abstain. No partner or associate in the law firm of a member of the Hearing Board, or any attorney in any way affiliated with a member of the Hearing Board or the member's law firm, may accept or continue in employment connected with any matter pending before the Hearing Board on which the member is serving.

(c) Disqualification. Members of Hearing Boards shall not represent an attorney in any matter as provided in these Rules during their terms of service.

Rule 251.18. Hearings Before the Hearing Board

(a) Notice. Not less than 56 days (8 weeks) before the date set for the hearing of a complaint, the Regulation Counsel shall give notice of such hearing as provided in C.R.C.P. 251.32(b) to the respondent, or the respondent's counsel, and to the complaining witness. The notice shall designate the date, place, and time of the hearing. The notice shall also advise the respondent that the respondent is entitled to be represented by counsel at the hearing, to cross-examine witnesses, and to present evidence in the respondent's own behalf.

The notice shall also advise the complaining witness that the complaining witness has a right to be present at the hearing and if there is a finding of misconduct to make a statement, orally or in writing, regarding the form of discipline.

(b) Designation of a Hearing Board.

(1) All hearings on complaints seeking disciplinary action against a respondent shall be conducted by a Hearing Board except as provided in subsection (b)(3). A Hearing Board shall consist of the Presiding Disciplinary Judge and two other members, one of whom shall be an attorney, who are to be selected at random from the pool of Hearing Board Members by the clerk for the Presiding Disciplinary Judge. If the Presiding Disciplinary Judge has been disqualified, then a presiding officer shall be selected at random from among the attorneys on the list of Hearing Board members. The presiding officer shall, in all respects, act in accordance with these Rules.

(2) The Presiding Disciplinary Judge or the presiding officer shall rule on all motions, objections, and other matters presented after a complaint is filed and in the course of a hearing.

(3) Once a default has been entered against a respondent, the respondent or Regulation Counsel has 28 days after notice of the default order to request a sanctions hearing before a three-person Hearing Board. The party requesting this hearing shall send notice of such request, in writing, to the Presiding Disciplinary Judge and the opposing party. If neither party requests a sanctions hearing before a three-person Hearing Board, the sanction shall be decided by the Presiding Disciplinary Judge.

(c) Prehearing Conference. At the discretion of the Presiding Disciplinary Judge, a prehearing conference may be ordered.

(d) Procedure and Proof. Except as otherwise provided in these Rules, hearings and all matters commencing with filing the complaint as provided in C.R.C.P. 251.14 shall be conducted in conformity with the Colorado Rules of Civil Procedure, the Colorado Rules of Evidence, and the practice in this state in the trial of civil cases; provided, however, that proof shall be by clear and convincing evidence, and provided further that the respondent may not be required to testify or to produce records over the respondent's objection if to do so would be in violation of the respondent's constitutional privilege against self-incrimination.

In the course of proceedings conducted pursuant to this Rule, the Presiding Disciplinary Judge or the Presiding Officer, acting pursuant to and in conformity with these Rules, shall have the power to administer oaths and affirmations.

A complete record shall be made of all depositions and of all testimony taken at hearings before a Hearing Board.

(e) Order for Examination. When the mental or physical condition of the attorney in question has become an issue in the proceeding, the Presiding Disciplinary Judge, on motion of the Regulation Counsel, may order the attorney to submit to a physical or mental examination by a suitable licensed or certified examiner. The order may be made only upon a determination that reasonable cause exists and after notice to the attorney. The attorney will be provided the opportunity to respond to the motion of the Regulation Counsel, and the attorney may request a hearing before the Presiding Disciplinary Judge. If requested, the hearing shall be held within 28 days of the date of the attorney's request, and shall be limited to the issue of whether reasonable cause exists for such an order.

(f) Procurement of Evidence During Hearing.

(1) Subpoena. In the course of a hearing conducted pursuant to these Rules, and upon the petition of any party to the hearing, the clerk of the Presiding Disciplinary Judge may, for the use of a party, issue subpoenas to compel the attendance of witnesses and the production of pertinent books, papers, documents, or other evidence.

Witnesses shall be entitled to receive fees for mileage as provided by law for witnesses in civil actions.

(2) Quashing a Subpoena. Any challenge to the power to subpoena as exercised pursuant to this Rule shall be directed to the Presiding Disciplinary Judge or the Presiding Officer of the Hearing Board.

(3) Contempt. Any person who fails or refuses to comply with a subpoena issued pursuant to these Rules may be cited for contempt of the Supreme Court.

Any person who by misbehavior obstructs the Hearing Board or any part thereof in the performance of its duties may be cited for contempt of the Supreme Court.

Any person having been duly sworn to testify who refuses to answer any proper question may be cited for contempt of the Supreme Court.

A contempt citation may be issued by the Presiding Disciplinary Judge or the presiding officer. A copy of the contempt citation, together with the findings of fact made by the Presiding Disciplinary Judge or the presiding officer surrounding the contempt, shall be filed

with the Supreme Court. The Supreme Court shall then determine whether to impose contempt.

(4) Discovery.

(A) Purpose and Scope. Rules 16 and 26 of the Colorado Rules of Civil Procedure shall not apply to proceedings conducted pursuant to these Rules. This Rule shall govern discovery in attorney discipline and disability proceedings.

(B) Meeting. A meeting of the parties must be held no later than 14 days after the case is at issue to confer with each other about the nature and basis of the claims and defenses and discuss the matters to be disclosed.

(C) Disclosures. No later than 28 days after the case is at issue, the parties shall disclose:

(i) The name and, if known, the address, and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged in the pleadings, identifying who the person is and the subjects of the information;

(ii) A listing, together with a copy of, or a description of, all documents, data compilations, and tangible things in the possession, custody, or control of the parties that are relevant to the disputed facts in the pleadings; and

(iii) A statement of whether the parties anticipate use of expert witnesses, identifying the subject areas of the proposed experts.

(D) Trial Management Order. Upon the request of one of the parties or upon order of the Presiding Disciplinary Judge or the presiding officer of the Hearing Board, no later than 42 days prior to the trial date, the parties shall disclose to the other party and file a trial management order containing the following matters under the following captions and in the following order:

(i) Statement of Claims and Defenses to be Pursued or Withdrawn. The parties shall set forth a listing of the claims and defenses remaining for trial. Any claims or defenses set forth in the pleadings which will not be at issue at trial shall be designated as "withdrawn."

(ii) Stipulated Facts. The parties shall set forth a plain, concise statement of all facts which the Hearing Board shall accept as undisputed.

(iii) Pretrial Motions. The parties shall list motions, if any, which are anticipated to be filed before trial as well as motions, if any, which are pending before the Hearing Board. The parties shall indicate a deadline for the filing of such motions which shall be no later than 14 days prior to the date set for trial.

(iv) Legal Issues. The parties shall set forth a list of legal issues that are controverted, including appropriate citation of statutory, case or other authority. In addition, the parties shall indicate whether trial briefs will be filed, including a schedule for their filing. Trial briefs shall be filed no later than 7 days before the commencement of the trial.

(v) Identification of Witnesses and Exhibits. Each party shall provide the following information:

(a) Lay Witnesses. Each party shall include a list containing the name, address, and telephone number of any person whom the party will call and of any person whom the party may call as a witness at trial.

(b) Exhibits. Each party shall attach a list describing any physical or documentary evidence which the party intends to introduce at trial. Complainant shall assign a number and

respondent shall assign a letter designation for each exhibit. If any party wishes to object to the authenticity or admissibility of any exhibit, such objection shall be noted, together with the grounds therefor.

(c) Expert Witnesses. Each party shall attach to the trial management order a list of the name, address, and telephone number of each person whom the party will call and any person whom the party may call as an expert witness at trial, indicating the anticipated length of testimony, including cross-examination. The list shall indicate whether the opposing party accepts or challenges the qualifications of a witness to testify as an expert as to the opinions expressed. If there is a challenge, the list shall be accompanied by a resume setting forth the basis for the expertise of the challenged witness. Copies of any expert reports shall be provided to the other party at this time.

(vi) Presentation of Testimony. If the testimony of any witness is to be presented by deposition or through any other acceptable means in lieu of live testimony, a copy shall be submitted to the Hearing Board or the Presiding Disciplinary Judge if there is no Hearing Board and include the proponent's and opponent's anticipated designations of the pertinent portions of such testimony or a statement why designation is not feasible prior to trial. If any party wishes to object to the admissibility of the testimony or to any tendered question or answer therein, it shall be noted, setting forth the grounds therefor.

(vii) Trial Efficiencies. If the anticipated length of the trial has changed, the parties shall so indicate.

(E) Limitations. Except upon order by the Presiding Disciplinary Judge or the presiding officer of the Hearing Board for good cause shown, discovery shall be limited as follows:

(i) The Regulation Counsel may take one deposition of the respondent and two other persons in addition to the depositions of experts as provided in C.R.C.P. 26. The respondent may take one deposition of the complaining witness and two other persons in addition to the depositions of experts as provided in C.R.C.P. 26. The scope and manner of proceeding by way of deposition and the use thereof shall otherwise be governed by C.R.C.P. 26, 28, 29, 30, 31, 32, and 45.

(ii) A party may serve on the adverse party 30 written interrogatories, each of which shall consist of a single question. The scope and manner of proceeding by means of written interrogatories and the use thereof shall otherwise be governed by C.R.C.P. Rules 26 and 33.

(iii) The Regulation Counsel may obtain a physical or mental examination of the respondent pursuant to C.R.C.P. 251.18(e).

(iv) A party may serve the adverse party requests for production of documents pursuant to C.R.C.P. 34, except such requests for production shall be limited to 20 in number, each of which shall consist of a single request.

(v) A party may serve on the adverse party 20 requests for admission, each of which shall consist of a single request. The scope and manner of proceeding by means of requests for admission and the use thereof shall otherwise be governed by C.R.C.P. 36.

(F) In determining good cause pursuant to C.R.C.P. 251.18(f)(4)(E), the Presiding Disciplinary Judge or the presiding officer of the Hearing Board shall consider the following:

(i) Whether the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less

expensive;

(ii) Whether the party seeking discovery has had ample opportunity by disclosure or discovery in the action to obtain the information sought;

(iii) Whether the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the parties' resources, the importance of the issues in the litigation, and the importance of the proposed discovery in resolving the issues; and

(iv) Whether, because of the number of parties and their alignment with respect to the underlying claims and defenses, the proposed discovery is reasonable.

(G) Supplementation of Disclosures and Discovery Responses. A party is under a duty to supplement its disclosures under section (f)(4)(C) of this Rule when the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the disclosure or discovery process. A party is under a duty to amend a prior response to an interrogatory, request for production or request for admission when the party learns that the prior response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process. With respect to experts, the duty to supplement or correct extends both to information contained in the expert's report or summary disclosed pursuant to section (f)(4)(D)(v)(c) of this Rule and to information provided through any deposition of or interrogatory responses by the expert. Supplementation shall be performed in a timely manner.

Rule 251.19. Findings of Fact and Decision

(a) Hearing Board Opinion and Decision. Within 56 days (8 weeks) after the hearing, the Hearing Board shall prepare an opinion setting forth its findings of fact and its decision. In preparing its decision, the Hearing Board shall take into consideration the respondent's prior disciplinary record, if any. The opinion shall be signed by each concurring member of the Hearing Board. Two members are required to make a decision. Members of the Hearing Board who dissent shall also sign the opinion, provided they indicate the basis of their dissent in the opinion.

(b) Decision of the Hearing Board. When it renders its decision, the Hearing Board shall:

(1) Determine that the complaint is not proved and enter an order dismissing the complaint;

(2) Enter an order imposing private admonition, public censure, a definite period of suspension, or disbarment; or

(3) Enter an order conditioned on the agreement of the attorney diverting the case to the alternatives to discipline program.

The Hearing Board may also enter other appropriate orders including, without limitation, probation, and orders requiring the respondent to pay the costs of the disciplinary proceeding, to make restitution, or to refund money paid to the respondent.

(4) Within 14 days of entry of an order as provided in this Rule or such greater time as the Hearing Board may allow, a party may move for post-hearing relief as provided in C.R.C.P. 59. In the event a motion for post-hearing relief is filed, the Presiding Disciplinary Judge or the presiding officer shall consult with the other members of the Hearing Board and then rule on the motion.

(5) For purposes of this Rule, the decision of the Hearing Board shall be final and time for filing notice of appeal shall commence as set forth in C.R.C.P. 251.27.

(6) Unless stayed, vacated, reversed, or otherwise modified by order of the Supreme Court, a final decision of the Hearing Board under paragraph (b)(5) of this Rule shall be considered for all purposes an order of the Supreme Court.

(c) Decision of the Presiding Disciplinary Judge. When the Presiding Disciplinary Judge renders a decision without a Hearing Board as provided in these rules, the Presiding Disciplinary Judge shall:

(1) Enter an order imposing private admonition, public censure, a definite period of suspension, or disbarment; or

(2) Enter an order conditioned on the agreement of the attorney diverting the case to the alternatives to discipline program.

The Presiding Disciplinary Judge may also enter other appropriate orders including, without limitation, probation, and orders requiring the respondent to pay the costs of the disciplinary proceeding, to make restitution, or to refund money paid to the respondent.

(3) Within 14 days of entry of an order as provided in this Rule or such greater time as the Presiding Disciplinary Judge may allow, a party may move for post-hearing relief as provided in C.R.C.P. 59.

(4) For purposes of this Rule, the decision of the Presiding Disciplinary Judge shall be final and time for filing notice of appeal shall commence as set forth in C.R.C.P. 251.26.

Rule 251.20. Attorney Convicted of a Crime

(a) Proof of Conviction. Except as otherwise provided by these Rules, a certified copy of the judgment of conviction from the clerk of any court of criminal jurisdiction indicating that an attorney has been convicted of a crime in that court shall conclusively establish the existence of such conviction for purposes of disciplinary proceedings in this state and shall be conclusive proof of the commission of that crime by the respondent.

(b) Duty to Report Conviction. Every attorney subject to these Rules, upon being convicted of a crime, except those misdemeanor traffic offenses or traffic ordinance violations, not including the use of alcohol or drugs, shall notify the Regulation Counsel in writing of such conviction within 14 days after the date of the conviction. In addition, the clerk of any court in this state in which the conviction was entered shall transmit to the Regulation Counsel within 14 days after the date of the conviction a certificate thereof.

(c) Commencement of Disciplinary Proceedings Upon Notice of Conviction. Upon receiving notice that an attorney subject to these Rules has been convicted of a crime, other than a serious crime as hereinafter defined, the Regulation Counsel shall, following an investigation as provided in these Rules, make a determination as provided in C.R.C.P.

251.11 or refer the matter to the committee for further proceedings consistent with C.R.C.P. 251.12.

If the conviction is for a serious crime as hereinafter defined, the Regulation Counsel shall obtain the record of conviction and prepare and file a complaint against the respondent as provided in C.R.C.P. 251.14.

If a complaint is filed against a respondent pursuant to the provisions of this Rule, the Regulation Counsel shall present proof of the criminal conviction and may present any other evidence which the Regulation Counsel deems appropriate. If the respondent's criminal conviction is either proved or admitted, the respondent shall have the right to be heard by the Hearing Board only on matters of rebuttal of any evidence presented by the Regulation Counsel other than proof of the conviction.

(d) Conviction of a Serious Crime -- Immediate Suspension. The Regulation Counsel shall report to the Supreme Court the name of any attorney who has been convicted of a serious crime, as hereinafter defined. The Supreme Court shall thereupon issue a citation directing the convicted attorney to show cause why the attorney's license to practice law should not be immediately suspended pursuant to C.R.C.P. 251.8. Upon full consideration of the matter, the Supreme Court may either impose immediate suspension for a definite or indefinite period or may discharge the rule to show cause. The fact that a convicted attorney is seeking appellate review of the conviction shall not limit the power of the Supreme Court to impose immediate suspension.

(e) Serious Crime Defined. The term serious crime as used in these Rules shall include:

(1) Any felony; and

(2) Any lesser crime a necessary element of which, as determined by its statutory or common law definition, involves interference with the administration of justice, false swearing, misrepresentation, fraud, willful extortion, misappropriation, or theft; or an attempt or conspiracy to commit such crime; or solicitation of another to commit such crime.

(f) Notice to Clients and Others of Immediate Suspension. An order of immediate suspension of an attorney pursuant to this Rule shall constitute a suspension of the attorney for the purpose of the provisions of C.R.C.P. 251.28.

(g) Automatic Reinstatement From Immediate Suspension When Conviction Reversed. An attorney suspended under the provisions of this Rule shall be reinstated to practice law immediately upon filing a certificate demonstrating that the underlying criminal conviction has been reversed; provided, however, that reinstatement of the attorney shall have no effect on any proceedings conducted pursuant to these Rules then pending against him.

(h) Conviction Defined. The term conviction as used in these Rules shall include any ultimate finding of fact in a criminal proceeding that an individual is guilty of a crime, whether the judgment rests on a verdict of guilty, a plea of guilty, or a plea of nolo contendere, and irrespective of whether entry of judgment or imposition of sentence is suspended or deferred by the court.

Rule 251.21. Discipline Imposed by Foreign Jurisdiction

(a) Proof of Discipline Imposed. Except as otherwise provided by these Rules, a final adjudication in another jurisdiction of misconduct constituting grounds for discipline of an attorney shall, for purposes of proceedings pursuant to these Rules, conclusively establish such misconduct.

(b) Duty to Report Discipline Imposed. Any attorney subject to these Rules against whom any form of public discipline has been imposed by the authorities of another jurisdiction, or who voluntarily surrenders the attorney's license to practice law in connection with disciplinary proceedings in another jurisdiction, shall notify the Regulation Counsel of such action in writing within 14 days thereof.

(c) Commencement of Proceedings Upon Notice of Voluntary Surrender of License. Upon receiving notice that an attorney subject to these Rules has voluntarily surrendered his license to practice law in another jurisdiction, the Regulation Counsel shall, following investigation pursuant to these Rules, refer the matter to the committee for further proceedings consistent with C.R.C.P. 251.12.

(d) Commencement of Proceedings Upon Notice of Discipline Imposed. Upon receiving notice that an attorney subject to these Rules has been publicly disciplined in another jurisdiction, the Regulation Counsel shall obtain the disciplinary order and prepare and file a complaint against the attorney as provided in C.R.C.P. 251.14. If the Regulation Counsel intends either to claim that substantially different discipline is warranted or to present additional evidence, notice of that intent shall be given in the complaint.

If the attorney intends to challenge the validity of the disciplinary order entered in the foreign jurisdiction, the attorney must file with the Presiding Disciplinary Judge an answer and a full copy of the record of the disciplinary proceedings which resulted in the imposition of that disciplinary order within 21 days after service of the complaint or such greater time as the Presiding Disciplinary Judge may allow for good cause shown.

At the conclusion of proceedings brought under this Rule, the Hearing Board shall issue a decision imposing the same discipline as was imposed by the foreign jurisdiction, unless it is determined by the Hearing Board that:

(1) The procedure followed in the foreign jurisdiction did not comport with requirements of due process of law;

(2) The proof upon which the foreign jurisdiction based its determination of misconduct is so infirm that the Hearing Board cannot, consistent with its duty, accept as final the determination of the foreign jurisdiction;

(3) The imposition by the Hearing Board of the same discipline as was imposed in the foreign jurisdiction would result in grave injustice; or

(4) The misconduct proved warrants that a substantially different form of discipline be imposed by the Hearing Board.

(e) If Regulation Counsel does not seek substantially different discipline and if the respondent does not challenge the order based on any of the grounds set forth in (d)(1)(4) above, then the Presiding Disciplinary Judge may, without a hearing or a Hearing Board, issue a decision imposing the same discipline as imposed by the foreign jurisdiction.

Rule 251.22. Discipline Based on Admitted Misconduct

(a) Acceptance of Admission. An attorney against whom proceedings are pending pursuant to these Rules may, at any point in the proceedings prior to final action by a Hearing Board, tender a conditional admission of misconduct constituting grounds for discipline in exchange for a stipulated form of discipline. The conditional admission must be approved by the Regulation Counsel prior to being tendered to the committee or the Presiding Disciplinary Judge.

If the form of discipline stipulated to is private admonition, the conditional admission shall be tendered to the committee for its review. The committee shall either reject the conditional admission and order the proceedings continued in accordance with these Rules, or accept the conditional admission and order private admonition imposed.

If the form of discipline stipulated to is disbarment, suspension, public censure, or a range that includes any of the former and private admonition, the conditional admission shall be tendered to the Presiding Disciplinary Judge for review. The Presiding Disciplinary Judge or Presiding Officer of the Hearing Board shall, after conducting a hearing as provided in this Rule, if one is requested, either reject the conditional admission and order the proceedings continued in accordance with these Rules, or approve the conditional admission and enter an appropriate order.

Imposition of discipline pursuant to a conditional admission of misconduct shall terminate all proceedings conducted pursuant to these Rules and pending against the attorney in connection with that misconduct.

(b) Conditional Admission -- Contents. A conditional admission of misconduct shall be set forth in the form of an affidavit, be submitted by the attorney, and shall contain:

(1) An admission of misconduct which constitutes grounds for discipline;

(2) An acknowledgment of the proceedings pending against the attorney; and

(3) A statement that the admission is freely and voluntarily made, that it is not the product of coercion or duress, and that the attorney is fully aware of the implications of the attorney's admission.

If the conditional admission is tendered before a complaint is filed as provided in C.R.C.P. 251.14, it shall remain confidential if the form of discipline stipulated to is private admonition and its contents shall not be publicly disclosed or made available for use in any proceedings outside this Chapter except as otherwise provided in these Rules or by order of the Supreme Court.

(c) Conditional Admission -- Hearing.

(1) Procedure. Within 14 days of the date a conditional admission is filed, the respondent or the Regulation Counsel may request a hearing before the Presiding Disciplinary Judge. If a hearing is requested, it shall be set promptly.

(2) Notice. Not less than 14 days before the date set for the hearing on the conditional admission, the Regulation Counsel shall give notice of such hearing as provided in C.R.C.P. 251.32(b) to the respondent, the respondent's counsel, and the complaining witness. The notice shall designate the date, place, and time of the hearing. The notice shall advise the respondent that the respondent is entitled to be represented by counsel at the hearing and to present argument regarding the form of discipline to be ordered.

(3) Complaining Witness. In addition to the foregoing, the notice shall advise the

complaining witness that the complaining witness has a right to be present at the hearing and to make a statement, orally or in writing, to the Presiding Disciplinary Judge regarding the form of discipline.

(d) Stay of Proceedings. Proceedings conducted pursuant to these Rules that are pending before the Presiding Disciplinary Judge at the time a conditional admission is tendered may be stayed by order of the Presiding Disciplinary Judge.

(e) Further Proceedings. If the conditional admission of misconduct is rejected and the matter is returned for further proceedings consistent with these Rules, the conditional admission may not be used against the attorney.

Rule 251.23. Disability Inactive Status

(a) Disability Inactive Status. Where it is shown that an attorney is unable to fulfill professional responsibilities competently because of physical, mental or emotional infirmity or illness, including addiction to drugs or intoxicants, the attorney shall be transferred to disability inactive status. During such time as an attorney is on disability inactive status the attorney shall not engage in the practice of law.

Proceedings instituted against an attorney pursuant to this Rule are disability proceedings. Transfer to disability inactive status is not a form of discipline and does not involve a violation of the attorney's oath. The pendency of proceedings provided for by this Rule shall not defer or abate other proceedings conducted pursuant to these Rules, unless after a hearing the Presiding Disciplinary Judge determines that the attorney, is unable to assist in the defense of those other proceedings because of the disability. If such other proceedings are deferred, then the deferral shall continue until such time as the attorney is found to be eligible for reinstatement as provided by C.R.C.P. 251.30.

(b) Transfer to Disability Inactive Status Without a Hearing. Where an attorney who is subject to these Rules has been judicially declared mentally ill, or has been involuntarily committed to a mental hospital, or has voluntarily petitioned for the appointment of a guardian, or has been found not guilty by reason of insanity in a criminal proceeding in a court of record, the Presiding Disciplinary Judge, upon proper proof of the fact, shall enter an order transferring the attorney to disability inactive status. Such order shall remain in effect unless altered by the Presiding Disciplinary Judge or the Supreme Court. A copy of the order transferring an attorney to disability inactive status shall be served upon the attorney and upon either the attorney's guardian or the superintendent of the hospital in which the attorney is confined. Service shall be made in such manner as the Presiding Disciplinary Judge may direct.

(c) Procedure When Disability is Alleged. Whenever any interested party shall petition the Presiding Disciplinary Judge to determine whether an attorney is incapable of continuing to practice law by reason of physical, mental or emotional infirmity or illness, including addiction to drugs or intoxicants, or whether the attorney in a proceeding conducted pursuant to these Rules is so incapacitated as to be unable to proffer a defense, the Presiding Disciplinary Judge shall direct such action as it deems necessary or proper to determine whether the attorney is incapacitated, including an examination of the attorney by qualified

medical experts designated by the Presiding Disciplinary Judge; provided, however, that before any medical examination or other action may be ordered, the Presiding Disciplinary Judge must afford the attorney an opportunity to show cause why such examination or action should not be ordered. If, upon due consideration of the matter, the Presiding Disciplinary Judge determines that the attorney is incapable of continuing to practice law or is incapable of defending in proceedings conducted pursuant to these Rules, the Presiding Disciplinary Judge shall enter an order transferring the attorney to disability inactive status. Such order shall remain in effect unless altered by the Presiding Disciplinary Judge or the Supreme Court.

An attorney against whom disability proceedings are pending shall be given notice of such proceedings. Notice shall be given in such a manner as the Presiding Disciplinary Judge may direct. The Presiding Disciplinary Judge may appoint counsel to represent the attorney if the attorney is without adequate representation.

(d) Procedure When Attorney During Course of Proceedings Alleges a Disability that Impairs the Attorney's Ability to Defend Himself. If in the course of proceedings conducted pursuant to these Rules the lawyer alleges disability by reason of physical, mental or emotional infirmity or illness, including addiction to drugs or intoxicants, that impairs the attorney's ability to defend adequately in such proceedings, such proceedings shall be suspended and the Presiding Disciplinary Judge shall enter an order transferring the attorney to disability inactive status and order a medical examination of the attorney. Upon review of the report of the medical examination and other relevant information, the Presiding Disciplinary Judge may do any of the following:

(1) Order a hearing on the issue of whether the attorney suffers from a disability that impairs the attorney's ability to defend adequately in such other proceedings;

(2) Continue the order transferring the lawyer to disability inactive status;

(3) Discharge the order transferring the lawyer to disability inactive status, and order that the proceedings pending against the attorney be resumed;

(4) Enter any other appropriate order, including an order directing further examination of the attorney.

(e) Burden of Proof. In a disability proceeding seeking the transfer of an attorney to disability inactive status the party petitioning for transfer shall bear the burden of proof by clear and convincing evidence.

(f) Hearings. Any hearings held pursuant to this Rule shall be conducted by the Presiding Disciplinary Judge in the manner prescribed by C.R.C.P. 251.18 and C.R.C.P. 251.19, and a Hearing Board shall not be required.

(g) Compensation. The Presiding Disciplinary Judge may fix the compensation to be paid to any legal counsel or medical expert appointed by the Presiding Disciplinary Judge pursuant to this Rule. The Presiding Disciplinary Judge may direct that such compensation be assessed as part of the costs of a proceeding held pursuant to this Rule and that it be paid as such in accordance with law.

(h) Post-Hearing Relief and Notice of Appeal. The attorney may file a motion for post-hearing relief or a notice of appeal as provided in C.R.C.P. 251.19.

Rule 251.24. Appellate Discipline Commission

Repealed, effective September 1, 2000.

Rule 251.25. Counsel for the Appellate Discipline Commission

Repealed, effective September 1, 2000.

Rule 251.26. Proceedings Before the Appellate Discipline Commission

Repealed, effective September 1, 2000.

Rule 251.27. Proceedings Before the Supreme Court

(a) Appellate Jurisdiction. Appellate review by the Supreme Court of every final decision of the Hearing Board in which public censure, a period of suspension, disbarment, or transfer to disability inactive status is ordered or in which reinstatement or readmission is denied shall be allowed as provided by these rules.

(b) Standard of Review. All disciplinary and disability proceedings filed in the Supreme Court as herein provided shall be conducted in the name of the People of the State of Colorado titled "IN THE MATTER OF [the name of the ATTORNEY-RESPONDENT]" and shall be prosecuted by the Regulation Counsel.

When proceedings are conducted before the Supreme Court as herein provided, the Supreme Court shall affirm the decision of the Hearing Board unless it determines that, based on the record, the findings of fact of the Hearing Board are clearly erroneous or that the form of discipline imposed by the Hearing Board (1) bears no relation to the conduct, (2) is manifestly excessive or insufficient in relation to the needs of the public, or (3) is otherwise unreasonable. The Supreme Court may conduct a de novo review of the conclusions of law.

The matter shall be docketed by the clerk of the Supreme Court as:

SUPREME COURT, STATE OF COLORADO
Case No.
ORIGINAL PROCEEDING IN DISCIPLINE [OR DISABILITY]

IN THE MATTER OF [the name of the ATTORNEY-RESPONDENT]

(c) Appeal--How Taken. An appeal from a Hearing Board to the Supreme Court shall be taken by filing a notice of appeal with the Supreme Court within the time set forth in this Rule. Upon the filing of the notice of appeal, the Supreme Court shall have the exclusive jurisdiction over the appeal and procedures concerning the appeal unless otherwise specified

by these Rules. An advisory copy of the notice of appeal shall be served on the Presiding Disciplinary Judge within the time for its filing in the Supreme Court. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is a ground only for such action as the Supreme Court deems appropriate, which may include dismissal of the appeal. Content of the notice of appeal shall not be deemed jurisdictional.

(d) Contents of Notice of Appeal. Except as otherwise provided by these rules, and to the extent practicable, the notice of appeal shall conform to the requirements set forth in C.A.R. 3(e).

(e) Contents of Any Notice of Cross-Appeal. A notice of cross-appeal shall set forth the same information required for a notice of appeal and shall set forth the party initiating the cross-appeal and designate all cross-appellees.

(f) Number of Copies to be Filed. Five copies of the notice of appeal or cross-appeal shall be filed with the original.

(g) Appeal--When Taken. The notice of appeal required by this rule shall be filed with the Supreme Court with an advisory copy served on the Presiding Disciplinary Judge within 21 days of the date of mailing the decision from which the party appeals. If a timely notice of appeal is filed by a party, the other party may file a notice of appeal within 14 days of the date on which the first notice of appeal is filed, or within the time otherwise prescribed by this section (g), whichever period last expires.

The running of the time for filing a notice of appeal is terminated as to both parties by a timely motion filed with the Presiding Disciplinary Judge by either party pursuant to the Colorado Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this section (g) commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion under C.R.C.P. 52 or 59, to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (2) granting or denying a motion under C.R.C.P. 59, to alter or amend the judgment; (3) denying a motion for a new hearing under C.R.C.P. 59; (4) expiration of an extension of time granted by the Presiding Disciplinary Judge to file motion(s) for post-hearing relief under C.R.C.P. 59, where no motion is filed. The Hearing Board shall continue to have jurisdiction to hear and decide a motion under C.R.C.P. 59 regardless of the filing of a notice of appeal, provided the C.R.C.P. 59 motion is timely filed under C.R.C.P. 59(a) and determined within the time specified in C.R.C.P. 59(j). During such time, all proceedings in the Supreme Court shall be stayed. If the decision is transmitted to the parties by mail, the time for the filing of the notice of appeal shall commence from the date of the mailing of the decision.

Upon a showing of excusable neglect, the Supreme Court may extend the time for filing the notice of appeal by a party for a period not to exceed 28 days from the expiration of the time otherwise prescribed by this section (g). Such an extension may be granted before or after the time otherwise prescribed by this section (g) has expired; but if a request for an extension is made after such time has expired, it shall be made by motion with such notice as the Supreme Court shall deem appropriate.

(h) Stay Pending Appeal. Application for a stay of the decision of a Hearing Board

pending appeal must ordinarily be made in the first instance to the Hearing Board. The application for stay pending appeal should be granted except when an immediate suspension has been ordered, or when no conditions of probation and supervision while the appeal is pending will protect the public. A motion for such relief may be made to the Supreme Court, but the motion shall show that application to the Hearing Board for the relief sought is not practicable, or that the Hearing Board has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the Hearing Board for its action. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant. Reasonable notice of the motion shall be given to all parties.

(i) Record on Appeal--Composition.

(1) The final pleadings which frame the issues before the Hearing Board; the findings of fact, conclusions of law and decision; motions for new trial and other post-trial motions, if any, and the Hearing Board's ruling; together with any other documents which by designation of either party or by stipulation are directed to be included shall constitute the record on appeal in all cases.

(2) The reporter's transcript, or such parts thereof as provided under section (j) of this rule, relevant depositions and exhibits may be made a part of the record.

(3) The records and files of the Hearing Board shall be certified by the clerk of the Presiding Disciplinary Judge.

(4) The original papers in all instances shall be in the record submitted. Except on written request by a party, the Presiding Disciplinary Judge need not duplicate or retain a copy of the papers or exhibits included in the record. The party requesting that a duplicate be retained shall advance the cost of preparing the copies.

(5) The record shall be properly paginated and fully indexed and shall be prepared and bound under the direction of the Presiding Disciplinary Judge.

(j) Record of Proceedings; Duty of Appellant to Order; Notice to Appellee if Partial Record is Ordered; Costs. Within 14 days after filing the notice of appeal, the appellant shall file with the Presiding Disciplinary Judge and with the clerk of the Supreme Court either: (1) a statement that no portions of the record other than those numerated in section (i) are desired or (2) a detailed designation of record, setting forth specifically those portions of the record to be included and all dates of proceedings for which transcripts are requested and the name(s) of the court reporter(s) who reported the proceedings that the appellant directs to be included in the record. The appellant shall serve a copy of the designation of record on each court reporter listed therein. If the appellant contends that a finding or conclusion is not supported by the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. Unless the entire transcript is to be included, the appellant shall include in the designation of record a description of the part of the transcript that the appellant intends to include in the record and a statement of the issues to be presented on appeal. If the appellee deems it necessary to include a transcript of other proceedings or other parts of the record, the appellee shall, within 14 days after the service of the statement or the appellant's designation of the record, file with the Presiding

Disciplinary Judge and the Supreme Court, and serve on the appellant and on any court reporter who reported proceedings of which the appellee desires an additional transcript, a designation of the additional items to be included. Service on any court reporter of the appellant's designation of record or the appellee's additional designation of record shall constitute a request for transcription of the specified proceedings. Within 14 days after service of any such designation of record, each such court reporter shall provide in writing to all counsel in the appeal: (1) the estimated number of pages to be transcribed; (2) the estimated completion date; and (3) the estimated cost of transcription. Within 21 days after receiving the reporter's estimate, the designating party shall deposit the full amount of such estimate with the court reporter. For good cause shown, within said 21 days and upon the agreement of the court reporter, the Presiding Disciplinary Judge may order a payment schedule extending the time for payment. When the cost of the transcription will be paid by public funds, the public entity shall make arrangements with the court reporter for payment of the transcription costs. Within 28 days of the transmittal of the court reporter's cost estimate to the pro se party or counsel, the court reporter shall file with the Presiding Disciplinary Judge and Supreme Court a statement of: (1) the date the court reporter's estimate was provided and the date on which the reporter received full payment of the estimate; or (2) the schedule of payments approved by the Presiding Disciplinary Judge under a good cause extension; or (3) that the cost of the transcript will be paid from public funds. Each party shall advance the cost of preparing that part of the record designated by such party except as otherwise ordered by the Presiding Disciplinary Judge for good cause shown.

(k) Transmission of the Record.

(1) Time. The record on appeal, including the transcript and exhibits necessary for the determination of the appeal, shall be transmitted to the Supreme Court within 56 days (8 weeks) after the filing of the notice of appeal unless the time is shortened or extended by an order entered as provided in this rule. After filing the notice of appeal the appellant shall comply with the provisions of this rule and shall take any other action necessary to enable the Presiding Disciplinary Judge to assemble and transmit the record.

(2) Duty Of Presiding Disciplinary Judge To Transmit The Record. When the record, including any designated transcript, is complete for purposes of the appeal, the clerk of the Presiding Disciplinary Judge shall transmit it to the clerk of the Supreme Court. The clerk of the Presiding Disciplinary Judge shall number the documents comprising the entire designated record and shall transmit with the record a list of the documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight and physical exhibits other than documents shall not be transmitted unless a party or the Supreme Court directs the Presiding Disciplinary Judge to do so. A party must make advance arrangements for the transportation and receipt of exhibits of unusual bulk or weight.

Transmission of the record is effected when the clerk of the Presiding Disciplinary Judge mails or otherwise forwards the record to the clerk of the Supreme Court. The clerk of the Presiding Disciplinary Judge shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is transmitted to the Supreme Court.

(3) Temporary Retention of Record by the Presiding Disciplinary Judge For Use In

Preparing Appellate Papers. Notwithstanding the provisions of this rule, the parties may stipulate, or the Presiding Disciplinary Judge on motion of any party may order, that the record shall temporarily be retained by the Presiding Disciplinary Judge for use by the parties in preparing appellate papers. In that event, the appellant shall nevertheless cause the appeal to be docketed and the record to be filed within the time fixed or allowed for transmission of the record by complying with the provisions of this Rule and by presenting to the Supreme Court a partial record in the form of a copy of the docket entries, accompanied by a certificate of counsel for the appellant, or of the appellant if the appellant is without counsel, reciting that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the Supreme Court may order, the appellant shall request the Presiding Disciplinary Judge to transmit the record.

(4) Extension Of Time For Transmission Of The Record; Reduction Of Time. The Supreme Court for good cause shown may extend the time for transmitting the record. A request for extension must be made within the time originally prescribed or within an extension previously granted. Any request for extension of the period of time based upon the reporter's inability to complete the transcript shall be supported by an affidavit of the reporter specifying why the transcript has not yet been prepared, and the date by which the transcript can be completed and a statement by the court reporter that all payments due have been made. Failure to pay for the transcript in accordance with C.R.C.P. 251.27(j) is grounds for denial of a motion for extension. The Supreme Court may direct the Presiding Disciplinary Judge to expedite the preparation and transmittal of the record on appeal and, upon motion or sua sponte, take other appropriate action regarding preparation and completion of the record.

(5) Stipulation Of Parties That Parts of the Record Be Retained By the Presiding Disciplinary Judge. The parties may agree by written stipulation filed with the Presiding Disciplinary Judge that designated parts of the record shall be retained by the Presiding Disciplinary Judge unless thereafter the Supreme Court shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(6) Preliminary Record Transmitted to the Supreme Court. If prior to the time the record is transmitted, a party desires to make to the Supreme Court a motion for dismissal, for a stay pending appeal, or for any intermediate order, the Presiding Disciplinary Judge at the request of any party shall transmit to the Supreme Court such parts of the original record as any party shall designate.

(l) Docketing the Appeal.

(1) Filing. At the time of the filing of the notice of appeal or the time of filing any documents with the Supreme Court before the filing of the notice of appeal, the Appellant shall pay to the clerk of the Supreme Court a docket fee of $150 and the clerk shall enter the appeal upon the docket. The party appealing shall docket the case as provided in section (b) of this Rule.

(2) Leave to Proceed On Appeal In Forma Pauperis From Hearing Board to Supreme Court. A party to an action before a Hearing Board who desires to proceed on appeal in

forma pauperis shall file with the Presiding Disciplinary Judge a motion for leave so to proceed, together with an affidavit showing an inability to pay costs, a belief that the party is entitled to redress, and a statement of the issues which the party intends to present on appeal. If the motion is granted, the party may proceed without further application to the Supreme Court and without prepayment of costs. If the motion is denied, the Presiding Disciplinary Judge shall state in writing the reasons for the denial.

Notwithstanding the provisions of the preceding paragraph, a party who has been permitted to proceed in an action before the Presiding Disciplinary Judge in forma pauperis may proceed on appeal in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the Presiding Disciplinary Judge shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed, in which event the Presiding Disciplinary Judge shall state in writing the reasons for such certification or finding. A party proceeding under this subsection shall attach a copy of the Presiding Disciplinary Judge's order granting or denying leave to proceed in forma pauperis before the Hearing Board with the appendix to the notice of appeal.

(3) Filing Of The Record. Upon receipt of the record or papers authorized to be filed in lieu of the record under the provisions of subsections (k)(3) and (k)(6) of this rule following timely transmittal, the clerk of the Supreme Court shall file the record. The clerk shall immediately give notice to all parties of the date on which the record was filed.

(4) The appellant shall have 28 days after the filing with the clerk of the Supreme Court of the record on appeal within which to file an opening brief. The appellee shall have 28 days after the filing of the appellant's opening brief within which to file an answer brief. The appellant shall have 14 days after the filing of the answer brief within which to file a reply brief.

(m) General Provisions. Except as otherwise provided in these Rules, and to the extent practicable, appeals shall be conducted in conformity with the general provisions found in C.A.R. 25, 26, 27, 28, 29, 31, 32, 34, 36, 38, 39, 42, and 45.

(n) Oral Argument. Oral argument may be allowed at the discretion of the court in accordance with C.A.R. 34.

(o) Disposition. When proceedings are conducted before the Supreme Court as herein provided, the Supreme Court may resolve the matter by opinion or by order without opinion, as the court shall determine in its discretion.

Rule 251.28. Required Action After Disbarment, Suspension, or Transfer to Disability

(a) Effective Date of Order - Winding Up Affairs. Orders imposing disbarment or a definite suspension shall become effective 35 days after the date of entry of the decision or order, or at such other time as the Supreme Court, a Hearing Board, or the Presiding Disciplinary Judge may order. Orders imposing immediate suspension, transferring an attorney to disability inactive status, or for failure to comply with rules governing attorney registration or continuing legal education, shall become effective immediately upon the date of entry of the order, unless otherwise ordered by the Supreme Court, a Hearing Board, or

the Presiding Disciplinary Judge. After the entry of an order of disbarment, suspension unless fully stayed (see C.R.C.P. 251.7(a)(3)), or transfer to disability inactive status, the attorney may not accept any new retainer or employment as an attorney in any new case or legal matter; provided, however, that during any period between the date of entry of an order and its effective date the attorney may, with the consent of the client after full disclosure, wind up or complete any matters pending on the date of entry of the order.

(b) Notice to Clients in Pending Matters. An attorney against whom an order of disbarment, suspension unless fully stayed, or transfer to disability inactive status has been entered shall promptly notify in writing by certified mail each client whom the attorney represents in a matter still pending of the order entered against the attorney and of the attorney's consequent inability to act as an attorney after the effective date of such order, and advising such clients to seek legal services elsewhere. In addition, the attorney shall deliver to each client all papers and property to which the client is entitled. An attorney who has been suspended as provided in the rules governing attorney registration or continuing legal education need not comply with the requirements of this subsection if the attorney has sought reinstatement as provided by the rules governing attorney registration or continuing legal education and reasonably believes that reinstatement will occur within 14 days of the date of the order of suspension. If the attorney is not reinstated within those 14 days, then the attorney must comply with this subsection.

(c) Notice to Parties in Litigation. An attorney against whom an order of disbarment, suspension unless fully stayed, or transfer to disability inactive status is entered and who represents a client in a matter involving litigation or proceedings before an administrative body shall notify that client as required by section (b) of this rule, and shall recommend that the client promptly obtain substitute counsel. In addition, the lawyer must notify in writing by certified mail the opposing counsel of the order entered against the attorney and of the attorney's consequent inability to act as an attorney after the effective date of the order. The notice to opposing counsel shall state the place of residence of the client of the attorney against whom the order was entered. An attorney who has been suspended as provided in the rules governing attorney registration or continuing legal education need not comply with the requirements of this section if the attorney has sought reinstatement as provided by the rules governing attorney registration or continuing legal education and reasonably believes that reinstatement will occur 14 days of the date of the order of suspension. If the attorney is not reinstated within those 14 days, then the attorney must comply with this section.

If the client of the attorney against whom an order was entered does not obtain substitute counsel before the effective date of such order, the attorney must appear before the court or administrative body in which the proceeding is pending and move for leave to withdraw.

(d) Affidavit Filed With Supreme Court or the Hearing Board. Within 14 days after the effective date of the order of disbarment, suspension, or transfer to disability inactive status, or within such additional time as allowed by the Supreme Court, the Hearing Board, or the Presiding Disciplinary Judge, the attorney shall file with the Supreme Court or the Hearing Board an affidavit setting forth a list of all pending matters in which the attorney served as counsel and showing:

(1) That the attorney has fully complied with the provisions of the order and of this rule;

(2) That the attorney has served on Regulation Counsel, a list of the clients notified pursuant to subsection (b) of this rule and a copy of each notice provided;

(3) That the attorney has notified every other jurisdiction before which the attorney is admitted to practice law of the order entered against attorney; and

(4) That the attorney has served a copy of such affidavit upon the Presiding Disciplinary Judge and the Regulation Counsel. The list and notices described in (d)(2) shall only be attached to the affidavit provided to Regulation Counsel.

Such affidavit shall also set forth the address of the attorney to which communications may thereafter be directed.

In addition, the attorney shall continue to file a registration statement in accordance with C.R.C.P. 227 for a period of five years following the effective date of the order listing the attorney's residence or other address where communications may thereafter be directed to the attorney; provided, however, that the annual registration fee need not be paid during such five-year period unless and until the attorney is reinstated. Upon reinstatement the attorney shall pay the annual registration fee for the year in which reinstatement occurs.

(e) Public Notice of Order. The clerk of the Supreme Court or the Presiding Disciplinary Judge shall release for publication orders of disbarment, suspension, or transfer to disability inactive status entered against an attorney.

(f) Notice of Order to the Courts. The Presiding Disciplinary Judge or the clerk of the Supreme Court shall promptly transmit notice of the final order of disbarment, suspension, or transfer to disability inactive status to all courts in this state. The chief judge of each judicial district may make such further orders pursuant to C.R.C.P. 251.32(h) or otherwise as the Chief Judge deems necessary to protect the rights of clients of the attorney.

(g) Duty to Maintain Records. An attorney who has been disbarred, suspended, or transferred to disability inactive status shall keep and maintain records of any steps taken by the attorney pursuant to this rule as proof of compliance with this rule and with the order entered against the attorney. Failure to comply with this section without good cause shown shall constitute contempt of the Supreme Court. Proof of compliance with this section shall be a condition precedent to any petition for reinstatement or readmission.

Rule 251.29. Readmission and Reinstatement After Discipline

(a) Readmission After Disbarment. A disbarred attorney may not apply for readmission until at least eight years after the effective date of the order of disbarment. To be eligible for readmission the attorney must demonstrate the attorney's fitness to practice law and professional competence, and must successfully complete the written examination for admission to the Bar. The attorney must file a petition for readmission, properly verified, with the Presiding Disciplinary Judge, and furnish a copy to the Regulation Counsel. Thereafter, the petition shall be heard in procedures identical to those outlined by these rules governing hearings of complaints, except it is the attorney who must demonstrate by clear and convincing evidence the attorney's rehabilitation and full compliance with all applicable disciplinary orders and with all provisions of this Chapter. A Hearing Board shall consider every petition for readmission and shall enter an order granting or denying readmission.

(b) Reinstatement After Suspension. Unless otherwise provided by the Supreme Court, a Hearing Board, or the Presiding Disciplinary Judge in the order of suspension, an attorney who has been suspended for a period of one year or less shall be reinstated by order of the Presiding Disciplinary Judge, provided the attorney files an affidavit with the Regulation Counsel within 28 days prior to the expiration of the period of suspension, stating that the attorney has fully complied with the order of suspension and with all applicable provisions of this chapter. Upon receipt of the attorney's affidavit that has been timely filed, the Regulation Counsel shall notify the Presiding Disciplinary Judge of the attorney's compliance with this Rule. Upon receipt of the notice, the Presiding Disciplinary Judge shall issue an order reinstating the attorney. The order shall become effective upon the expiration of the period of suspension. If the attorney fails to file the required affidavit within the time specified, the attorney must seek reinstatement pursuant to section (c) of this Rule; provided, however, that a suspended attorney who fails to file a timely affidavit may obtain leave of the Presiding Disciplinary Judge to file an affidavit upon showing that the attorney's failure to file the affidavit was the result of mistake, inadvertence, surprise, or excusable neglect. An attorney reinstated pursuant to this section shall not be required to show proof of rehabilitation.

An attorney who has been suspended for a period longer than one year must file a petition with the Presiding Disciplinary Judge for reinstatement and must prove by clear and convincing evidence that the attorney has been rehabilitated, has complied with all applicable disciplinary orders and with all provisions of this chapter, and is fit to practice law.

If the attorney remains suspended for five years or longer, reinstatement shall be conditioned upon certification by the state board of law examiners of the attorney's successful completion, after the expiration of the period of suspension, of the examination for admission to practice law and upon a showing by the attorney of such other proof of professional competence as the Supreme Court or a Hearing Board may require; provided, however, that filing a petition for reinstatement within five years of the effective date of the suspension of the attorney tolls the five-year period until such time as the Hearing Board rules on the petition.

(c) Petition for Reinstatement. Any attorney who has been suspended for a period longer than one year must file a petition with the Presiding Disciplinary Judge for an order of reinstatement if the attorney wishes to be reinstated to practice law. The petition must be properly verified and, when filed, a copy must be furnished to the Regulation Counsel.

The petition for reinstatement must set forth:

(1) The date the order of suspension was entered and the effective date thereof, and a copy of the disciplinary order or opinion;

(2) The date on which all prior petitions for reinstatement were filed and the disposition thereof;

(3) The facts other than passage of time and absence of additional misconduct upon which the petitioning attorney relies to establish that the attorney possesses all of the qualifications required of applicants for admission to the Bar of Colorado, fully considering the previous disciplinary action taken against the attorney;

(4) Evidence of compliance with all applicable disciplinary orders and with all provisions

of this Chapter regarding actions required of suspended lawyers;

(5) Evidence of efforts to maintain professional competence through continuing legal education or otherwise during the period of suspension; and

(6) A statement of restitution made as ordered to any persons and the Colorado Attorneys' Fund for Client Protection and the source and amount of funds used to make restitution.

(d) Reinstatement Proceedings. Immediately upon receipt of a petition for reinstatement the Regulation Counsel shall conduct any investigation the Regulation Counsel deems necessary. The petitioner shall cooperate in any such investigation.

The Regulation Counsel shall submit an answer to the petition. Thereafter, the petition for reinstatement shall be reviewed in procedures identical to those outlined by these Rules governing hearings of complaints.

The Regulation Counsel may present evidence bearing upon the matters in issue, and the attorney seeking reinstatement shall bear the burden of proving by clear and convincing evidence the averments in the petition.

(e) Hearing Board Decision. In deciding whether to grant or deny the petition, the Hearing Board shall consider the attorney's past disciplinary record. The Hearing Board may condition reinstatement upon compliance with any additional orders it deems appropriate, including but not limited to the payment of restitution to any person harmed by the misconduct for which the petitioner was suspended.

(f) Readmission and Reinstatement Proceedings Before the Supreme Court. An attorney whose petition for readmission or reinstatement is denied by the Hearing Board may proceed before the Supreme Court in a manner identical to that outlined in C.R.C.P. 251.27.

(g) Successive Petitions. No petition for reinstatement under this Rule shall be accepted within two years following a denial of a previous petition for reinstatement filed on behalf of the same person.

(h) Public Information. Notwithstanding the provisions of C.R.C.P. 251.31, and any Rule relating to the confidentiality of Bar admissions, petitions for reinstatement and applications for readmission shall be matters of public record.

Any hearing held under sections (a) and (d) of this Rule shall be open to the public.

(i) Cost Deposit. Petitions for readmission or reinstatement under this Rule shall be accompanied by a cost deposit of $500 to be used to pay all expenses connected with the reinstatement proceedings. If such costs should exceed $500, the Supreme Court, the Presiding Disciplinary Judge or the presiding officer of the Hearing Board may enter an order requiring the petitioner to supply an additional deposit. Upon the completion of proceedings held pursuant to this Rule an accounting shall be rendered and any portion of the cost deposit unexpended shall be returned to the petitioner.

(j) Reinstatement on Stipulation. Provided the petition for reinstatement under section (c) of this rule is filed within 28 days prior to the expiration of the period of suspension or 91 days (13 weeks) if the period of suspension is longer than one year and provided the attorney seeking reinstatement and the Regulation Counsel, after any investigation the Regulation Counsel deems necessary, stipulate to reinstatement, the Regulation Counsel shall file with the Presiding Disciplinary Judge the stipulation containing such terms and

conditions of reinstatement, if any, as may be agreed. Upon receipt of the stipulation, the Presiding Disciplinary Judge may approve the stipulation following an appearance by the attorney before the Presiding Disciplinary Judge and enter an order of reinstatement on the terms and conditions contained in the stipulation or reject the stipulation and order that a hearing be held by a Hearing Board as provided in section (d) of this rule.

Rule 251.30. Reinstatement after Transfer to Disability Inactive Status

(a) Reinstatement Upon Termination of Disability. An attorney who has been transferred to disability inactive status pursuant to C.R.C.P. 251.23 shall be entitled to petition for reinstatement at such time as the Supreme Court or the Presiding Disciplinary Judge may direct. The petition shall be filed with the Presiding Disciplinary Judge, and a copy shall be furnished to the Regulation Counsel. Such petition for reinstatement shall be granted upon a showing by clear and convincing evidence that the attorney's disability has been removed and that the attorney is competent to resume the practice of law.

Upon receipt of a petition for reinstatement from disability inactive status, the Presiding Disciplinary Judge may take or direct such action as he or she deems necessary or proper to determine whether the attorney is again competent to practice law, including but not limited to the issuance of an order for an examination of the attorney by qualified medical experts designated by the Presiding Disciplinary Judge.

In addition, the Presiding Disciplinary Judge may direct that the petitioner re-establish proof of competence and learning in law, including certification by the state board of law examiners of the petitioner's successful completion of the examination for admission to practice law. If the petitioner remains on disability inactive status for five years or longer, reinstatement shall be conditioned upon certification by the state board of law examiners of the petitioner's successful completion, within the previous twelve months, of the examination for admission to practice law and upon a showing by the petitioner of such other proof of professional competence as the Supreme Court or the Presiding Disciplinary Judge may require; provided, however, that filing a petition for reinstatement within five years of the effective date of the attorney's transfer to disability inactive status tolls the five-year period until such time as the Presiding Disciplinary Judge rules on the petition.

When an attorney has been transferred to disability inactive status by an order in accordance with C.R.C.P. 251.23 and thereafter has been judicially declared to be competent, the Presiding Disciplinary Judge may dispense with any further evidence of the attorney's return to competence and may direct that the attorney be reinstated upon such terms as are deemed proper and advisable; provided, however, that if a disciplinary proceeding conducted pursuant to these rules and pending against the petitioner was deferred upon the petitioner's transfer to disability inactive status, such proceeding shall be resumed and the petitioner shall not be reinstated pending the final disposition of such proceeding.

(b) Reinstatement Proceedings. The Presiding Disciplinary Judge may, in the Presiding Disciplinary Judge's discretion, order that reinstatement proceedings identical to those provided for by C.R.C.P. 251.29(d) be conducted.

(c) Compensation of Medical Experts. The Presiding Disciplinary Judge may fix the compensation to be paid to any medical expert appointed by the Presiding Disciplinary Judge pursuant to this rule. The Supreme Court may direct that such compensation be assessed as part of the costs of a proceeding held pursuant to this Rule and that it be paid as such in accordance with law.

(d) Waiver of Doctor-Patient Privilege. For the purposes of any proceedings conducted pursuant to this Rule, the filing of a petition for reinstatement by an attorney who has been transferred to disability inactive status shall constitute a waiver of any doctor-patient privilege between the attorney and any psychiatrist, psychologist, physician, treating professional, or other medical expert who has examined or treated the attorney in connection with the disability. By order of the Supreme Court the attorney may be required to disclose the name of every psychiatrist, psychologist, physician, treating professional, or other medical expert who has examined or treated the attorney in connection with the disability, and to furnish written consent for the disclosure by such persons of any information and records pertaining to such examination or treatment requested by the Supreme Court.

Rule 251.31. Access to Information Concerning Proceedings Under These Rules

(a) Availability of Information. Except as otherwise provided by these rules, all records, except (i) the work product, deliberations and internal communications of the Regulation Counsel, the committee, the Presiding Disciplinary Judge, the Hearing Boards, and the Supreme Court, and (ii) the lists of clients and copies of client notices referred to in C.R.C.P. 251.28(d)(2), shall be available to the public after the committee determines that reasonable cause to believe grounds for discipline exists and the Regulation Counsel files and serves a complaint as provided in C.R.C.P. 251.14, unless the complainant or the respondent obtains a protective order.

Unless otherwise ordered by the Supreme Court or the Presiding Disciplinary Judge, nothing in these rules shall prohibit the complaining witness, the attorney, or any other witness from disclosing the existence of proceedings under these rules or from disclosing any documents or correspondence served on or provided to those persons.

(b) Confidentiality. Before the filing and service of a complaint as provided in C.R.C.P. 251.14, the proceedings are confidential within the Office of the Regulation Counsel, the committee, the Presiding Disciplinary Judge, and the Supreme Court, except that the pendency, subject matter, and status of an investigation under C.R.C.P 251.10 may be disclosed by the Regulation Counsel if:

(1) The respondent has waived confidentiality;

(2) The proceeding is based upon allegations that include either the conviction of a crime or discipline imposed by a foreign jurisdiction;

(3) The proceeding is based on allegations that have become generally known to the public;

(4) There is a need to notify another person or organization, including the fund for client protection, to protect the public, the administration of justice, or the legal profession; or

(5) A petition for immediate suspension has been filed pursuant to C.R.C.P. 251.8.

(c) Public Proceedings. When the committee determines that reasonable cause to believe that grounds for discipline exists and the Regulation Counsel files and serves a complaint as provided in C.R.C.P. 251.14, or when a petition for reinstatement or readmission is filed, the proceeding is public except for:

(1) The deliberations of the Presiding Disciplinary Judge, the Hearing Board, or the Supreme Court; and,

(2) Information with respect to which a protective order has been issued.

(d) Proceedings Alleging Disability. In disability proceedings, all orders transferring an attorney to or from disability inactive status shall be matters of public record, but otherwise, disability proceedings shall be confidential and shall not be made public, except by order of the Supreme Court, the Presiding Disciplinary Judge, or a Hearing Board.

(e) Protective Orders. To protect the interests of a complainant, witness, third party, or respondent, the Presiding Disciplinary Judge or a Hearing Board, may, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted so as to implement the order, including requiring that the hearing be conducted in such a way as to preserve the confidentiality of the information that is the subject of the application.

(f) Disclosure to Law Firms. When the Regulation Counsel obtains an order transferring the attorney to disability inactive status or immediately suspending the attorney, or is authorized to file a complaint as provided by C.R.C.P. 251.12, the attorney shall make written disclosure to the attorney's current firm and, if different, to the attorney's law firm at the time of the act or omission giving rise to the matter, of the fact that the order has been obtained or that a disciplinary proceeding as provided for in these rules has been commenced. The disclosures shall be made within 14 days of the date of the order or of the date the Regulation Counsel notified the attorney that a disciplinary proceeding has been commenced.

(g) Pending Investigations. Except as provided by section (b) of this rule or when the attorney waives confidentiality, the Regulation Counsel shall treat as confidential proceedings pending with the Regulation Counsel or before the committee.

(h) Cases Dismissed. Except as provided by section (b) of this rule or when the attorney waives confidentiality, the Regulation Counsel shall treat as confidential proceedings that have been dismissed.

(i) Private Admonitions. Any public proceeding in which a private admonition is imposed as provided by C.R.C.P. 251.6 shall be public, as follows: the fact that private admonition is imposed shall be public information, but the private admonition itself shall not be disclosed.

(j) Production of Records Pursuant to Subpoena. The Regulation Counsel, pursuant to a valid subpoena, shall not permit access to files or records or furnish documents that are confidential as provided by these rules unless the Supreme Court orders otherwise. When counsel is permitted to disclose confidential documents contained in files or confidential records, a reasonable fee may be charged for identification of and photocopying the

documents and records.

(k) Response to False or Misleading Statement. If public statements that are false or misleading are made about any disciplinary or disability case, the Regulation Counsel may disclose any information necessary to correct the false or misleading statements.

(l) Request for Nonpublic Information. A request for nonpublic information other than that authorized for disclosure under subsection (b) of this Rule shall be denied unless the request is from:

(1) An agency authorized to investigate the qualifications of persons for admission to practice law;

(2) An agency authorized to investigate the qualifications of persons for government employment;

(3) An attorney discipline enforcement agency;

(4) A criminal justice agency; or,

(5) An agency authorized to investigate the qualifications of judicial candidates. If a judicial nominating commission of the State of Colorado requests the information it shall be furnished promptly and the Regulation Counsel shall give written notice to the attorney that specified confidential information has been so disclosed.

(m) Notice to the Attorney. Except as provided in subsection (l)(5) of this Rule, if the Regulation Counsel is permitted to provide nonpublic information requested, and if the attorney has not signed a waiver permitting the requesting agency to obtain nonpublic information, the attorney shall be notified in writing at his or her last known address of that information which has been requested and by whom, together with a copy of the information proposed to be released to the requesting agency. The notice shall advise the attorney that the information shall be released at the end of 21 days following mailing of the notice unless the attorney objects to the disclosure. If the attorney timely objects to the disclosure, the information shall remain confidential unless the requesting agency obtains an order from the Supreme Court requiring its release.

(n) Release Without Notice. If an agency otherwise authorized by section (l) of this rule has not obtained a waiver from the attorney to obtain nonpublic information, and requests that the information be released without giving notice to the attorney, the requesting agency shall certify that:

(1) The request is made in furtherance of an ongoing investigation into misconduct by the attorney;

(2) The information is essential to that investigation; and

(3) Disclosure of the existence of the investigation to the attorney would seriously prejudice that investigation.

(o) Notice to National Regulatory Data Bank. The Regulation Counsel shall transmit notice of all public discipline imposed against an attorney, transfers to or from disability inactive status, and reinstatements to the National Regulatory Data Bank maintained by the American Bar Association.

(p) Duty of Officials and Employees. All officials and employees within the Office of the Regulation Counsel, the committee, the Presiding Disciplinary Judge, and the Supreme Court shall conduct themselves so as to maintain the confidentiality mandated by this rule.

(q) Evidence of Crime. Nothing in these rules except for the admission of past misconduct protected by C.R.C.P. 251.13(i) shall be construed to preclude any person from giving information or testimony to authorities authorized to investigate criminal activity.

COMITTEE COMMENT

The confidentiality rule set forth in C.R.C.P. 251.31(b) seeks to strike a balance between the protection of attorneys against publicity predicated upon unfounded accusations and the protection of clients and prospective clients and the effective administration of justice from harm caused by attorneys who are unwilling or unable to fulfill their professional obligations. C.R.C.P. 251.31(b) also recognizes that restrictions on confidentiality no longer serve their purpose when allegations that would ordinarily be confidential have become generally known through disclosure in the public record, publicity or otherwise.

The Regulation Counsel frequently receives inquiries from judges, clients or prospective clients and the media asking if an attorney is the subject of a pending disciplinary investigation. Ordinarily, this rule prohibits the Regulation Counsel from providing information about a pending investigation or even confirming that an investigation is pending. C.R.C.P. 251.31(b) sets forth exceptions when the Regulation Counsel may reveal the pendency, subject matter, and status of an investigation under C.R.C.P. 251.10.

Certain exceptions are clear. For example, when the attorney has waived confidentiality or when the proceeding against the attorney is based on a criminal conviction, discipline imposed on the attorney in another jurisdiction, or a petition for immediate suspension filed by the Regulation Counsel against the attorney under C.R.C.P. 251.8.

Other exceptions require the Regulation Counsel to exercise discretion. C.R.C.P. 251.31(b)(3) requires the Regulation Counsel to determine whether otherwise confidential allegations against an attorney have become generally known. Factors that the Regulation Counsel should consider in these circumstances include but are not limited to the nature and extent of media coverage, the nature and extent of inquiries from the media and the public, the nature and status of any related judicial proceedings, the number of people believed to have knowledge of the allegations, and the seriousness of the allegations.

Another important exception requiring the Regulation Counsel to exercise discretion is C.R.C.P. 251.31(b)(4), which allows disclosure when there is a need to notify another person or organization in order to protect the public, the administration of justice, or the legal profession. In determining whether a need to notify exists, the Regulation Counsel should consider factors including but not limited to the nature and seriousness of the conduct under investigation, the attorney's prior disciplinary history and whether the attorney has previously been disciplined for conduct similar to the alleged conduct under investigation, and the potential harm to a client or prospective client, the public or the judicial system. In those instances in which the Regulation Counsel determines that disclosure is permitted based on

C.R.C.P. 251.31(b)(4) alone, the Regulation Counsel is authorized to disclose the pendency, subject matter, and status of an investigation in response to inquiry, but also to disclose this information affirmatively to those persons having a need to know the information in order to avoid potential harm.

Rule 251.32. General Provisions

(a) Quorum. A majority of the members of the committee or a Hearing Board shall constitute a quorum of such body, and the action of a majority of those present and comprising such a quorum shall be the action of the committee or Hearing Board.

(b) Notice and Service of Process. Except as may be otherwise provided by these Rules or by order of the Supreme Court, notice shall be in writing, and the giving of notice and service of process shall be sufficient when made either personally upon the attorney or by certified mail, sent to the attorney at both the attorney's last known address as provided by the attorney pursuant to C.R.C.P. 227 or such later address as may be known to the person effecting service.

If the attorney is not licensed to practice law in this state but was specially admitted by a court of this state for a particular proceeding, notice and service shall be effected as provided in this section, and if service is by certified mail, it shall be made to the attorney's last known address.

(c) Number of Copies Filed. Unless otherwise provided in these rules, in all cases where a party files documents with the Presiding Disciplinary Judge or a Hearing Board, the committee, or the Regulation Counsel, an original and three copies must be filed. When documents are filed with the Supreme Court, an original and ten copies must be filed.

(d) Costs.

(1) Disciplinary Proceedings. In all cases where discipline is imposed by the Hearing Board, it may assess against the respondent all or any part of the costs incurred in connection with the disciplinary proceedings. If the Supreme Court imposes discipline, the Supreme Court may also assess against the respondent all or any part of the costs of the proceedings. If the committee imposes discipline as provided by these rules, it may also assess against the respondent all or any part of the costs of the proceedings.

(2) Reinstatement and Readmission Proceedings After Discipline. An attorney who petitions for reinstatement from a suspension or readmission after disbarment must bear the cost of such proceedings, as required by C.R.C.P. 251.29(i).

(3) Disability Proceedings. The Presiding Disciplinary Judge, a Hearing Board, or the Supreme Court, in its discretion, may order the attorney to bear the cost of all or any part of the disability proceedings, including the cost of any examinations ordered.

(4) Reinstatement Proceedings After Transfer to Disability Inactive Status. The Presiding Disciplinary Judge, a Hearing Board, or the Supreme Court, in its discretion, may order an attorney who petitions for reinstatement after transfer to disability inactive status to pay the cost of all or any part of the proceedings conducted pursuant to C.R.C.P. 251.30, including the cost of any examinations ordered.

(e) Immunity. Testimony given in disciplinary proceedings or communications relating

to attorney misconduct, lack of professionalism or disability made to the Supreme Court, the committee, the Regulation Counsel, the Presiding Disciplinary Judge, members of the Hearing Board, mediators acting pursuant to C.R.C.P. 251.3(c)(11), or monitors enlisted to assist with probation or diversion, as authorized by C.R.C.P. 251.13, shall be absolutely privileged and no lawsuit shall be predicated thereon. If the matter is confidential as provided in these rules, and if the person who testified or communicated does not maintain confidentiality, then the testimony or communications shall be qualifiedly privileged, such that an action may lie against the person whose testimony or communications were made in bad faith or with reckless disregard of their truth or falsity. Persons performing official duties under the provisions of this Chapter, including but not limited to the Presiding Disciplinary Judge and staff; members of the Hearing Board; the committee; the Regulation Counsel and staff; mediators appointed by the Supreme Court pursuant to C.R.C.P. 251.3(c)(11); monitors enlisted to assist with diversion as authorized by C.R.C.P. 251.13; members of the Bar working in connection with disciplinary proceedings or under the direction of the Presiding Disciplinary Judge, or the committee; and health care professionals working in connection with disciplinary proceedings shall be immune from suit for all conduct in the course of their official duties.

(f) Termination of Proceedings. No disciplinary or disability proceeding may be terminated except as provided by these Rules.

(g) Pending Litigation. All disciplinary proceedings which involve complaints with material allegations substantially similar to the material allegations of a criminal prosecution pending against the respondent may in the discretion of the committee, the Presiding Disciplinary Judge, or a Hearing Board be deferred until the conclusion of such prosecution.

Disciplinary proceedings involving complaints with material allegations which are substantially similar to those made against the respondent in pending civil litigation may in the discretion of the committee, the Presiding Disciplinary Judge, or a Hearing Board be deferred until the conclusion of such litigation. If the disciplinary proceeding is deferred pending the conclusion of civil litigation, the respondent shall make all reasonable efforts to obtain a prompt trial and final disposition of the pending litigation. If the respondent fails to take steps to assure a prompt disposition of the civil litigation, the disciplinary proceeding may be immediately resumed.

The acquittal of a respondent on criminal charges or a verdict or judgment in the respondent's favor in civil litigation involving substantially similar material allegations shall not alone justify the termination of disciplinary proceedings pending against the respondent upon the same material allegations.

(h) Protective Appointment of Counsel. When an attorney has been transferred to disability inactive status; or when an attorney has disappeared; or when an attorney has died; or when an attorney has been suspended or disbarred and there is evidence that the attorney has not complied with the provisions of C.R.C.P. 251.28, and no partner, executor, or other responsible party capable of conducting the attorney's affairs is known to exist, the chief judge of any judicial district in which the attorney maintained his office, upon the request of the Regulation Counsel, shall appoint legal counsel to inventory the files of the lawyer in question and to take any steps necessary to protect the interests of the attorney in question

and the attorney's clients. Counsel appointed pursuant to this Rule shall not disclose any information contained in the files so inventoried without the consent of the client to whom such files relate, except as necessary to carry out the order of the court that appointed the counsel to make such inventory.

(i) Statute of Limitations. A request for investigation against an attorney shall be filed within five years of the time that the complaining witness discovers or reasonably should have discovered the misconduct. There shall be no statute of limitations for misconduct alleging fraud, conversion, or conviction of a serious crime, or for an offense the discovery of which has been prevented by concealment by the attorney.

Rule 251.33. Expunction of Records

(a) Expunction - Self-Executing. Except for records relating to proceedings that have become public pursuant to C.R.C.P. 251.31, all records relating to proceedings conducted pursuant to these Rules, which proceedings were dismissed, shall be expunged from the files of the committee, the Presiding Disciplinary Judge, and Regulation Counsel three years after the end of the year in which the dismissal occurred.

(b) Definition. The terms "expunge" and "expunction" shall mean the destruction of all records or other evidence of any type, including, but not limited to, the request for investigation, the response, Investigator's notes, and the report of investigation.

(c) Notice to Respondent. If proceedings conducted pursuant to these Rules (or their predecessor) were commenced, the attorney in question shall be given prompt notice of the expunction.

(d) Effect of Expunction. After expunction, the proceedings shall be deemed never to have occurred. Upon either general or specific inquiry concerning the existence of proceedings which have been expunged, the committee or the Regulation Counsel shall respond by stating that no record of the proceedings exists. The attorney in question may properly respond to any general inquiry about proceedings which have been expunged by stating that no record of the proceedings exists. The attorney in question may properly respond to any inquiry requiring reference to a specific proceeding which has been expunged by stating only that the proceeding was dismissed and that the record of the proceeding was expunged pursuant to this Rule. After a response as provided in this Rule is given to an inquirer, no further response to an inquiry into the nature or scope of the proceedings which have been expunged need be made.

(e) Retention of Records. Upon written application to the committee, for good cause and with written notice to the attorney in question and opportunity to such attorney to be heard, the Regulation Counsel may request that records which would otherwise be expunged under this Rule be retained for such additional period of time not to exceed three years as the committee deems appropriate. The Regulation Counsel may seek further extensions of the period for which retention of the records is authorized whenever a previous application has been granted.

Rule 251.34. Advisory Committee

(a) Advisory Committee. The Supreme Court Advisory Committee is hereby established. The Advisory Committee shall serve as a permanent committee of the Supreme Court.

(1) Members. The Advisory Committee shall be composed of the Chair and Vice-Chair of the Attorney Regulation Committee. Two Supreme Court justices who serve as liaison to the attorney regulation system, eight members of the Bar, and a member of the public shall also serve as members of the Advisory Committee. The membership shall include one member from the Colorado Bar Association's Ethics Committee, one Respondent Bar member of the Colorado Bar Association's Attorney Regulation Policy Committee, and one member of the Hearing Board pool. Diversity shall be a consideration in making the appointments.

The members of the Advisory Committee shall serve at the pleasure of the Supreme Court and may be dismissed from the Advisory Committee at any time by order of the Supreme Court. A member of the Advisory Committee may resign at any time.

(2) Vacancy. In the event of a vacancy on the Advisory Committee, the Supreme Court shall fill the vacancy to serve at the pleasure of the Supreme Court.

(3) Chair. The court shall appoint a member of the Advisory Committee to serve as its chair. The chair shall exercise overall supervisory control of the Advisory Committee.

(4) Reimbursement of Advisory Committee Members. The members of the Advisory Committee shall be entitled to reimbursement for reasonable travel, lodging, and other expenses incurred in the performance of their official duties.

(b) Powers and Duties of the Advisory Committee. The Advisory Committee shall be authorized and empowered to act in accordance with these Rules and to:

(1) Assist the Supreme Court in making appointments as described in these Rules;

(2) Oversee the management committee in the coordination of administrative matters within all programs of the attorney regulation system. The management committee shall be composed of the Clerk of the Supreme Court, who shall serve as its chair, the Regulation Counsel, and the Presiding Disciplinary Judge. The management committee's functions are limited to considering administrative matters;

(3) Review the productivity, effectiveness, and efficiency of the Supreme Court's attorney regulation system including that of the Presiding Disciplinary Judge and peer assistance programs and report its findings to the Supreme Court;

(4) Review the resources of the system for the purpose of making recommendations to the Supreme Court;

(5) Periodically report to the Supreme Court on the operation of the Advisory Committee;

(6) Recommend to the Supreme Court proposed changes or additions to the rules of procedure for attorney discipline and disability proceedings;

(7) Assist the Supreme Court in such matters as the court may direct; and

(8) Repealed.

(9) Select one or more health assistance programs as designated providers.

To be eligible for designation by the Advisory Committee, an attorney's health assistance program shall provide for the education of attorneys with respect to the recognition and

prevention of physical, emotional, and psychological problems and provide for intervention when necessary; offer assistance to an attorney in identifying physical, emotional, or psychological problems; evaluate the extent of physical, emotional, or psychological problems and refer the attorney for appropriate treatment; monitor the status of an attorney who has been referred for treatment; provide counseling and support for the attorney referred for treatment; agree to receive referrals from the Advisory Committee or the Regulation Counsel; and agree to make their services available to all active licensed Colorado attorneys.

Nothing in this section or section 9.5 shall be construed to create any liability on the Advisory Committee or the Supreme Court for the actions of the Advisory Committee in funding assistance programs, and no civil action may be brought or maintained against the committee or the Supreme Court for an injury alleged to have been the result of the activities of any committee-selected assistance program or court approved lawyers' peer assistance program, or the result of an act or omission of an attorney participating in or referred by a committee-selected assistance program.

(9.5) Make recommendations concerning approval of lawyers' peer assistance program.

A. Any lawyers' peer assistance program that wishes to provide services to Colorado lawyers and have protection from the reporting requirements of Colo. RPC 8.3, must be approved by the Colorado Supreme Court. To request such approval, a description of the program must be submitted to the Advisory Committee who shall then review the program and make a recommendation to the Colorado Supreme Court as to approval.

B. The description shall contain the following information:

i. The type of organization, e.g. corporation, limited liability company, etc.;

ii. The mission statement for the program;

iii. The funding for the program;

iv. A list of the volunteers and/or paid employees, together with their qualifications and backgrounds, working for or together with the program; and,

v. An explanation of the type and frequency of training for the volunteers and/or paid employees.

C. Approval of a lawyer peer assistance program is for a period of two years subject to revocation at any time by the Colorado Supreme Court. In order to be reapproved, the program must file a request for renewal with the Clerk of the Colorado Supreme Court, containing the information listed in subparagraph B, and explain any changes that occurred in the program since its initial approval by the Colorado Supreme Court. The Clerk shall then forward the request for renewal to the Advisory Committee for recommendations to the Colorado Supreme Court. Unless renewed by the Colorado Supreme Court at the conclusion of the two years, the program shall lose its approved status.

(10) Adopt such practices as may from time to time become necessary to govern the internal operation of the Advisory Committee as approved by the Supreme Court.

RULE 252. Colorado Rules of Procedure Regarding Attorneys' Fund for Client Protection

Rule 252.1. Purpose and Scope

(a) The purpose of the Colorado Attorneys' Fund for Client Protection is to promote public confidence in the administration of justice and the integrity of the legal profession by mitigating losses caused by the dishonest conduct of attorneys admitted and licensed to practice law in the courts of this state occurring in the course of attorney-client or court-appointed fiduciary relationship between the attorney and the claimant.

Rule 252.2. Establishment

(a) There is established the Colorado Attorneys' Fund for Client Protection to mitigate claimants for losses caused by dishonest conduct committed by attorneys admitted to practice in this state.

(b) There is established, under the supervision of the Supreme Court of Colorado, the Colorado Attorneys' Fund for Client Protection Board of Trustees, which shall receive, hold, manage and disburse from the fund such funds as may from time to time be allocated to the fund.

(c) These Rules shall be effective for claims filed with the board on or after July 1, 1999, and the Board shall not pay claims for losses incurred as a result of dishonest conduct committed prior thereto.

Rule 252.3. Funding

(a) The Supreme Court shall provide for funding by the attorneys of the state through the attorney registration fee established in C.R.C.P. 227(A)(1)(a) and (c).

(b) An attorney whose dishonest conduct has resulted in any payment by the fund to a claimant shall make restitution to the fund including interest and the expense incurred by the fund in processing the claim and pursuing restitution. An attorney's failure to make full restitution may be cause for additional discipline or denial of an application for reinstatement or readmission.

Rule 252.4. Funds

All money or other assets of the fund shall constitute a trust and shall be held in the name of the fund, subject to the direction of the Board.

Rule 252.5. Composition and Officers of the Board

(a) The Board of Trustees shall consist of five attorneys and two public members appointed by the Supreme Court for initial terms as follows:

(1) Two attorneys for one year;
(2) One public member for two years;
(3) Two attorneys for two years;
(4) One public member for three years; and
(5) One attorney for three years.

Subsequent appointments shall be for a term of three years. Members of the Board shall be eligible to serve no more than two consecutive terms.

(b) Trustees shall serve without compensation but shall be reimbursed for their actual and necessary expenses incurred in the discharge of their duties.

(c) Vacancies shall be filled by appointment by the Supreme Court for any unexpired terms.

(d) The Board shall select a chairperson, secretary, treasurer and such other officers as the Board deems appropriate.

(e) The treasurer and any other officer designated to endorse and execute checks and other financial instruments of the fund shall be bonded in such manner and amount as the Board shall determine.

Rule 252.6. Board Meetings

(a) The Board shall meet as frequently as necessary to conduct the business of the fund and to process claims in a timely manner.

(b) The chairperson shall call a meeting at any reasonable time or upon the request of at least two trustees.

(c) A quorum for any meeting of the Board shall be four trustees.

(d) Minutes of meetings shall be taken and permanently maintained by the secretary.

Rule 252.7. Duties and Responsibilities of the Board

(a) The Board shall have the following duties and responsibilities:

(1) To receive, and in its sole discretion evaluate, investigate, determine and pay claims;

(2) To promulgate rules of procedure not inconsistent with these rules;

(3) In its discretion, if warranted and prudent, to fix a maximum amount of payment per claim payable from the fund and/or of the aggregate amount which may be paid because of the dishonest conduct of any one attorney;

(4) To solicit and receive funds from donations and other sources in addition to annual attorney registration fees;

(5) To invest prudently such portions of the funds as may not be needed currently to pay losses;

(6) To provide a full report annually to the Supreme Court and to make other reports as necessary;

(7) To publicize its activities to the public and the Bar;

(8) To retain and compensate consultants, actuaries, agents, legal counsel and other persons as necessary;

(9) To pursue claims for restitution to which the Fund is entitled;

(10) To engage in studies and programs for client protection and prevention of dishonest conduct by attorneys; and

(11) To perform all other acts necessary or proper for the fulfillment of the purposes and effective administration of the fund.

(b) Regulation Counsel shall assist the Board in the effective and efficient performance of its functions, including but not limited to investigation of claims.

Rule 252.8. Conflict of Interest

(a) A Trustee who has or has had an attorney-client relationship or a financial relationship with a claimant or attorney who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that claimant or attorney.

(b) A Trustee with a past or present relationship, other than as provided in section (a), with a claimant or the attorney who is the subject of the claim, shall either voluntarily abstain from participating or disclose such relationship to the Board and, if the Board deems appropriate, that Trustee shall not participate in any proceeding relating to such claim.

Rule 252.9. Immunity

The Trustees, employees and agents of the Board shall be absolutely immune from civil liability for all acts performed in the course of their official duties. Absolute immunity shall also extend to claimants and attorneys who assist claimants for all communications to the fund.

Rule 252.10. Eligible Claims

(a) The loss must be caused by the dishonest conduct of the attorney and shall have arisen out of and by reason of an attorney-client relationship or a court-appointed fiduciary relationship between the attorney and the claimant.

(b) The claim shall have been filed no later than three years after the claimant knew or should have known of the dishonest conduct of the attorney.

(c) As used in these rules, "dishonest conduct" means one or more wrongful acts committed by an attorney in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value, including but not limited to:

(1) Refusal to refund unearned fees received in advance as required by Rule 1.16 of the Colorado Rules of Professional Conduct; and

(2) The borrowing of money from a client without intention to repay it, or with disregard of the attorney's inability or reasonably anticipated inability to repay it.

(d) Except as provided by section (e) of this rule, the following losses shall not be eligible:

(1) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of attorney(s) causing the losses;

(2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;

(3) Losses incurred by any financial institution which are recoverable under a "banker's

blanket bond" or similar commonly available insurance or surety contract;

(4) Losses incurred by any business entity controlled by the attorney;

(5) Losses incurred by any governmental entity or agency;

(6) Losses arising from the activities of an attorney not having an office or residence in Colorado where those activities do not have substantial contacts with Colorado; and,

(7) Interest on the loss or any type of consequential damages or punitive damages or costs.

(e) In cases of extreme hardship or special and unusual circumstances, the Board may, in its discretion, recognize a claim which would otherwise be excluded under these rules.

(f) In cases where it appears that there will be unjust enrichment or multiple recovery or the claimant unreasonably or knowingly contributed to the loss, the Board may, in its discretion, deny the claim.

Rule 252.11. Procedures for Filing Claims

(a) The Board shall prepare and approve a form for claiming reimbursement and shall designate the place and manner for filing a claim.

(b) The claimant must agree to cooperate with the Board in reference to the claim and in reference to civil actions which may be brought in the name of the Board pursuant to a subrogation and assignment clause which shall also be contained within the claim;

(c) The claimant shall have the responsibility to complete the claim form and provide satisfactory evidence to support the claim.

Rule 252.12. Procedures for Processing Claims

(a) Whenever it appears that a claim is not eligible for reimbursement pursuant to these rules, the claimant shall be advised of the reasons why the claim may not be eligible for reimbursement, and that, unless additional facts to support eligibility are submitted to the Fund, the claim file shall be closed.

(b) A certified copy of an order disciplining an attorney for the same dishonest act or conduct alleged in a claim, or a final judgment imposing civil or criminal liability therefor, shall be conclusive evidence that the attorney committed such dishonest act or conduct.

(c) Regulation Counsel shall be promptly notified of the claim and requested to furnish a report of its investigation, if any, on the matter to the Board. The Regulation Counsel shall allow the Fund's representatives access to its records during an investigation of a claim. The Board shall evaluate whether the investigation is complete and determine whether the Board should conduct additional investigation or await the conclusion of any disciplinary investigation or proceeding involving the same act or conduct that is alleged in the claim.

(d) The Board may conduct its own investigation when it deems it appropriate and may seek and obtain the assistance of the Regulation Counsel, the Attorney Regulation Committee, the Board of Law Examiners, the Board of Continuing Legal Education, and the Attorney Registration Office, irrespective of any confidentiality requirements of those offices, subject to rule 252.15.

(e) The Board or an individual trustee or counsel designated to act on behalf of the trustees, upon determining that any person has knowledge or is in possession or custody of books, papers, documents or other objects relevant to the disposition of a claim, may issue a subpoena requiring such person to appear and testify or to produce such books, papers, documents or other objects before the Board or counsel designated to act on behalf of the trustees, at the time and place specified therein. Subpoenas shall be subject to the provisions of C.R.C.P. 45.

(f) If any person, without adequate excuse, shall fail to obey a subpoena, the Board or an individual trustee or counsel designated to act on their behalf, may file with the Supreme Court a verified statement setting forth the facts establishing such disobedience, and the Court may then, in its discretion, institute contempt proceedings. If such person is found guilty of contempt, the Court may compel payment of the costs of the contempt proceedings to be taxed by the Court.

(g) If, by the completion of the investigation, the attorney or the attorney's representative has not been notified of the claim and given an opportunity to respond to the claim, a copy of the claim shall be served upon the attorney, or the attorney's representative. The attorney or representative shall have 21 days in which to respond.

(h) The Board may request that testimony be presented to complete the record. Upon request, the claimant or attorney, or their representatives, will be given an opportunity to be heard.

(i) The Board may make a finding of dishonest conduct for purposes of adjudicating a claim. Such a determination is not a finding of dishonest conduct for purposes of professional discipline or other purposes.

(j) When the record is complete, the claim shall be determined on the basis of all available evidence, and notice shall be given to the claimant and the attorney of the Board's determination and the reasons therefor. The approval or denial of a claim shall require the affirmative votes of at least four trustees. Payment of a claim may be made in a lump sum or in installments in the discretion of the Board.

(k) Any proceeding upon a claim need not be conducted according to technical rules relating to evidence, procedure and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in court proceedings.

(l) The Board shall determine the order and manner of payment and pay all approved claims, but unless the Board directs otherwise, no claim should be approved during the pendency of a disciplinary proceeding involving the same act or conduct that is alleged in the claim if the attorney disputes the pertinent allegations.

(m) Both the claimant and the attorney shall be advised of the status of the Board's consideration of the claim and shall be informed of the final determination.

(n) The claimant may request in writing reconsideration within 35 days of the denial or determination of the amount of a claim. If the claimant fails to make a request or the request is denied, the decision of the Board is final.

Rule 252.13. Reimbursement from Fund is a Matter of Grace

No person shall have the legal right to payment from the fund whether as claimant, third-party beneficiary, or otherwise. The decisions and actions of the Board of Trustees are not reviewable on any ground in any court or other tribunal.

Rule 252.14. Restitution and Subrogation

(a) An attorney whose dishonest conduct results in payment to a claimant shall be liable to the Fund for restitution; and the Board may bring such action as it deems advisable to enforce such obligation, including costs of such action.

(b) As a condition of payment, a claimant shall be required to provide the fund with a transfer of the claimant's rights up to the amount paid by the Fund against the attorney, the attorney's legal representative, estate or assigns; and of the claimant's rights against any third party or entity who may be liable for the claimant's loss.

(c) Upon commencement of an action by the Board as subrogee or assignee of a claim, it shall advise the claimant, who may then join in such action to recover the claimant's unpaid losses.

(d) In the event that the claimant commences an action to recover unpaid losses against the attorney or another entity who may be liable for the claimant's loss, the claimant shall be required to notify the Board of such action.

(e) The claimant shall be required to agree to cooperate in all efforts that the Board undertakes to achieve restitution for the Fund.

Rule 252.15. Confidentiality

(a) The Board and its agents shall keep claims, proceedings and reports involving claims for reimbursement confidential until the Board authorizes reimbursement to the claimant, except as provided below. After payment of the reimbursement, the Board shall publicize the nature of the claim, the amount of reimbursement, and the name of the attorney. The name and the address of the claimant shall not be publicized by the Board unless specific permission has been granted by the claimant.

(b) This rule shall not be construed to deny access to relevant information by the Regulation Counsel or other professional discipline agencies or other law enforcement authorities as the Board shall authorize, or the release of statistical information which does not disclose the identity of the attorney or the claimant.

Rule 252.16. Compensation for Representing Claimants

No attorney shall accept any payment for prosecuting a claim to the Fund on behalf of a claimant, unless such payment has been approved by the Board.

Rule 254. Colorado Lawyer Assistance Program

(1) Colorado Lawyer Assistance Program. The Colorado Supreme Court hereby establishes an independent Colorado Lawyer Assistance Program ("COLAP"). The goal of such program is:

(a) To protect the interests of clients, litigants and the general public from harm caused by impaired attorneys or judges;

(b) To assist impaired members of the legal profession to begin and continue recovery; and

(c) To educate the bench, bar and law schools to the causes of and remedies for impairments affecting members of the legal profession. Such program and its director shall be under the supervision of the Supreme Court Advisory Committee ("Advisory Committee") as set forth in C.R.C.P. 251.34(b)(3).

(2) COLAP Services. The Attorney Assistance Program shall provide the following services:

(a) Immediate and continuing assistance to members of the legal profession who suffer from physical or mental disabilities that result from disease, disorder, trauma or age and that impair their ability to practice;

(b) Planning and presentation of educational programs to increase the awareness and understanding of members of the legal profession to recognize problems in themselves and in their colleagues; to identify the problems correctly; to reduce stigma; and, to convey an understanding of appropriate ways of interacting with affected individuals;

(c) Investigation, planning and participation in interventions with members of the legal profession in need of assistance;

(d) Aftercare services upon request, by order, or under contract that may include the following: assistance in structuring aftercare and discharge planning; assistance for entry into appropriate aftercare and professional peer support meetings; and assistance in obtaining a primary care physician or local peer counselor; and

(e) Monitoring services that may include the following: alcohol and/or drug screening programs; tracking aftercare, peer support and twelve step meeting attendance; providing documentation of compliance; and providing such reports concerning compliance by those participating in a monitoring program as may be required by the terms of that program.

(3) Director. The Advisory Committee shall recruit, retain, and supervise a COLAP Director. The Director shall serve at the pleasure of the Advisory Committee as an at-will employee. The Advisory Committee shall set the Director's annual salary subject to periodic review. The Director shall have the same employee benefits as the employees of the Colorado Judicial Department. The Director shall coordinate the annual budget of COLAP with the Advisory Committee. A portion of the annual attorney registration fee shall be used to establish and administer COLAP.

(4) Qualifications. The director shall have sufficient experience and training to enable the director to identify and assist impaired members of the legal profession.

(5) Powers and Duties. The COLAP Director shall act in accordance with these Rules and shall:

(a) Provide initial response to help line calls.

(b) Help Attorneys, judges, law firms, courts and others to identify and intervene with

impaired members of the legal profession.

(c) Help members of the legal profession to secure expert counseling and treatment for chemical dependency and other illnesses, maintaining current information on available treatment services, both those that are available without charge as well as paid services.

(d) Establish and maintain regular contact with other bar associations, agencies and committees that serve either as sources of referral or resources in providing help.

(e) Establish and oversee monitoring services with respect to recovery of members of the legal profession for whom monitoring is appropriate.

(f) Plan and deliver educational programs for the legal community with respect to all sources of potential impairment as well as treatment and preventative measures.

(h) Perform such other duties as the Supreme Court or Advisory Committee may direct.

(6) Confidentiality.

(a) Information and actions taken by COLAP shall be privileged and held in strictest confidence and shall not be disclosed or required to be disclosed to any person or entity outside of COLAP, unless such disclosure is authorized by the member of the legal profession to whom it relates. Such information and actions shall be excluded as evidence in any complaint, investigation or proceeding before the Supreme Court Attorney Regulation Committee, the Presiding Disciplinary Judge of the Supreme Court, or the Colorado Supreme Court.

(b) COLAP employees, and volunteers recruited under this rule shall be deemed to be participating in a lawyer's peer assistance program approved by the Colorado Supreme Court as provided in Colo. RPC 8.3(c).

(7) Immunity.

(a) Any person reporting information to COLAP employees or agents including volunteers recruited under rule 254 shall be entitled to the immunities and presumptions under C.R.C.P. 251.32(e).

(b) COLAP members, employees and agents including volunteers recruited under rule 254 shall be entitled to the immunities and presumptions under C.R.C.P. 251.32(e).

(c) COLAP members, employees and agents including volunteers recruited under rule are relieved of the duty of disclosure of information to authorities as imposed by Rule 8.3(a).

Rule 260. Mandatory Continuing Legal and Judicial Education

PREAMBLE: Statement of Purpose

As society becomes more complex, the delivery of legal services likewise becomes more complex. The public rightly expects that practicing attorneys, in their practice of law, and judges, in the performance of their duties, will continue their legal and judicial education throughout the period of their service to society. It is the purpose of these rules to make mandatory a minimum amount of continuing legal education for practicing attorneys and judges in order to foster and promote competence and professionalism in the practice of law and the administration of justice.

Rule 260.1. Definitions

(1) The "Board" is the Board of Continuing Legal and Judicial Education.

(2) "Continuing legal education" is any legal, judicial or other educational activity accredited by the Board.

(3) An attorney in "inactive status" is one who has elected such status pursuant to Rule 227A.

(4) "Registered attorney" is an attorney who has paid the registration fee required by Rule 227A for the current year and who is not on inactive status or suspended by the Supreme Court from the practice of law.

(5) "Judge" is a judge who is subject to the jurisdiction of the Commission on Judicial Qualifications or the Denver County Court Judicial Qualifications Commission.

(6) "These rules" refer to rules numbered 260.1 through 260.7 of the Rules of Civil Procedure.

(7) A "unit" of continuing legal education is a measurement factor combining time and quality assigned by the Board to all or part of a particular continuing legal educational activity.

Rule 260.2. CLE Requirements

(1) Every registered attorney and every judge shall complete 45 units of continuing legal education during each applicable three-year compliance period as provided in these rules.

(2) At least 7 of the 45 units will be devoted to continuing legal education specifically addressed to legal or judicial ethics. This requirement shall be effective for all three-year compliance periods beginning on or after January 1, 1992.

(3) All registered attorneys admitted after January 1, 1979, shall become subject to the minimal educational requirements set forth in these rules on the date of their initial admission to the bar of the State of Colorado. Their first compliance period shall begin on that date and end on December 31 of the third full calendar year following the year of admission.

(4) This subsection 4 is repealed and replaced by 201.14(3).

(5) Upon being reinstated pursuant to Paragraphs (3) or (8) of Rule 227A, any registered attorney who has been suspended under Paragraph (2) of Rule 227A, shall become subject to the minimum educational requirements set forth in these rules on the date of reinstatement. The first compliance period shall begin on that date and end on December 31 of the third full calendar year following the year of reinstatement, provided the date of reinstatement is more than one year after the date of suspension or transfer to inactive status. Otherwise, the compliance period shall be the same as it would have been absent the suspension or transfer.

(6) Units of continuing legal education completed after the adoption of this rule by the Supreme Court and prior to January 1, 1979, may be used to meet the minimum educational requirement for the first applicable compliance period. Units of continuing legal education completed in excess of the required units of continuing legal education in any applicable compliance period may not be used to meet the minimum educational requirements in any succeeding compliance period.

Rule 260.3. Board of Continuing Legal and Judicial Education

(1) There is established a Board of Continuing Legal and Judicial Education which shall consist of nine members appointed by the Supreme Court. Six of the members shall be registered attorneys, at least one of whom shall also be a judge, and three of the members shall be nonattorneys. At least one of the registered attorneys shall be under the age of 35 when he or she is appointed. Members shall serve three-year terms; except that of the members initially appointed, three shall serve for one year, three shall serve for two years, and three shall serve for three years. The Supreme Court shall appoint one of the members to serve as chairperson at its pleasure. In the event of a vacancy, a successor shall be appointed for the unexpired term of the member whose office is vacated. Membership on the Board may be terminated as to any member by the Supreme Court at its pleasure. The members shall be entitled to reimbursement for reasonable travel, lodging and other expenses incurred in the performance of official duties.

(2) The Board shall employ an Executive Director and such other staff as may be necessary to assist it in performing its functions and shall pay all expenses reasonably and necessarily incurred by it under a budget approved by the Supreme Court.

(3) The Board shall administer the program of mandatory continuing legal education established by these rules. It may formulate rules and regulations and prepare forms not inconsistent with these rules pertaining to its functions and modify or amend the same from time to time. All such rules, regulations and forms and any modifications or amendments thereto shall be submitted to the Supreme Court and shall be made known to all registered attorneys and judges. Those rules, regulations and forms shall automatically become effective on the 28th day following submission unless they shall be suspended by the Supreme Court prior to that date.

Rule 260.4. Accreditation

(1) Continuing legal education must be educational activity which has as its primary objective the increase of professional competence of registered attorneys and judges. The activity must be an organized activity dealing with subject matter directly related to the practice of law or the performance of judicial duties. The Board shall accredit a broad variety of educational activities which meet these requirements.

(2) Formal classroom instruction or educational seminars which meet the requirements of Paragraph (1) above lend themselves very well to the fulfillment of the educational requirement imposed by these rules and will be readily accredited by the Board. However, it is not intended that compliance with these rules will impose any undue hardship upon any registered attorney or judge by virtue of the fact that he or she may find it difficult because of age or other reasons to attend such activities. Consequently, in addition to accrediting classroom activities and seminars at centralized locations, the Board shall attempt to promote and accredit such educational activities as video tape and audio tape presentations; preparation of articles, papers, books and other such written materials; self-administered courses and testing; and other meritorious learning experiences. The Board shall to the extent

possible make all educational activities reasonably available throughout Colorado. In case of incapacity because of poor health, the Board may defer the requirements set forth in these rules for individual attorneys. Deferral does not constitute a waiver.

(3) The educational activity required by these rules will be in addition to teaching on a regular basis in which particular registered attorneys or judges may engage. Pursuant to paragraph (6) below, the Board will determine whether a registered attorney's or judge's teaching qualifies for accreditation.

(4) The Board shall assign an appropriate number of units of credit to each educational activity it shall accredit. Generally, a unit of credit shall be the equivalent of attending 50 minutes of a formal classroom lecture with accompanying textual material.

(5) The Board may accredit as a sponsoring agency any organization which offers continuing legal education activities. All of the activities sponsored by such agency which conform to the requirements of these rules and such additional rules and regulations as the Board may adopt from time to time shall be accredited. Accreditation extended by the Board to any sponsoring agency shall be reviewed by the Board at least annually.

(6) The Board shall develop criteria for the accreditation of individual educational activities and shall in appropriate cases accredit qualifying activities of such nature. Although such accreditation will generally be given before the occurrence of the educational activity, the Board may in appropriate cases extend accreditation to qualified activities which have already occurred.

(7) The Board shall make available a list of all educational activities accredited by it, together with the units of credit assigned to each activity, which may be undertaken by registered attorneys or judges.

(8) In furtherance of the purposes and objectives of this Rule to promote competence and professionalism in the practice of law and the administration of justice, the Board shall consider, in accrediting programs and educational activities, the contribution the program will make to the competent and professional practice of law by lawyers in this state or to the competent and professional administration of justice. To this end, the Board may review course content, presentation, advertising, and promotion to ascertain that the highest standards of competence and professionalism are being promoted. The Board may withhold accreditation for any program that does not meet these standards, or the contents or promotion of which would be scandalous or unprofessional.

Rule 260.5. Exemptions

Any registered attorney shall be exempt from the minimum educational requirements set forth in these rules for the years following the year of the attorney's 65th birthday.

Rule 260.6. Compliance

(1) The mandatory continuing legal educational requirement imposed by these rules shall take effect on January 1, 1979. To aid administrative implementation of the requirement, the Board shall divide all registered attorneys into three groups of approximately equal numbers.

The first group shall be required to complete 15 units of continuing legal education during the first year, and thereafter all registered attorneys in the first group shall complete 45 units of continuing legal education during each subsequent three-year compliance period. The second group shall be required to complete 30 units of continuing legal education during the first two years, and thereafter all registered attorneys in the second group shall complete 45 units of continuing legal education during each subsequent three-year compliance period. The third group shall be required to complete 45 units of continuing legal education during the first three years, and thereafter all registered attorneys and judges in the third group shall complete 45 units of continuing legal education during each subsequent three-year compliance period. All registered attorneys admitted to the bar within the two calendar years preceding January 1, 1979 and all judges shall be placed in the third group.

(2) Commencing with the date set forth in Paragraph (1) above, the Board shall send to each registered attorney and judge an Affidavit for the reporting of compliance with these rules. It shall be in such form as will allow the reporting of progress towards fulfilling the units required during each applicable compliance period, as such units are earned.

(3) At the time of payment of the registration fee required by Rule 227A or Rule 227B, each registered attorney and each judge shall submit an Affidavit showing the units of continuing legal education completed since the date such registered attorney or judge became subject to these rules or the date an Affidavit was last filed, whichever shall be later.

(4) No later than January 31st following the end of each applicable compliance period, each registered attorney and each judge shall submit a final Affidavit showing the total units of continuing legal education completed during such period, if the Board's records do not show that the attorney or judge has completed the requirements for that compliance period.

(5) In the event a registered attorney or judge shall fail to complete the required units at the end of each applicable compliance period, the final Affidavit may be accompanied by a specific plan for making up the deficiency of units necessary within 119 days (17 weeks) after the date of final Affidavit. When filed, the plan shall be accompanied by a make-up plan filing fee, the amount of which shall be determined by the Board annually and which shall be used to cover the costs of processing the plan. Such plan shall be deemed accepted by the Board unless within 14 days after the receipt of such final affidavit the Board notifies the affiant to the contrary. Full completion of the affiant's plan shall be reported by Affidavit to the Board not later than 14 days following such 119-day period. Failure of the affiant to complete the plan within such 119-day period shall invoke the sanctions set forth in Paragraph (6).

(a) Section 5 does not apply to the required course on professionalism mandated by C.R.C.P. 201.14.

(6) In the event that any registered attorney or judge shall fail to comply with these rules or Rule 201.14 in any respect, the Board shall promptly notify such registered attorney or judge of the nature of the noncompliance by a statement of noncompliance. The statement shall advise the registered attorney or judge that within 14 days either the noncompliance must be corrected or a request for a hearing before the Board must be made, and that upon failure to do either, the statement of noncompliance shall be filed with the Supreme Court.

(7) If the noncompliance is not corrected within 14 days, or if a hearing is not requested

within 14 days, the Board shall promptly forward the statement of noncompliance to the Supreme Court which may impose the sanctions set forth in Paragraph (10).

(8) If a hearing before the Board is requested, such hearing shall be held within 35 days after the request by the full Board or one or more of the members of the Board as it shall designate, provided that the presiding member at the hearing must be a registered attorney or judge. Notice of the time and place of the hearing shall be given to the registered attorney or judge at least 14 days prior thereto. The registered attorney or judge may be represented by counsel. Witnesses shall be sworn; and, if requested by the registered attorney or judge, a complete electronic record shall be made of all proceedings had and testimony taken. The presiding member shall have authority to rule on all motions, objections and other matters presented in connection with the hearing. The hearing shall be conducted in conformity with the Colorado Rules of Civil Procedure, and the practice in the trial of civil cases, except the registered attorney or judge involved may not be required to testify over his or her objection. The chairman of the Board shall have the power to compel, by subpoena issued out of the Supreme Court, the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in the hearing.

(9) At the conclusion of the hearing, the member or members of the Board who conducted the hearing shall make findings of fact and shall determine whether the registered attorney or judge involved has complied with the requirements of these rules and, if it determines there was noncompliance, whether there was reasonable cause for noncompliance. A copy of such findings and determination shall be sent to the registered attorney or judge involved. If it is determined that compliance has occurred, the matter shall be dismissed; and the Board's records shall be made to reflect such compliance. If it is determined that compliance has not occurred, the Board shall proceed as follows:

(a) If the Board determines that there was reasonable cause for noncompliance, the registered attorney or judge shall be allowed 14 days within which to file with the Board a specific plan for correcting the noncompliance within 119 days (17 weeks). Such plan shall be deemed accepted by the Board unless within 14 days after its receipt the Board notifies the registered attorney or judge to the contrary. Full completion of the plan shall be reported by Affidavit to the Board not later than 14 days following such 119-day period. If the registered attorney or judge shall fail to file an acceptable plan, or shall fail to complete and certify completion of the plan within such 119-day period, the Board shall proceed as set forth in Paragraph (b) as though it had determined that there was not reasonable cause for noncompliance.

(b) If the Board determines that there was not reasonable cause for noncompliance, a record of the matter, which must include a copy of the findings and determination, shall be promptly filed with the Supreme Court. If requested by the Board, registered attorney or judge, the record shall include a transcript of the hearing prepared at the expense of the requesting party.

(10) Upon receipt of a statement of noncompliance upon which a hearing was not requested or upon receipt of the record of a Board hearing, the Supreme Court shall enter such order as it shall deem appropriate, which may include an order of summary suspension from the practice of law until the further order of the Court in the case of registered attorneys

or referral of the matter to the Commission on Judicial Qualifications or the Denver County Court Judicial Qualifications Commission in the case of judges.

(11) Any registered attorney who has been suspended pursuant to Paragraph (2) of Rule 227A, or who has elected to transfer to inactive status pursuant to Paragraph (7) of Rule 227A, shall be relieved thereby from the requirements of these rules. Upon being reinstated pursuant to Paragraphs (3) or (7) of Rule 227A, the compliance period for such registered attorney shall commence on the date of reinstatement and end on December 31 of the third full calendar year following the year of reinstatement, provided the date of reinstatement is more than one year after the date of suspension or transfer to inactive status, or such lesser period as the Board may determine. Otherwise, the compliance period shall be the same as it would have been absent the suspension or transfer. No registered attorney or judge shall be permitted to transfer from active status to inactive status and vice versa or to become suspended and then reinstated to circumvent the requirements of these rules.

(12) All notices given pursuant to these rules shall be sent by certified mail, return receipt requested, to the registered address of the registered attorney or judge maintained by the Clerk of the Supreme Court pursuant to Rule 227A or Rule 227B.

(13) Any attorney who has been suspended for noncompliance pursuant to Rule 260.6(10) may be reinstated by order of the Court upon a showing that the attorney's current continuing legal education deficiency has been made up. The attorney shall file with the Board three (3) copies of a petition seeking reinstatement, addressed to the Supreme Court. The petition shall state with particularity the accredited programs of continuing legal education which the attorney has already completed, including dates of their completion, by which activity the attorney earned sufficient units of credit to make up the deficiency which was the cause of the attorney's suspension. The petition shall be accompanied by a reinstatement filing fee, the amount of which shall be determined by the Board annually and which shall be used to cover the costs associated with noncompliance. The Board shall file a properly completed petition, accompanied by the Board's recommendation, with the Clerk of the Supreme Court within 14 days after receipt.

Rule 260.7. Confidentiality

The files, records and proceedings of the Board, as they relate to the compliance or noncompliance of any registered attorney or judge with the requirements of these rules, shall be confidential and shall not be disclosed except upon written request or consent of the registered attorney or judge affected or as directed by the Supreme Court.

Rule 260.8. Direct Representation and Mentoring in Pro Bono Civil Legal Matters

(1) A lawyer may be awarded a maximum of nine (9) units of general credit during each three-year compliance period for providing uncompensated pro bono legal representation to an indigent or near-indigent client or clients in a civil legal matter, or mentoring another lawyer or a law student providing such representation.

(2) To be eligible for units of general credit, the civil pro bono legal matter in which a lawyer provides representation must have been assigned to the lawyer by: a court; a bar association or Access to Justice Committee-sponsored program; an organized non-profit entity, such as Colorado Legal Services, Metro Volunteer Lawyers, or Colorado Lawyers Committee whose purpose is or includes the provision of pro bono representation to indigent or near-indigent persons in civil legal matters; or a law school. Prior to assigning the matter, the assigning court, program, entity, or law school shall determine that the client is financially eligible for pro bono legal representation because (a) the client qualifies for participation in programs funded by the Legal Services Corporation, or (b) the client's income and financial resources are slightly above the guidelines utilized by such programs, but the client nevertheless cannot afford counsel.

(3) Subject to the reporting and review requirements specified herein, (a) a lawyer providing uncompensated, pro bono legal representation shall receive one (1) unit of general credit for every five (5) billable-equivalent hours of representation provided to the indigent client; (b) a lawyer who acts as a mentor to another lawyer as specified in this Rule shall be awarded one (1) unit of general credit per completed matter; and (c) a lawyer who acts as a mentor to a law student shall be awarded two (2) units of general credit per completed matter. A lawyer will not be eligible to receive more than nine (9) units of general credit during any three-year compliance period via any combination of pro bono representation and mentoring.

(4) A lawyer wishing to receive general credit units under this Rule shall submit to the assigning court, program, or law school a completed Form 8. As to mentoring, the lawyer shall submit Form 8 only once, when the matter is fully completed. As to pro bono representation, if the representation will be concluded during a single three-year compliance period, then the lawyer shall complete and submit Form 8 only once, when the representation is fully completed. If the representation will continue into another three-year compliance period, then the applying lawyer may submit an interim Form 8 seeking such credit as the lawyer may be eligible to receive during the three-year compliance period that is coming to an end. Upon receipt of an interim or final Form 8, the assigning court, program, entity, or law school shall in turn report to the Board the number of general CLE units that it recommends be awarded to the reporting lawyer under the provisions of this Rule. It shall recommend an award of the full number of units for which the lawyer is eligible under the provisions of this Rule, unless it determines after review that such an award is not appropriate due to the lawyer's lack of diligence or competence, in which case it shall recommend awarding less than the full number of units or no units. An outcome in the matter adverse to the client's objectives or interests shall not result in any presumption that the lawyer's representation or mentoring was not diligent or competent. The Board shall have final authority to issue or decline to issue units of credit to the lawyer providing representation or mentoring, subject to the other provisions of these Rules and Regulations, including without limitation the hearing provisions of Regulation 108.

(5) A lawyer who acts as a mentor to another lawyer providing representation shall be available to the lawyer providing representation for information and advice on all aspects of the legal matter, but will not be required to file or otherwise enter an appearance on behalf

of the indigent client in any court. Mentors shall not be members of the same firm or in association with the lawyer providing representation to the indigent client.

(6) A lawyer who acts as a mentor to a law student who is eligible to practice law under C.R.S. §§ 12-5-116 to -116.5 shall be assigned to the law student at the time of the assignment of the legal matter with the consent of the mentor, the law student, and the law school. The matter shall be assigned to the law student by a court, a program or entity as described in Rule 260.8(2), or an organized student law office program administered by his or her law school, after such court, program, entity, or student law office determines that the client is eligible for pro bono representation in accordance Rule 260.8(2). The mentor shall be available to the law student for information and advice on all aspects of the matter, and shall directly and actively supervise the law student while allowing the law student to provide representation to the client. The mentor shall file or enter an appearance along with the law student in any legal matter pursued or defended for the client in any court. Mentors may be acting as full-time or adjunct professors at the law student's law school at the same time they serve as mentors, so long as it is not a primary, paid responsibility of that professor to administer the student law office and supervise its law-student participants.

APPENDIX TO CHAPTERS 18 TO 20

The Colorado Rules of Professional Conduct

Adopted by the

SUPREME COURT OF COLORADO

May 7, 1992,

Effective January 1, 1993

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APPENDIX TO CHAPTERS 18 TO 20

COLORADO RULES OF PROFESSIONAL CONDUCT

PREAMBLE AND SCOPE

PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third-party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third-party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to

strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law. Zealousness does not, under any circumstances, justify conduct that is unprofessional, discourteous or uncivil toward any person involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government

for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers. Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constructive and descriptive in that they define a lawyer's professional role. Many of the Comments use the term "should." Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

[15] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. The Comments are sometimes used to alert lawyers to their responsibilities under such other law.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self- assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, in appropriate cases, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[21] The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The Preamble and this note on Scope provide general orientation. The Comments are intended as guides to interpretation, but the text of each Rule is authoritative.

Rule 1.0. Terminology

(a) "Belief" or "believes" denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (e) for

the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

(c) "Firm" or "law firm" denotes a partnership, professional company, or other entity or a sole proprietorship through which a lawyer or lawyers render legal services; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

(d) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(e) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.

(f) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

(g) "Partner" denotes a member of a partnership, an owner of a professional company, or a member of an association authorized to practice law.

(1) "Professional company" has the meaning ascribed to the term in C.R.C.P. 265.

(h) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(i) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(j) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(k) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(l) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(m) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(n) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

COMMENT

Confirmed in Writing

[1] If it is not feasible to obtain or transmit a written confirmation at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. If a lawyer has obtained a client's informed consent, the lawyer may act in reliance on that consent so long as it is confirmed in writing within a reasonable time thereafter.

Firm

[2] Whether two or more lawyers constitute a firm within paragraph (c) can depend on the specific facts. For example, two practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a firm. However, if they present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm, as is the fact that they have mutual access to information concerning the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule that the same lawyer should not represent opposing parties in litigation, while it might not be so regarded for purposes of the Rule that information acquired by one lawyer is attributed to another.

[3] With respect to the law department of an organization, including the government, there is ordinarily no question that the members of the department constitute a firm within the meaning of the Rules of Professional Conduct. There can be uncertainty, however, as to the identity of the client. For example, it may not be clear whether the law department of a corporation represents a subsidiary or an affiliated corporation, as well as the corporation by which the members of the department are directly employed. A similar question can arise concerning an unincorporated association and its local affiliates.

[4] Similar questions can also arise with respect to lawyers in legal aid and legal services organizations. Depending upon the structure of the organization, the entire organization or different components of it may constitute a firm or firms for purposes of these Rules.

Fraud

[5] When used in these Rules, the terms "fraud" or "fraudulent" refer to conduct that is characterized as such under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive. This does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform.

Informed Consent

[6] Many of the Rules of Professional Conduct require the lawyer to obtain the informed consent of a client or other person (e.g., a former client or, under certain circumstances, a prospective client) before accepting or continuing representation or pursuing a course of conduct. See, e.g., Rules 1.2(c), 1.6(a) and 1.7(b). The communication necessary to obtain such consent will vary according to

the Rule involved and the circumstances giving rise to the need to obtain informed consent. The lawyer must make reasonable efforts to ensure that the client or other person possesses information reasonably adequate to make an informed decision. Ordinarily, this will require communication that includes a disclosure of the facts and circumstances giving rise to the situation, any explanation reasonably necessary to inform the client or other person of the material advantages and disadvantages of the proposed course of conduct and a discussion of the client's or other person's options and alternatives. In some circumstances it may be appropriate for a lawyer to advise a client or other person to seek the advice of other counsel. A lawyer need not inform a client or other person of facts or implications already known to the client or other person; nevertheless, a lawyer who does not personally inform the client or other person assumes the risk that the client or other person is inadequately informed and the consent is invalid. In determining whether the information and explanation provided are reasonably adequate, relevant factors include whether the client or other person is experienced in legal matters generally and in making decisions of the type involved, and whether the client or other person is independently represented by other counsel in giving the consent. Normally, such persons need less information and explanation than others, and generally a client or other person who is independently represented by other counsel in giving the consent should be assumed to have given informed consent.

[7] Obtaining informed consent will usually require an affirmative response by the client or other person. In general, a lawyer may not assume consent from a client's or other person's silence. Consent may be inferred, however, from the conduct of a client or other person who has reasonably adequate information about the matter. A number of Rules require that a person's consent be confirmed in writing. See Rules 1.7(b) and 1.9(a). For a definition of "writing" and "confirmed in writing," see paragraphs (n) and (b). Other Rules require that a client's consent be obtained in a writing signed by the client. See, e.g., Rules 1.8(a) and (g). For a definition of "signed," see paragraph (n).

Knowingly, Known or Knows

[7A] In considering the prior Colorado Rules of Professional Conduct, the Colorado Supreme Court has stated, "with one important exception [involving knowing misappropriation of property] we have considered a reckless state of mind, constituting scienter, as equivalent to 'knowing' for disciplinary purposes." *In the Matter of Egbune*, 971 P.2d 1065, 1069 (Colo.1999). See also *People v. Rader*, 822 P.2d 950 (Colo. 1992); *People v. Small*, 962 P.2d 258, 260 (Colo. 1998). For purposes of applying the ABA *Standards for Imposing Lawyer Sanctions*, and in determining whether conduct is fraudulent, the Court will continue to apply the *Egbune* line of cases. However, where a Rule of Professional Conduct specifically requires the mental state of "knowledge," recklessness will not be sufficient to establish a violation of that Rule and to that extent, the *Egbune* line of cases will not be followed.

Screened

[8] This definition applies to situations where screening of a personally

disqualified lawyer is permitted to remove imputation of a conflict of interest under Rules 1.10(e), 1.11, 1.12 or 1.18.

[9] The purpose of screening is to assure the affected parties that confidential information known by the personally disqualified lawyer remains protected. The personally disqualified lawyer should acknowledge the obligation not to communicate with any of the other lawyers in the firm with respect to the matter. Similarly, other lawyers in the firm who are working on the matter should be informed that the screening is in place and that they may not communicate with the personally disqualified lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected lawyers of the presence of the screening, it may be appropriate for the firm to undertake such procedures as a written undertaking by the screened lawyer to avoid any communication with other firm personnel and any contact with any firm files or other materials relating to the matter, written notice and instructions to all other firm personnel forbidding any communication with the screened lawyer relating to the matter, denial of access by the screened lawyer to firm files or other materials relating to the matter and periodic reminders of the screen to the screened lawyer and all other firm personnel.

[10] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm knows or reasonably should know that there is a need for screening.

CLIENT-LAWYER RELATIONSHIP

Rule 1.1. Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

COMMENT

Legal knowledge and skill

[1] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a

practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person. See also Rule 6.2.

Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more extensive treatment than matters of lesser complexity and consequence. An agreement between the lawyer and the client regarding the scope of the representation may limit the matters for which the lawyer is responsible. See Rule 1.2(c).

Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

Rule 1.2. Scope of Representation and Allocation of Authority Between Client and Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does

not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope or objectives, or both, of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. A lawyer may provide limited representation to pro se parties as permitted by C.R.C.P. 11(b) and C.R.C.P. 311(b).

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

COMMENT

Allocation of Authority between Client and Lawyer

[1] Paragraph (a) confers upon the client the ultimate authority to determine the purposes to be served by legal representation, within the limits imposed by law and the lawyer's professional obligations. The decisions specified in paragraph (a), such as whether to settle a civil matter, must also be made by the client. See Rule 1.4(a)(1) for the lawyer's duty to communicate with the client about such decisions. With respect to the means by which the client's objectives are to be pursued, the lawyer shall consult with the client as required by Rule 1.4(a)(2) and may take such action as is impliedly authorized to carry out the representation.

[2] On occasion, however, a lawyer and a client may disagree about the means to be used to accomplish the client's objectives. Clients normally defer to the special knowledge and skill of their lawyer with respect to the means to be used to accomplish their objectives, particularly with respect to technical, legal and tactical matters. Conversely, lawyers usually defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. Because of the varied nature of the matters about which a lawyer and client might disagree and because the actions in question may implicate the interests of a tribunal or other persons, this Rule does not prescribe how such disagreements are to be resolved. Other law, however, may be applicable and should be consulted by the lawyer. The lawyer should also consult with the client and seek a mutually acceptable resolution of the disagreement. If such efforts are unavailing and the lawyer has a fundamental disagreement with the client, the lawyer may withdraw from the representation. See Rule 1.16(b)(4). Conversely, the client may resolve the disagreement by discharging the lawyer. See Rule 1.16(a)(3).

[3] At the outset of a representation, the client may authorize the lawyer to take specific action on the client's behalf without further consultation. Absent a material change in circumstances and subject to Rule 1.4, a lawyer may rely on such an advance authorization. The client may, however, revoke such authority at any time.

[4] In a case in which the client appears to be suffering diminished

capacity, the lawyer's duty to abide by the client's decisions is to be guided by reference to Rule 1.14.

Independence from Client's Views or Activities

[5] Legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities.

Agreements Limiting Scope of Representation

[6] The scope of services to be provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. When a lawyer has been retained by an insurer to represent an insured, for example, the representation may be limited to matters related to the insurance coverage. A limited representation may be appropriate because the client has limited objectives for the representation. In addition, the terms upon which representation is undertaken may exclude specific means that might otherwise be used to accomplish the client's objectives. Such limitations may exclude actions that the client thinks are too costly or that the lawyer regards as repugnant or imprudent.

[7] Although this Rule affords the lawyer and client substantial latitude to limit the representation, the limitation must be reasonable under the circumstances. If, for example, a client's objective is limited to securing general information about the law the client needs in order to handle a common and typically uncomplicated legal problem, the lawyer and client may agree that the lawyer's services will be limited to a brief telephone consultation. Such a limitation, however, would not be reasonable if the time allotted was not sufficient to yield advice upon which the client could rely. Although an agreement for a limited representation does not exempt a lawyer from the duty to provide competent representation, the limitation is a factor to be considered when determining the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. See Rule 1.1.

[8] All agreements concerning a lawyer's representation of a client must accord with the Rules of Professional Conduct and other law. See, e.g., Rules 1.1, 1.8 and 5.6.

Criminal, Fraudulent and Prohibited Transactions

[9] Paragraph (d) prohibits a lawyer from knowingly counseling or assisting a client to commit a crime or fraud. This prohibition, however, does not preclude the lawyer from giving an honest opinion about the actual consequences that appear likely to result from a client's conduct. Nor does the fact that a client uses advice in a course of action that is criminal or fraudulent of itself make a lawyer a party to the course of action. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity.

[10] When the client's course of action has already begun and is continuing, the lawyer's responsibility is especially delicate. The lawyer is required to avoid

assisting the client, for example, by drafting or delivering documents that the lawyer knows are fraudulent or by suggesting how the wrongdoing might be concealed. A lawyer may not continue assisting a client in conduct that the lawyer originally supposed was legally proper but then discovers is criminal or fraudulent. The lawyer must, therefore, withdraw from the representation of the client in the matter. See Rule 1.16(a). In some cases, withdrawal alone might be insufficient. It may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm any opinion, document, affirmation or the like. See Rule 4.1.

[11] Where the client is a fiduciary, the lawyer may be charged with special obligations in dealings with a beneficiary.

[12] Paragraph (d) applies whether or not the defrauded party is a party to the transaction. Hence, a lawyer must not participate in a transaction to effectuate criminal or fraudulent avoidance of tax liability. Paragraph (d) does not preclude undertaking a criminal defense incident to a general retainer for legal services to a lawful enterprise. The last clause of paragraph (d) recognizes that determining the validity or interpretation of a statute or regulation may require a course of action involving disobedience of the statute or regulation or of the interpretation placed upon it by governmental authorities.

[13] If a lawyer comes to know or reasonably should know that a client expects assistance not permitted by the Rules of Professional Conduct or other law or if the lawyer intends to act contrary to the client's instructions, the lawyer must consult with the client regarding the limitations on the lawyer's conduct. See Rule 1.4(a)(5).

Rule 1.3. Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

COMMENT

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's work load must be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of

time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will continue to serve on a continuing basis unless the lawyer gives notice of withdrawal. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client and the lawyer and the client have not agreed that the lawyer will handle the matter on appeal, the lawyer must consult with the client about the possibility of appeal before relinquishing responsibility for the matter. See Rule 1.4(a)(2). Whether the lawyer is obligated to prosecute the appeal for the client depends on the scope of the representation the lawyer has agreed to provide to the client. See Rule 1.2.

[5] To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action. Cf. Rule 28 of the American Bar Association Model Rules for Lawyer Disciplinary Enforcement (providing for court appointment of a lawyer to inventory files and take other protective action in absence of a plan providing for another lawyer to protect the interests of the clients of a deceased or disabled lawyer); C.R.C.P. 251.32(h).

Rule 1.4. Communication

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

COMMENT

[1] Reasonable communication between the lawyer and the client is necessary for the client effectively to participate in the representation.

Communicating with Client

[2] If these Rules require that a particular decision about the representation be made by the client, paragraph (a)(1) requires that the lawyer promptly consult with and secure the client's consent prior to taking action unless prior discussions with the client have resolved what action the client wants the lawyer to take. For example, a lawyer who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case must promptly inform the client of its substance unless the client has previously indicated that the proposal will be acceptable or unacceptable or has authorized the lawyer to accept or to reject the offer. See Rule 1.2(a).

[3] Paragraph (a)(2) requires the lawyer to reasonably consult with the client about the means to be used to accomplish the client's objectives. In some situations--depending on both the importance of the action under consideration and the feasibility of consulting with the client--this duty will require consultation prior to taking action. In other circumstances, such as during a trial when an immediate decision must be made, the exigency of the situation may require the lawyer to act without prior consultation. In such cases the lawyer must nonetheless act reasonably to inform the client of actions the lawyer has taken on the client's behalf. Additionally, paragraph (a)(3) requires that the lawyer keep the client reasonably informed about the status of the matter, such as significant developments affecting the timing or the substance of the representation.

[4] A lawyer's regular communication with clients will minimize the occasions on which a client will need to request information concerning the representation. When a client makes a reasonable request for information, however, paragraph (a)(4) requires prompt compliance with the request, or if a prompt response is not feasible, that the lawyer, or a member of the lawyer's staff, acknowledge receipt of the request and advise the client when a response may be expected. Client telephone calls should be promptly returned or acknowledged.

Explaining Matters

[5] The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued, to the extent the client is willing and able to do so. Adequacy of communication depends in part on the kind of advice or assistance

that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation. In certain circumstances, such as when a lawyer asks a client to consent to a representation affected by a conflict of interest, the client must give informed consent, as defined in Rule 1.0(e).

[6] Ordinarily, the information to be provided is that appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from diminished capacity. See Rule 1.14. When the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the lawyer should address communications to the appropriate officials of the organization. See Rule 1.13. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client.

Withholding Information

[7] In some circumstances, a lawyer may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. Thus, a lawyer might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. A lawyer may not withhold information to serve the lawyer's own interest or convenience or the interests or convenience of another person. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client. Rule 3.4(c) directs compliance with such rules or orders.

Explanation of Fees and Expenses

[7A] Information provided to the client under Rule 1.4(a) should include information concerning fees charged, costs, expenses, and disbursements with regard to the client's matter. Additionally, the lawyer should promptly respond to the client's reasonable requests concerning such matters. It is strongly recommended that all these communications be in writing. As to the basis or rate of the fee, see Rule 1.5(b).

Rule 1.5. Fees

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee and expenses shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation. Any changes in the basis or rate of the fee or expenses shall also be promptly communicated to the client, in writing.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is otherwise prohibited. A contingent fee agreement shall meet all of the requirements of Chapter 23.3 of the Colorado Rules of Civil Procedure, "Rules Governing Contingent Fees."

(d) Other than in connection with the sale of a law practice pursuant to Rule 1.17, a division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;

(2) the client agrees to the arrangement, including the basis upon which the division of fees shall be made, and the client's agreement is confirmed in writing; and

(3) the total fee is reasonable.

(e) Referral fees are prohibited.

(f) Fees are not earned until the lawyer confers a benefit on the client or performs a legal service for the client. Advances of unearned fees are the property of the client and shall be deposited in the lawyer's trust account pursuant to Rule 1.15(f)(1) until earned. If advances of unearned fees are in the form of property other than funds, then the lawyer shall hold such property separate from the lawyer's own property pursuant to Rule 1.15(a).

(g) Nonrefundable fees and nonrefundable retainers are prohibited. Any agreement that purports to restrict a client's right to terminate the representation, or that unreasonably restricts a client's right to obtain a refund of unearned or unreasonable fees, is prohibited.

COMMENT

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services

performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, the basis or rate of the fee must be promptly communicated in writing to the client. When the lawyer has regularly represented a client, they ordinarily will have reached an understanding concerning the basis or rate of the fee; but, when there has been a change from their previous understanding, the basis or rate of the fee should be promptly communicated in writing. All contingent fee arrangements must be in writing, regardless of whether the client-lawyer relationship is new or established. See C.R.C.P., Ch. 23.3, Rule 1. A written communication must disclose the basis or rate of the lawyer's fees, but it need not take the form of a formal engagement letter or agreement, and it need not be signed by the client. Moreover, it is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, to identify the factors that may be take into account in finally fixing the fee, or to furnish the client with a simple memorandum or the lawyer's customary fee schedule. When developments occur during the representation that render an earlier disclosure substantially inaccurate, a revised written disclosure should be provided to the client.

[3] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

[3A] Repealed.

Terms of Payment

[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d). A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8(i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[5] An agreement may not be made whose terms might induce the lawyer

improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

[6] [No Colorado comment.]

Division of Fee

[7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership. A lawyer should refer a matter only to a lawyer who the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

[8] Paragraph (e) does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm.

Disputes over Fees

[9] If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by the bar, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

Advances of Unearned Fees and Engagement Retainer Fees

[10] The analysis of when a lawyer may treat advances of unearned fees as property of the lawyer must begin with the principle that the lawyer must hold in trust all fees paid by the client until there is a basis on which to conclude that the lawyer has earned the fee; otherwise the funds must remain in the lawyer's trust account because they are not the lawyer's property.

[11] To make a determination of when an advance fee is earned, the written

statement of the basis or rate of the fee, when required by Rule 1.5(b), should include a description of the benefit or service that justifies the lawyer's earning the fee, the amount of the advance unearned fee, as well as a statement describing when the fee is earned. Whether a lawyer has conferred a sufficient benefit to earn a portion of the advance fee will depend on the circumstances of the particular case. The circumstances under which a fee is earned should be evaluated under an objective standard of reasonableness. Rule 1.5(a).

Rule 1.5(f) Does Not Prohibit Lump-sum Fees or Flat Fees

[12] Advances of unearned fees, including "lump-sum" fees and "flat fees," are those funds the client pays for specified legal services that the lawyer has agreed to perform in the future. Pursuant to Rule 1.15, the lawyer must deposit an advance of unearned fees in the lawyer's trust account. The funds may be earned only as the lawyer performs specified legal services or confers benefits on the client as provided for in the written statement of the basis of the fee, if a written statement is required by Rule 1.5(b). See also Restatement (Third) of the Law Governing Lawyers §§ 34, 38 (1998). Rule 1.5(f) does not prevent a lawyer from entering into these types of arrangements.

[13] For example, the lawyer and client may agree that portions of the advance of unearned fees are deemed earned at the lawyer's hourly rate and become the lawyer's property as and when the lawyer provides legal services.

[14] Alternatively, the lawyer and client may agree to an advance lump-sum or flat fee that will be earned in whole or in part based upon the lawyer's completion of specific tasks or the occurrence of specific events, regardless of the precise amount of the lawyer's time involved. For instance, in a criminal defense matter, a lawyer and client may agree that the lawyer earns portions of the advance lump-sum or flat fee upon the lawyer's entry of appearance, initial advisement, review of discovery, preliminary hearing, pretrial conference, disposition hearing, motions hearing, trial, and sentencing. Similarly, in a trusts and estates matter, a lawyer and client may agree that the lawyer earns portions of the lump-sum or flat fee upon client consultation, legal research, completing the initial draft of testamentary documents, further client consultation, and completing the final documents.

[15] The portions of the advance lump sum or flat fee earned as each such event occurs need not be in equal amounts. However, the fees attributed to each event should reflect a reasonable estimate of the proportionate value of the legal services the lawyer provides in completing each designated event to the anticipated legal services to be provided on the entire matter. See Rule 1.5(a); *Feiger, Collison & Killmer v. Jones*, 926 P.2d 1244, 1252-53 (Colo. 1996) (client's sophistication is relevant factor).

[16] "[A]n 'engagement retainer fee' is a fee paid, apart from any other compensation, to ensure that a lawyer will be available for the client if required. An engagement retainer must be distinguished from a lump-sum fee constituting the entire payment for a lawyer's service in a matter and from an advance payment from which fees will be subtracted (see § 38, Comment g). A fee is an engagement

retainer only if the lawyer is to be additionally compensated for actual work, if any, performed." Restatement (Third) of the Law Governing Lawyers § 34 Comment e. An engagement retainer fee agreement must comply with Rule 1.5(a), (b), and (g), and should expressly include the amount of the engagement retainer fee, describe the service or benefit that justifies the lawyer's earning the engagement retainer fee, and state that the engagement retainer fee is earned upon receipt. As defined above, an engagement retainer fee will be earned upon receipt because the lawyer provides an immediate benefit to the client, such as forgoing other business opportunities by making the lawyer's services available for a given period of time to the exclusion of other clients or potential clients, or by giving priority to the client's work over other matters.

[17] Because an engagement retainer fee is earned at the time it is received, it must not be commingled with client property. However, it may be subject to refund to the client in the event of changed circumstances.

[18] It is unethical for a lawyer to fail to return unearned fees, to charge an excessive fee, or to characterize any lawyer's fee as nonrefundable. Lawyer's fees are always subject to refund if either excessive or unearned. If all or some portion of a lawyer's fee becomes subject to refund, then the amount to be refunded should be paid directly to the client if there is no further legal work to be performed or if the lawyer's employment is terminated. In the alternative, if there is an ongoing client-lawyer relationship and there is further work to be done, it may be deposited in the lawyer's trust account, to be withdrawn from the trust account as it is earned.

Rule 1.6. Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to reveal the client's intention to commit a crime and the information necessary to prevent the crime;

(3) to prevent the client from committing a fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(4) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(5) to secure legal advice about the lawyer's compliance with these Rules, other law or a court order;

(6) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the

lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(7) to comply with other law or a court order.

COMMENT

[1] This Rule governs the disclosure by a lawyer of information relating to the representation of a client during the lawyer's representation of the client. See Rule 1.18 for the lawyer's duties with respect to information provided to the lawyer by a prospective client, Rule 1.9(c)(2) for the lawyer's duty not to reveal information relating to the lawyer's prior representation of a former client and Rules 1.8(b) and 1.9(c)(1) for the lawyer's duties with respect to the use of such information to the disadvantage of clients and former clients.

[2] A fundamental principle in the client-lawyer relationship is that, in the absence of the client's informed consent, the lawyer must not reveal information relating to the representation. See Rule 1.0(e) for the definition of informed consent. This contributes to the trust that is the hallmark of the client-lawyer relationship. The client is thereby encouraged to seek legal assistance and to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging subject matter. The lawyer needs this information to represent the client effectively and, if necessary, to advise the client to refrain from wrongful conduct. Almost without exception, clients come to lawyers in order to determine their rights and what is, in the complex of laws and regulations, deemed to be legal and correct. Based upon experience, lawyers know that almost all clients follow the advice given, and the law is upheld.

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work-product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope.

[4] Paragraph (a) prohibits a lawyer from revealing information relating to the representation of a client. This prohibition also applies to disclosures by a lawyer that do not in themselves reveal protected information but could reasonably lead to the discovery of such information by a third person. A lawyer's use of a hypothetical to discuss issues relating to the representation is permissible so long as there is no reasonable likelihood that the listener will be able to ascertain the identity of the client or the situation involved.

Authorized Disclosure

[5] Except to the extent that the client's instructions or special circumstances limit that authority, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter. Lawyers in a firm may, in the course of the firm's practice, disclose to each other information relating to a client of the firm, unless the client has instructed that particular information be confined to specified lawyers.

[5A] A lawyer moving (or contemplating a move) from one firm to another is impliedly authorized to disclose certain limited non-privileged information protected by Rule 1.6 in order to conduct a conflicts check to determine whether the lawyer or the new firm is or would be disqualified. Thus, for conflicts checking purposes, a lawyer usually may disclose, without express client consent, the identity of the client and the basic nature of the representation to insure compliance with Rules such as Rules 1.7, 1.8, 1.9, 1.10, 1.11 and 1.12. Under unusual circumstances, even this basic disclosure may materially prejudice the interests of the client or former client. In those circumstances, disclosure is prohibited without client consent. In all cases, the disclosures must be limited to the information essential to conduct the conflicts check, and the confidentiality of this information must be agreed to in advance by all lawyers who receive the information.

Disclosure Adverse to Client

[6] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions. Paragraph (b)(1) recognizes the overriding value of life and physical integrity and permits disclosure reasonably necessary to prevent reasonably certain death or substantial bodily harm. Such harm is reasonably certain to occur if it will be suffered imminently or if there is a present and substantial threat that a person will suffer such harm at a later date if the lawyer fails to take action necessary to eliminate the threat. Thus, a lawyer who knows that a client has accidentally discharged toxic waste into a town's water supply may reveal this information to the authorities if there is a present and substantial risk that a person who drinks the water will contract a life threatening or debilitating disease and the lawyer's disclosure is necessary to eliminate the threat or reduce the number of victims.

[6A] Paragraph (b)(2) permits disclosure regarding a client's intention to commit a crime in the future and authorizes the disclosure of information necessary to prevent the crime. This paragraph does not apply to completed crimes. Although paragraph (b)(2) does not require the lawyer to reveal the client's intention to commit a crime, the lawyer may not counsel or assist the client in conduct the lawyer knows is criminal. See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and Rule 1.13(c), which permits the lawyer, where

the client is an organization, to reveal information relating to the representation in limited circumstances.

[7] Paragraph (b)(3) is a limited exception to the rule of confidentiality that permits the lawyer to reveal information to the extent necessary to enable affected persons or appropriate authorities to prevent the client from committing a fraud, as defined in Rule 1.0(d), that is reasonably certain to result in substantial injury to the financial or property interests of another and in furtherance of which the client has used or is using the lawyer's services. Such a serious abuse of the client-lawyer relationship by the client forfeits the protection of this Rule. The client can, of course, prevent such disclosure by refraining from the wrongful conduct. Although paragraph (b)(3) does not require the lawyer to reveal the client's misconduct, the lawyer may not counsel or assist the client in conduct the lawyer knows is fraudulent. See Rule 1.2(d). See also Rule 1.16 with respect to the lawyer's obligation or right to withdraw from the representation of the client in such circumstances, and Rule 1.13(c), which permits the lawyer, where the client is an organization, to reveal information relating to the representation in limited circumstances.

[8] Paragraph (b)(4) addresses the situation in which the lawyer does not learn of the client's crime or fraud until after it has been consummated. Although the client no longer has the option of preventing disclosure by refraining from the wrongful conduct, there will be situations in which the loss suffered by the affected person can be prevented, rectified or mitigated. In such situations, the lawyer may disclose information relating to the representation to the extent necessary to enable the affected persons to prevent or mitigate reasonably certain losses or to attempt to recoup their losses. Paragraph (b)(4) does not apply when a person who has committed a crime or fraud thereafter employs a lawyer for representation concerning that offense.

[9] A lawyer's confidentiality obligations do not preclude a lawyer from securing confidential legal advice about the lawyer's personal responsibility to comply with these Rules, other law, or a court order. In most situations, disclosing information to secure such advice will be impliedly authorized for the lawyer to carry out the representation. Even when the disclosure is not impliedly authorized, paragraph (b)(5) permits such disclosure because of the importance of a lawyer's compliance with these Rules, other law, or a court order. For example, Rule 1.6(b)(5) authorizes disclosures that the lawyer reasonably believes are necessary to seek advice involving the lawyer's duty to provide competent representation under Rule 1.1. In addition, this rule permits disclosure of information that the lawyer reasonably believes is necessary to secure legal advice concerning the lawyer's broader duties, including those addressed in Rules 3.3, 4.1 and 8.4.

[10] Where a legal claim or disciplinary charge alleges complicity of the lawyer in a client's conduct or other misconduct of the lawyer involving representation of the client, the lawyer may respond to the extent the lawyer reasonably believes necessary to establish a defense. The same is true with respect to a claim involving the conduct or representation of a former client. Such a charge can arise in a civil, criminal,

disciplinary or other proceeding and can be based on a wrong allegedly committed by the lawyer against the client or on a wrong alleged by a third person, for example, a person claiming to have been defrauded by the lawyer and client acting together. The lawyer's right to respond arises when an assertion of such complicity has been made. Paragraph (b)(6) does not require the lawyer to await the commencement of an action or proceeding that charges such complicity, so that the defense may be established by responding directly to a third party who has made such an assertion. The right to defend also applies, of course, where a proceeding has been commenced.

[11] A lawyer entitled to a fee is permitted by paragraph (b)(6) to prove the services rendered in an action to collect it. This aspect of the rule expresses the principle that the beneficiary of a fiduciary relationship may not exploit it to the detriment of the fiduciary.

[12] Other law may require that a lawyer disclose information about a client. Whether such a law supersedes Rule 1.6 is a question of law beyond the scope of these Rules. When disclosure of information relating to the representation appears to be required by other law, the lawyer must discuss the matter with the client to the extent required by Rule 1.4. If, however, the other law supersedes this Rule and requires disclosure, paragraph (b)(7) permits the lawyer to make such disclosures as are necessary to comply with the law.

[13] A lawyer may be ordered to reveal information relating to the representation of a client by a court or by another tribunal or governmental entity claiming authority pursuant to other law to compel the disclosure. For purposes of paragraph (b)(7), a subpoena is a court order. Absent informed consent of the client to do otherwise, the lawyer should assert on behalf of the client all nonfrivolous claims that the order is not authorized by other law or that the information sought is protected against disclosure by the attorney client privilege or other applicable law. In the event of an adverse ruling, the lawyer must consult with the client about the possibility of appeal to the extent required by Rule 1.4. Unless review is sought, however, paragraph (b)(7) permits the lawyer to comply with the court's order.

[13A] Rule 4.1(b) requires a disclosure when necessary to avoid assisting a client's criminal or fraudulent act, if such disclosure will not violate this Rule 1.6.

[14] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable.

[15] Paragraph (b) permits but does not require the disclosure of information relating to a client's representation to accomplish the purposes specified in

paragraphs (b) (1) through (b)(7). In exercising the discretion conferred by this Rule, the lawyer may consider such factors as the nature of the lawyer's relationship with the client and with those who might be injured by the client, the lawyer's own involvement in the transaction and factors that may extenuate the conduct in question. A lawyer's decision not to disclose as permitted by paragraph (b) does not violate this Rule.

[15A] The interrelationships between this Rule and Rules 1.2(d), 1.13, 3.3, 4.1, 8.1, and 8.3, and among those rules, are complex and require careful study by lawyers in order to discharge their sometimes conflicting obligations to their clients and the courts, and more generally, to our system of justice. The fact that disclosure is permitted, required, or prohibited under one rule does not end the inquiry. A lawyer must determine whether and under what circumstances other rules or other law permit, require, or prohibit disclosure. While disclosure under this Rule is always permissive, other rules or law may require disclosure. For example, Rule 3.3 requires disclosure of certain information (such as a lawyer's knowledge of the offer or admission of false evidence) even if this Rule would otherwise not permit that disclosure. In addition, Rule 1.13 sets forth the circumstances under which a lawyer representing an organization may disclose information, regardless of whether this Rule permits that disclosure. By contrast, Rule 4.1 requires disclosure to a third party of material facts when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless that disclosure would violate this Rule. See also Rule 1.2(d)(prohibiting a lawyer from counseling or assisting a client in conduct the lawyer knows is criminal or fraudulent). Similarly, Rule 8.1(b) requires certain disclosures in bar admission and attorney disciplinary proceedings and Rule 8.3 requires disclosure of certain violations of the Rules of Professional Conduct, except where this Rule does not permit those disclosures.

[16] A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3.

[17] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

Former Client

[18] The duty of confidentiality continues after the client-lawyer relationship has terminated. See Rule 1.9(c)(2). See Rule 1.9(c)(1) for the prohibition against using such information to the disadvantage of the former client.

Rule 1.7. Conflict of Interest: Current Clients

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

COMMENT

General Principles

[1] Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests. For specific rules regarding certain concurrent conflicts of interest, see Rule 1.8. For former client conflicts of interest, see Rule 1.9. For conflicts of interest involving prospective clients, see Rule 1.18. For definitions of "informed consent" and "confirmed in writing," see Rule 1.0(e) and (b).

[2] Resolution of a conflict of interest problem under this Rule requires the lawyer to: 1) clearly identify the client or clients; 2) determine whether a conflict of interest exists; 3) decide whether the representation may be undertaken despite the existence of a conflict, i.e., whether the conflict is consentable; and 4) if so, consult with the clients affected under paragraph (a) and obtain their informed consent, confirmed in writing. The clients affected under paragraph (a) include both of the clients referred to in paragraph (a)(1) and the one or more clients whose representation might be materially limited under paragraph (a)(2).

[3] A conflict of interest may exist before representation is undertaken, in which event the representation must be declined, unless the lawyer obtains the informed consent of each client under the

conditions of paragraph (b). To determine whether a conflict of interest exists, a lawyer should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the persons and issues involved. See also Comment to Rule 5.1. Ignorance caused by a failure to institute such procedures will not excuse a lawyer's violation of this Rule. As to whether a client-lawyer relationship exists or, having once been established, is continuing, see Comment to Rule 1.3 and Scope.

[4] If a conflict arises after representation has been undertaken, the lawyer ordinarily must withdraw from the representation, unless the lawyer has obtained the informed consent of the client under the conditions of paragraph (b). See Rule 1.16. Where more than one client is involved, whether the lawyer may continue to represent any of the clients is determined both by the lawyer's ability to comply with duties owed to the former client and by the lawyer's ability to represent adequately the remaining client or clients, given the lawyer's duties to the former client. See Rule 1.9. See also Comments [5] and [29].

[5] Unforeseeable developments, such as changes in corporate and other organizational affiliations or the addition or realignment of parties in litigation, might create conflicts in the midst of a representation, as when a company sued by the lawyer on behalf of one client is bought by another client represented by the lawyer in an unrelated matter. Depending on the circumstances, the lawyer may have the option to withdraw from one of the representations in order to avoid the conflict. The lawyer must seek court approval where necessary and take steps to minimize harm to the clients. See Rule 1.16. The lawyer must continue to protect the confidences of the client from whose representation the lawyer has withdrawn. See Rule 1.9(c).

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the

respective clients.

[7] Directly adverse conflicts can also arise in transactional matters. For example, if a lawyer is asked to represent the seller of a business in negotiations with a buyer represented by the lawyer, not in the same transaction but in another, unrelated matter, the lawyer could not undertake the representation without the informed consent of each client.

Identifying Conflicts of Interest: Material Limitation

[8] Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. For example, a lawyer asked to represent several individuals seeking to form a joint venture is likely to be materially limited in the lawyer's ability to recommend or advocate all possible positions that each might take because of the lawyer's duty of loyalty to the others. The conflict in effect forecloses alternatives that would otherwise be available to the client. The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

Lawyer's Responsibilities to Former Clients and Other Third Persons

[9] In addition to conflicts with other current clients, a lawyer's duties of loyalty and independence may be materially limited by responsibilities to former clients under Rule 1.9 or by the lawyer's responsibilities to other persons, such as fiduciary duties arising from a lawyer's service as a trustee, executor or corporate director.

Personal Interest Conflicts

[10] The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client. In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest. See Rule 1.8 for specific Rules pertaining to a number of personal interest conflicts, including business transactions with clients. See also Rule 1.10 (personal interest conflicts under Rule 1.7 ordinarily are not imputed to other lawyers in a law firm).

[11] When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage or when there is a cohabiting relationship between the lawyers, there may be a significant risk that client confidences will be revealed and that the lawyer's family or cohabiting

relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling or spouse (or in a cohabiting relationship with another lawyer,) ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship or a cohabiting relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10.

[12] A lawyer is prohibited from engaging in sexual relationships with a client unless the sexual relationship predates the formation of the client-lawyer relationship. See Rule 1.8(j).

Interest of Person Paying for a Lawyer's Service

[13] A lawyer may be paid from a source other than the client, including a co-client, if the client is informed of that fact and consents and the arrangement does not compromise the lawyer's duty of loyalty or independent judgment to the client. See Rule 1.8(f). If acceptance of the payment from any other source presents a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in accommodating the person paying the lawyer's fee or by the lawyer's responsibilities to a payer who is also a co-client, then the lawyer must comply with the requirements of paragraph (b) before accepting the representation, including determining whether the conflict is consentable and, if so, that the client has adequate information about the material risks of the representation.

Prohibited Representations

[14] Ordinarily, clients may consent to representation notwithstanding a conflict. However, as indicated in paragraph (b), some conflicts are nonconsentable, meaning that the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When the lawyer is representing more than one client, the question of consentability must be resolved as to each client.

[15] Consentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest. Thus, under paragraph (b)(1), representation is prohibited if in the circumstances the lawyer cannot reasonably conclude that the lawyer will be able to provide competent and diligent representation. See Rule 1.1 (competence) and Rule 1.3 (diligence).

[16] Paragraph (b)(2) describes conflicts that are nonconsentable because the representation is prohibited by applicable law. For example, in some states substantive law provides that the same lawyer may not represent more than one defendant in a capital case, even with the consent of the clients, and under federal criminal statutes certain representations by a former government lawyer are prohibited, despite the informed consent of the former client. In addition,

decisional law in some states limits the ability of a governmental client, such as a municipality, to consent to a conflict of interest.

[17] Paragraph (b)(3) describes conflicts that are nonconsentable because of the institutional interest in vigorous development of each client's position when the clients are aligned directly against each other in the same litigation or other proceeding before a tribunal. Whether clients are aligned directly against each other within the meaning of this paragraph requires examination of the context of the proceeding. Although this paragraph does not preclude a lawyer's multiple representation of adverse parties to a mediation (because mediation is not a proceeding before a "tribunal" under Rule 1.0(m)), such representation may be precluded by paragraph (b)(1).

Informed Consent

[18] Informed consent requires that each affected client be aware of the relevant circumstances and of the material and reasonably foreseeable ways that the conflict could have adverse effects on the interests of that client. See Rule 1.0(e) (informed consent). The information required depends on the nature of the conflict and the nature of the risks involved. When representation of multiple clients in a single matter is undertaken, the information must include the implications of the common representation, including possible effects on loyalty, confidentiality and the attorney-client privilege and the advantages and risks involved. See Comments [30] and [31] (effect of common representation on confidentiality).

[19] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

Consent Confirmed in Writing

[20] Paragraph (b) requires the lawyer to obtain the informed consent of the client, confirmed in writing. Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent. See Rule 1.0(b). See also Rule 1.0(n) (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and

concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Revoking Consent

[21] A client who has given consent to a conflict may revoke the consent and, like any other client, may terminate the lawyer's representation at any time. Whether revoking consent to the client's own representation precludes the lawyer from continuing to represent other clients depends on the circumstances, including the nature of the conflict, whether the client revoked consent because of a material change in circumstances, the reasonable expectations of the other client and whether material detriment to the other clients or the lawyer would result.

Consent to Future Conflict

[22] Whether a lawyer may properly request a client to waive conflicts that might arise in the future is subject to the test of paragraph (b). The effectiveness of such waivers is generally determined by the extent to which the client reasonably understands the material risks that the waiver entails. The more comprehensive the explanation of the types of future representations that might arise and the actual and reasonably foreseeable adverse consequences of those representations, the greater the likelihood that the client will have the requisite understanding. Thus, if the client agrees to consent to a particular type of conflict with which the client is already familiar, then the consent ordinarily will be effective with regard to that type of conflict. If the consent is general and open-ended, then the consent ordinarily will be ineffective, because it is not reasonably likely that the client will have understood the material risks involved. On the other hand, if the client is an experienced user of the legal services involved and is reasonably informed regarding the risk that a conflict may arise, such consent is more likely to be effective, particularly if, e.g., the client is independently represented by other counsel in giving consent and the consent is limited to future conflicts unrelated to the subject of the representation. In any case, advance consent cannot be effective if the circumstances that materialize in the future are such as would make the conflict nonconsentable under paragraph (b).

Conflicts in Litigation

[23] Paragraph (b)(3) prohibits representation of opposing parties in the same litigation, regardless of the clients' consent. On the other hand, simultaneous representation of parties whose interests in litigation may conflict, such as co-plaintiffs or codefendants, is governed by paragraph (a)(2). A conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily a lawyer should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests in civil litigation is proper if the requirements of

paragraph (b) are met.

[24] Ordinarily a lawyer may take inconsistent legal positions in different tribunals at different times on behalf of different clients. The mere fact that advocating a legal position on behalf of one client might create precedent adverse to the interests of a client represented by the lawyer in an unrelated matter does not create a conflict of interest. A conflict of interest exists, however, if there is a significant risk that a lawyer's action on behalf of one client will materially limit the lawyer's effectiveness in representing another client in a different case; for example, when a decision favoring one client will create a precedent likely to seriously weaken the position taken on behalf of the other client. Factors relevant in determining whether the clients need to be advised of the risk include: where the cases are pending, whether the issue is substantive or procedural, the temporal relationship between the matters, the significance of the issue to the immediate and long-term interests of the clients involved and the clients' reasonable expectations in retaining the lawyer. If there is significant risk of material limitation, then absent informed consent of the affected clients, the lawyer must refuse one of the representations or withdraw from one or both matters.

[25] When a lawyer represents or seeks to represent a class of plaintiffs or defendants in a class-action lawsuit, unnamed members of the class are ordinarily not considered to be clients of the lawyer for purposes of applying paragraph (a)(1) of this Rule. Thus, the lawyer does not typically need to get the consent of such a person before representing a client suing the person in an unrelated matter. Similarly, a lawyer seeking to represent an opponent in a class action does not typically need the consent of an unnamed member of the class whom the lawyer represents in an unrelated matter.

Nonlitigation Conflicts

[26] Conflicts of interest under paragraphs (a)(1) and (a)(2) arise in contexts other than litigation. For a discussion of directly adverse conflicts in transactional matters, see Comment [7]. Relevant factors in determining whether there is significant potential for material limitation include the duration and intimacy of the lawyer's relationship with the client or clients involved, the functions being performed by the lawyer, the likelihood that disagreements will arise and the likely prejudice to the client from the conflict. The question is often one of proximity and degree. See Comment [8].

[27] For example, conflict questions may arise in estate planning and estate administration. A lawyer may be called upon to prepare wills for several family members, such as husband and wife, and, depending upon the circumstances, a conflict of interest may be present. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

[28] Whether a conflict is consentable depends on the circumstances. For example, a lawyer may not represent multiple parties to a negotiation whose

interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference in interest among them. Thus, a lawyer may seek to establish or adjust a relationship between clients on an amicable and mutually advantageous basis; for example, in helping to organize a business in which two or more clients are entrepreneurs, working out the financial reorganization of an enterprise in which two or more clients have an interest or arranging a property distribution in settlement of an estate. The lawyer seeks to resolve potentially adverse interests by developing the parties' mutual interests. Otherwise, each party might have to obtain separate representation, with the possibility of incurring additional cost, complication or even litigation. Given these and other relevant factors, the clients may prefer that the lawyer act for all of them.

Special Considerations in Common Representation

[29] In considering whether to represent multiple clients in the same matter, a lawyer should be mindful that if the common representation fails because the potentially adverse interests cannot be reconciled, the result can be additional cost, embarrassment and recrimination. Ordinarily, the lawyer will be forced to withdraw from representing all of the clients if the common representation fails. In some situations, the risk of failure is so great that multiple representation is plainly impossible. For example, a lawyer cannot undertake common representation of clients where contentious litigation or negotiations between them are imminent or contemplated. Moreover, because the lawyer is required to be impartial between commonly represented clients, representation of multiple clients is improper when it is unlikely that impartiality can be maintained. Generally, if the relationship between the parties has already assumed antagonism, the possibility that the clients' interests can be adequately served by common representation is not very good. Other relevant factors are whether the lawyer subsequently will represent both parties on a continuing basis and whether the situation involves creating or terminating a relationship between the parties.

[30] A particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality and the attorney-client privilege. With regard to the attorney-client privilege, the prevailing rule is that, as between commonly represented clients, the privilege does not attach. Hence, it must be assumed that if litigation eventuates between the clients, the privilege will not protect any such communications, and the clients should be so advised.

[31] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. The lawyer should, at the outset of the common

representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

[32] When seeking to establish or adjust a relationship between clients, the lawyer should make clear that the lawyer's role is not that of partisanship normally expected in other circumstances and, thus, that the clients may be required to assume greater responsibility for decisions than when each client is separately represented. Any limitations on the scope of the representation made necessary as a result of the common representation should be fully explained to the clients at the outset of the representation. See Rule 1.2(c).

[33] Subject to the above limitations, each client in the common representation has the right to loyal and diligent representation and the protection of Rule 1.9 concerning the obligations to a former client. The client also has the right to discharge the lawyer as stated in Rule 1.16.

Organizational Clients

[34] A lawyer who represents a corporation or other organization does not, by virtue of that representation, necessarily represent any constituent or affiliated organization, such as a parent or subsidiary. See Rule 1.13(a). Thus, the lawyer for an organization is not barred from accepting representation adverse to an affiliate in an unrelated matter, unless the circumstances are such that the affiliate should also be considered a client of the lawyer, there is an understanding between the lawyer and the organizational client that the lawyer will avoid representation adverse to the client's affiliates, or the lawyer's obligations to either the organizational client or the new client are likely to limit materially the lawyer's representation of the other client.

[35] A lawyer for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles might conflict. The lawyer may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the lawyer's resignation from the board and the possibility of the corporation's obtaining legal advice from another lawyer in such situations. If there is material risk that the dual role will compromise the lawyer's independence of professional judgment, the lawyer should not serve as a director or should cease to act as the corporation's lawyer when conflicts of interest arise. The lawyer should advise the other members of the board that in some circumstances matters discussed at board meetings while the lawyer is present in the capacity of director

might not be protected by the attorney-client privilege and that conflict of interest considerations might require the lawyer's recusal as a director or might require the lawyer and the lawyer's firm to decline representation of the corporation in a matter.

Rule 1.8. Conflict of Interest: Current Clients: Specific Rules

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) the client gives informed consent;

(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an

aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

(1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement; or

(2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith.

(i) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) acquire a lien authorized by law to secure the lawyer's fee or expenses; and

(2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (b) through (i) that applies to any one of them shall apply to all of them.

COMMENT

Business Transactions Between Client and Lawyer

[1] A lawyer's legal skill and training, together with the relationship of trust and confidence between lawyer and client, create the possibility of overreaching when the lawyer participates in a business, property or financial transaction with a client, for example, a loan or sales transaction or a lawyer investment on behalf of a client. The requirements of paragraph (a) must be met even when the transaction is not closely related to the subject matter of the representation, as when a lawyer drafting a will for a client learns that the client needs money for unrelated expenses and offers to make a loan to the client. The Rule applies to lawyers engaged in the sale of goods or services related to the practice of law, for example, the sale of title insurance or investment services to existing clients of the lawyer's legal practice. See Rule 5.7. It also applies to lawyers purchasing property from estates they represent. It does not apply to ordinary fee arrangements between client and lawyer, which are governed by Rule 1.5, although its requirements must be met when the lawyer accepts an interest in the client's business or other nonmonetary property as payment of all or part of a fee. In addition, the Rule does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities' services. In such transactions, the lawyer has no advantage in dealing with the client, and the

restrictions in paragraph (a) are unnecessary and impracticable.

[2] Paragraph (a)(1) requires that the transaction itself be fair to the client and that its essential terms be communicated to the client, in writing, in a manner that can be reasonably understood. Paragraph (a)(2) requires that the client also be advised, in writing, of the desirability of seeking the advice of independent legal counsel. It also requires that the client be given a reasonable opportunity to obtain such advice. Paragraph (a)(3) requires that the lawyer obtain the client's informed consent, in a writing signed by the client, both to the essential terms of the transaction and to the lawyer's role. When necessary, the lawyer should discuss both the material risks of the proposed transaction, including any risk presented by the lawyer's involvement, and the existence of reasonably available alternatives and should explain why the advice of independent legal counsel is desirable. See Rule 1.0(e) (definition of informed consent).

[3] The risk to a client is greatest when the client expects the lawyer to represent the client in the transaction itself or when the lawyer's financial interest otherwise poses a significant risk that the lawyer's representation of the client will be materially limited by the lawyer's financial interest in the transaction. Here the lawyer's role requires that the lawyer must comply, not only with the requirements of paragraph (a), but also with the requirements of Rule 1.7. Under that Rule, the lawyer must disclose the risks associated with the lawyer's dual role as both legal adviser and participant in the transaction, such as the risk that the lawyer will structure the transaction or give legal advice in a way that favors the lawyer's interests at the expense of the client. Moreover, the lawyer must obtain the client's informed consent. In some cases, the lawyer's interest may be such that Rule 1.7 will preclude the lawyer from seeking the client's consent to the transaction.

[4] If the client is independently represented in the transaction, paragraph (a)(2) of this Rule is inapplicable, and the paragraph (a)(1) requirement for full disclosure is satisfied either by a written disclosure by the lawyer involved in the transaction or by the client's independent counsel. The fact that the client was independently represented in the transaction is relevant in determining whether the agreement was fair and reasonable to the client as paragraph (a)(1) further requires.

Use of Information Related to Representation

[5] Use of information relating to the representation to the disadvantage of the client violates the lawyer's duty of loyalty. Paragraph (b) applies when the information is used to benefit either the lawyer or a third person, such as another client or business associate of the lawyer. For example, if a lawyer learns that a client intends to purchase and develop several parcels of land, the lawyer may not use that information to purchase one of the parcels in competition with the client or to recommend that another client make such a purchase. The Rule does not prohibit uses that do not disadvantage the client. For example, a lawyer who learns a government agency's interpretation of trade legislation during the representation of one client may properly use that information to benefit other clients.

Paragraph (b) prohibits disadvantageous use of client information unless the client gives informed consent, except as permitted or required by these Rules. See Rules 1.2(d), 1.6, 1.9(c), 3.3, 4.1(b), 8.1 and 8.3.

Gifts to Lawyers

[6] A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If a client offers the lawyer a more substantial gift, paragraph (c) does not prohibit the lawyer from accepting it, although such a gift may be voidable by the client under the doctrine of undue influence, which treats client gifts as presumptively fraudulent. In any event, due to concerns about overreaching and imposition on clients, a lawyer may not suggest that a substantial gift be made to the lawyer or for the lawyer's benefit, except where the lawyer is related to the client as set forth in paragraph (c).

[7] If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance the client should have the detached advice that another lawyer can provide. The sole exception to this Rule is where the client is a relative of the donee.

[8] This Rule does not prohibit a lawyer from seeking to have the lawyer or a partner or associate of the lawyer named as executor of the client's estate or to another potentially lucrative fiduciary position. Nevertheless, such appointments will be subject to the general conflict of interest provision in Rule 1.7 when there is a significant risk that the lawyer's interest in obtaining the appointment will materially limit the lawyer's independent professional judgment in advising the client concerning the choice of an executor or other fiduciary. In obtaining the client's informed consent to the conflict, the lawyer should advise the client concerning the nature and extent of the lawyer's financial interest in the appointment, as well as the availability of alternative candidates for the position.

Literary Rights

[9] An agreement by which a lawyer acquires literary or media rights concerning the conduct of the representation creates a conflict between the interests of the client and the personal interests of the lawyer. Measures suitable in the representation of the client may detract from the publication value of an account of the representation. Paragraph (d) does not prohibit a lawyer representing a client in a transaction concerning literary property from agreeing that the lawyer's fee shall consist of a share in ownership in the property, if the arrangement conforms to Rule 1.5 and paragraphs (a) and (i).

Financial Assistance

[10] Lawyers may not subsidize law suits or administrative proceedings brought on behalf of their clients, including making or guaranteeing loans to their clients for living expenses, because to do so would encourage clients to pursue law suits that might not otherwise be brought and because such assistance gives lawyers too great a financial stake in the litigation. These dangers do not warrant a prohibition on a lawyer lending a client court costs and litigation expenses, including the expenses of medical examination and the costs of obtaining and

presenting evidence, because these advances are virtually indistinguishable from contingent fees and help ensure access to the courts. Similarly, an exception allowing lawyers representing indigent clients to pay court costs and litigation expenses regardless of whether these funds will be repaid is warranted.

Person Paying for a Lawyer's Services

[11] Lawyers are frequently asked to represent a client under circumstances in which a third person will compensate the lawyer, in whole or in part. The third person might be a relative or friend, an indemnitor (such as a liability insurance company) or a co-client (such as a corporation sued along with one or more of its employees). Because third-party payers frequently have interests that differ from those of the client, including interests in minimizing the amount spent on the representation and in learning how the representation is progressing, lawyers are prohibited from accepting or continuing such representations unless the lawyer determines that there will be no interference with the lawyer's independent professional judgment and there is informed consent from the client. See also Rule 5.4(c) (prohibiting interference with a lawyer's professional judgment by one who recommends, employs or pays the lawyer to render legal services for another).

[12] Sometimes, it will be sufficient for the lawyer to obtain the client's informed consent regarding the fact of the payment and the identity of the third-party payer. If, however, the fee arrangement creates a conflict of interest for the lawyer, then the lawyer must comply with Rule 1.7. The lawyer must also conform to the requirements of Rule 1.6 concerning confidentiality. Under Rule 1.7(a), a conflict of interest exists if there is significant risk that the lawyer's representation of the client will be materially limited by the lawyer's own interest in the fee arrangement or by the lawyer's responsibilities to the third-party payer (for example, when the third-party payer is a co-client). Under Rule 1.7(b), the lawyer may accept or continue the representation with the informed consent of each affected client, unless the conflict is nonconsentable under that paragraph. Under Rule 1.7(b), the informed consent must be confirmed in writing.

Aggregate Settlements

[13] Differences in willingness to make or accept an offer of settlement are among the risks of common representation of multiple clients by a single lawyer. Under Rule 1.7, this is one of the risks that should be discussed before undertaking the representation, as part of the process of obtaining the clients' informed consent. In addition, Rule 1.2(a) protects each client's right to have the final say in deciding whether to accept or reject an offer of settlement and in deciding whether to enter a guilty or nolo contendere plea in a criminal case. The rule stated in this paragraph is a corollary of both these Rules and provides that, before any settlement offer or plea bargain is made or accepted on behalf of multiple clients, the lawyer must inform each of them about all the material terms of the settlement, including what the other clients will receive or pay if the settlement or plea offer is accepted. See also Rule 1.0(e) (definition of informed consent). Lawyers representing a class of plaintiffs or

defendants, or those proceeding derivatively, may not have a full client-lawyer relationship with each member of the class; nevertheless, such lawyers must comply with applicable rules regulating notification of class members and other procedural requirements designed to ensure adequate protection of the entire class.

Limiting Liability and Settling Malpractice Claims

[14] Agreements prospectively limiting a lawyer's liability for malpractice are prohibited unless the client is independently represented in making the agreement because they are likely to undermine competent and diligent representation. Also, many clients are unable to evaluate the desirability of making such an agreement before a dispute has arisen, particularly if they are then represented by the lawyer seeking the agreement. This paragraph does not, however, prohibit a lawyer from entering into an agreement with the client to arbitrate legal malpractice claims, provided such agreements are enforceable and the client is fully informed of the scope and effect of the agreement. Nor does this paragraph limit the ability of lawyers to practice in the form of a limited-liability entity, where permitted by law, provided that each lawyer remains personally liable to the client for his or her own conduct and the firm complies with any conditions required by law, such as provisions requiring client notification or maintenance of adequate liability insurance. Nor does it prohibit an agreement in accordance with Rule 1.2 that defines the scope of the representation, although a definition of scope that makes the obligations of representation illusory will amount to an attempt to limit liability.

[15] Agreements settling a claim or a potential claim for malpractice are not prohibited by this Rule. Nevertheless, in view of the danger that a lawyer will take unfair advantage of an unrepresented client or former client, the lawyer must first advise such a person in writing of the appropriateness of independent representation in connection with such a settlement. In addition, the lawyer must give the client or former client a reasonable opportunity to find and consult independent counsel.

Acquiring Proprietary Interest in Litigation

[16] Paragraph (i) states the traditional general rule that lawyers are prohibited from acquiring a proprietary interest in litigation. Like paragraph (e), the general rule has its basis in common law champerty and maintenance and is designed to avoid giving the lawyer too great an interest in the representation. In addition, when the lawyer acquires an ownership interest in the subject of the representation, it will be more difficult for a client to discharge the lawyer if the client so desires. The Rule is subject to specific exceptions developed in decisional law and continued in these Rules. The exception for certain advances of the costs of litigation is set forth in paragraph (e). In addition, paragraph (i) sets forth exceptions for liens authorized by law to secure the lawyer's fees or expenses and contracts for reasonable contingent fees. The law of each jurisdiction determines which liens are authorized by law. These may include liens granted by statute, liens

originating in common law and liens acquired by contract with the client. When a lawyer acquires by contract a security interest in property other than that recovered through the lawyer's efforts in the litigation, such an acquisition is a business or financial transaction with a client and is governed by the requirements of paragraph (a). Contracts for contingent fees in civil cases are governed by Rule 1.5.

Client-Lawyer Sexual Relationships

[17] The relationship between lawyer and client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage. In addition, such a relationship presents a significant danger that, because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment. Moreover, a blurred line between the professional and personal relationships may make it difficult to predict to what extent client confidences will be protected by the attorney-client evidentiary privilege, since client confidences are protected by privilege only when they are imparted in the context of the client-lawyer relationship. Because of the significant danger of harm to client interests and because the client's own emotional involvement renders it unlikely that the client could give adequate informed consent, this Rule prohibits the lawyer from having sexual relations with a client regardless of whether the relationship is consensual and regardless of the absence of prejudice to the client.

[18] Sexual relationships that predate the client-lawyer relationship are not prohibited. Issues relating to the exploitation of the fiduciary relationship and client dependency are diminished when the sexual relationship existed prior to the commencement of the client-lawyer relationship. However, before proceeding with the representation in these circumstances, the lawyer should consider whether the lawyer's ability to represent the client will be materially limited by the relationship. See Rule 1.7(a)(2).

[19] When the client is an organization, paragraph (j) of this Rule prohibits a lawyer for the organization (whether inside counsel or outside counsel) from having a sexual relationship with a constituent of the organization who supervises, directs or regularly consults with that lawyer concerning the organization's legal matters.

Imputation of Prohibitions

[20] Under paragraph (k), a prohibition on conduct by an individual lawyer in paragraphs (b) through (i) also applies to all lawyers associated in a firm with the personally prohibited lawyer. For example, one lawyer in a firm may not solicit a substantial gift from a client of another member of the firm, even if the soliciting lawyer is not personally involved in the representation of the client, because the prohibition in paragraph (c) applies to all lawyers associated in the firm. The prohibitions set forth in paragraphs (a) and (j) are personal and are not applied to associated lawyers.

Rule 1.9. Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

COMMENT

[1] After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest and thus may not represent another client except in conformity with this Rule. Under this Rule, for example, a lawyer could not properly seek to rescind on behalf of a new client a contract drafted on behalf of the former client. So also a lawyer who has prosecuted an accused person could not properly represent the accused in a subsequent civil action against the government concerning the same transaction. Nor could a lawyer who has represented multiple clients in a matter represent one of the clients against the others in the same or a substantially related matter after a dispute arose among the clients in that matter, unless all affected clients give informed consent. See Comment [9]. Current and former government lawyers must comply with this Rule to the extent required by Rule 1.11.

[2] The scope of a "matter" for purposes of this Rule depends on the facts of a particular situation or transaction. The lawyer's involvement in a matter can also be a question of degree. When a lawyer has been directly involved in a specific transaction, subsequent representation of other clients with materially adverse interests in that transaction clearly is prohibited. On the other hand, a lawyer who recurrently handled a type of problem for a former client is not precluded from later representing another client in a factually distinct problem of that type even though the subsequent representation involves a position adverse to the prior

client. Similar considerations can apply to the reassignment of military lawyers between defense and prosecution functions within the same military jurisdictions. The underlying question is whether the lawyer was so involved in the matter that the subsequent representation can be justly regarded as a changing of sides in the matter in question.

[3] Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter. For example, a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce. Similarly, a lawyer who has previously represented a client in securing environmental permits to build a shopping center would be precluded from representing neighbors seeking to oppose rezoning of the property on the basis of environmental considerations; however, the lawyer would not be precluded, on the grounds of substantial relationship, from defending a tenant of the completed shopping center in resisting eviction for nonpayment of rent. Information that has been disclosed to the public or to other parties adverse to the former client ordinarily will not be disqualifying. Information acquired in a prior representation may have been rendered obsolete by the passage of time, a circumstance that may be relevant in determining whether two representations are substantially related. In the case of an organizational client, general knowledge of the client's policies and practices ordinarily will not preclude a subsequent representation; on the other hand, knowledge of specific facts gained in a prior representation that are relevant to the matter in question ordinarily will preclude such a representation. A former client is not required to reveal the confidential information learned by the lawyer in order to establish a substantial risk that the lawyer has confidential information to use in the subsequent matter. A conclusion about the possession of such information may be based on the nature of the services the lawyer provided the former client and information that would in ordinary practice be learned by a lawyer providing such services.

Lawyers Moving Between Firms

[4] When lawyers have been associated within a firm but then end their association, the question of whether a lawyer should undertake representation is more complicated. There are several competing considerations. First, the client previously represented by the former firm must be reasonably assured that the principle of loyalty to the client is not compromised. Second, the Rule should not be so broadly cast as to preclude other persons from having reasonable choice of legal counsel. Third, the Rule should not unreasonably hamper lawyers from forming new associations and taking on new clients after having left a previous association. In this connection, it should be recognized that today many lawyers practice in firms, that many lawyers to some degree limit their practice to one field or another, and that many move from one association to another several times in

their careers. If the concept of imputation were applied with unqualified rigor, the result would be radical curtailment of the opportunity of lawyers to move from one practice setting to another and of the opportunity of clients to change counsel.

[5] Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10(b) for the restrictions on a firm once a lawyer has terminated association with the firm.

[6] Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought.

[7] Independent of the question of disqualification of a firm, a lawyer changing professional association has a continuing duty to preserve confidentiality of information about a client formerly represented. See Rules 1.6 and 1.9(c).

[8] Paragraph (c) provides that information acquired by the lawyer in the course of representing a client may not subsequently be used or revealed by the lawyer to the disadvantage of the client. However, the fact that a lawyer has once served a client does not preclude the lawyer from using generally known information about that client when later representing another client.

[9] The provisions of this Rule are for the protection of former clients and can be waived if the client gives informed consent, which consent must be confirmed in writing under paragraphs (a) and (b). See Rule 1.0(e). With regard to the effectiveness of an advance waiver, see Comment [22] to Rule 1.7. With regard to disqualification of a firm with which a lawyer is or was formerly associated, see Rule 1.10.

Rule 1.10. Imputation of Conflicts of Interest: General Rule

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by

the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

(e) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9 unless:

(1) the matter is not one in which the personally disqualified lawyer substantially participated;

(2) the personally disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom;

(3) the personally disqualified lawyer gives prompt written notice (which shall contain a general description of the personally disqualified lawyer's prior representation and the screening procedures to be employed) to the affected former clients and the former clients' current lawyers, if known to the personally disqualified lawyer, to enable the former clients to ascertain compliance with the provisions of this Rule; and

(4) the personally disqualified lawyer and the partners of the firm with which the personally disqualified lawyer is now associated reasonably believe that the steps taken to accomplish the screening of material information are likely to be effective in preventing material information from being disclosed to the firm and its client.

COMMENT

GENERAL RULE

Definition of "Firm"

[1] For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. See Rule 1.0(c). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0, Comments [2] - [4].

Principles of Imputed Disqualification

[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who

practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from one firm to another, the situation is governed by Rules 1.9(b) and 1.10(b).

[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

[4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0(k) and 5.3.

[5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

[6] Rule 1.10(c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7(b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the future, see Rule 1.7, Comment [22]. For a definition of informed consent, see Rule 1.0(e).

[7] Where a lawyer has joined a private firm after having represented the

government, imputation is governed by Rule 1.11(b) and (c), not this Rule. Under Rule 1.11(d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer.

[8] Where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (k) of that Rule, and not this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

Rule 1.11. Special Conflicts of Interest for Former and Current Government Officers and Employees

(a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) is subject to Rule 1.9(c); and

(2) shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) the personally disqualified lawyer gives prompt written notice (which shall contain a general description of the personally disqualified lawyer's prior participation in the matter and the screening procedures to be employed), to the government agency to enable the government agency to ascertain compliance with the provisions of this Rule; and

(3) the personally disqualified lawyer and the partners of the firm with which the personally disqualified lawyer is now associated, reasonably believe that the steps taken to accomplish the screening of material information are likely to be effective in preventing material information from being disclosed to the firm and its client.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) is subject to Rules 1.7 and 1.9; and

(2) shall not:

(i) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing; or

(ii) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) As used in this Rule, the term "matter" includes:

(1) any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties, and

(2) any other matter covered by the conflict of interest rules of the appropriate government agency.

COMMENT

[1] A lawyer who has served or is currently serving as a public officer or employee is personally subject to the Rules of Professional Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7. In addition, such a lawyer may be subject to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule. See Rule 1.0(e) for the definition of informed consent.

[2] Paragraphs (a)(1), (a)(2) and (d)(1) restate the obligations of an individual lawyer who has served or is currently serving as an officer or employee of the government toward a former government or private client. Rule 1.10 is not applicable to the conflicts of interest addressed by this Rule. Rather, paragraph (b) sets forth a special imputation rule for former government lawyers that provides for screening and notice. Because of the special problems raised by imputation within a government agency, paragraph (d) does not impute the conflicts of a lawyer currently serving as an officer or employee of the government to other associated government officers or employees, although ordinarily it will be prudent to screen such lawyers.

[3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a lawyer is adverse to a former client and are thus designed not only to protect the former client, but also to prevent a lawyer from exploiting public office for the advantage of another client. For example, a lawyer who has pursued a claim on behalf of the government may not pursue the same claim on behalf of a later private client after the lawyer has left government service, except when authorized to do so

by the government agency under paragraph (a). Similarly, a lawyer who has pursued a claim on behalf of a private client may not pursue the claim on behalf of the government, except when authorized to do so by paragraph (d). As with paragraphs (a)(1) and (d)(1), Rule 1.10 is not applicable to the conflicts of interest addressed by these paragraphs.

[4] This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyer's government service. On the other hand, the rules governing lawyers presently or formerly employed by a government agency should not be so restrictive as to inhibit transfer of employment to and from the government. The government has a legitimate need to attract qualified lawyers as well as to maintain high ethical standards. Thus a former government lawyer is disqualified only from particular matters in which the lawyer participated personally and substantially. The provisions for screening and waiver in paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a deterrent against entering public service. The limitation of disqualification in paragraphs (a)(2) and (d)(2) to matters involving a specific party or parties, rather than extending disqualification to all substantive issues on which the lawyer worked, serves a similar function.

[5] When a lawyer has been employed by one government agency and then moves to a second government agency, it may be appropriate to treat that second agency as another client for purposes of this Rule, as when a lawyer is employed by a city and subsequently is employed by a federal agency. However, because the conflict of interest is governed by paragraph (d), the latter agency is not required to screen the lawyer as paragraph (b) requires a law firm to do. The question of whether two government agencies should be regarded as the same or different clients for conflict of interest purposes is beyond the scope of these Rules. See Rule 1.13 Comment [6].

[6] Paragraphs (b) and (c) contemplate a screening arrangement. See Rule 1.0(k) (requirements for screening procedures). These paragraphs do not prohibit a lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly relating the lawyer's compensation to the fee in the matter in which the lawyer is disqualified.

[7] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[8] Paragraph (c) operates only when the lawyer in question has knowledge of the information, which means actual knowledge; it does not operate with respect to information that merely could be imputed to the lawyer.

[9] Paragraphs (a) and (d) do not prohibit a lawyer from jointly representing a private party and a government agency when doing so is permitted by Rule 1.7 and is not otherwise prohibited by law.

[10] For purposes of paragraph (e) of this Rule, a "matter" may continue in another form. In determining whether two particular matters are the same, the lawyer should consider the extent to which the matters involve the same basic facts, the same or related parties, and the time elapsed.

Rule 1.12. Former Judge, Arbitrator, Mediator or Other Third-party Neutral

(a) Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk to a judge or other adjudicative officer may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(2) the personally disqualified lawyer gives prompt written notice (which shall contain a general description of the personally disqualified lawyer's prior participation in the matter and the screening procedures to be employed), to the parties and any appropriate tribunal, to enable the parties and the tribunal to ascertain compliance with the provisions of this Rule; and

(3) the personally disqualified lawyer and the partners of the firm with which the personally disqualified lawyer is now associated, reasonably believe that the steps taken to accomplish the screening of material information are likely to be effective in preventing material information from being disclosed to the firm and its client.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

COMMENT

[1] This Rule generally parallels Rule 1.11. The term "personally and

substantially" signifies that a judge who was a member of a multimember court, and thereafter left judicial office to practice law, is not prohibited from representing a client in a matter pending in the court, but in which the former judge did not participate. So also the fact that a former judge exercised administrative responsibility in a court does not prevent the former judge from acting as a lawyer in a matter where the judge had previously exercised remote or incidental administrative responsibility that did not affect the merits. Compare the Comment to Rule 1.11. The term "adjudicative officer" includes such officials as judges pro tempore, referees, special masters, hearing officers and other parajudicial officers, and also lawyers who serve as part-time judges. Paragraph III(B) of the Application Section of the Colorado Code of Judicial Conduct provides that a part-time judge "shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto." Rule 2.11(A)(5)(a) of the Colorado Code of Judicial Conduct requires a judge to disqualify himself or herself in a proceeding in which the judge served as a lawyer in the matter in controversy, or the judge was associated with a lawyer who participated substantially as a lawyer in the matter during such association. Although phrased differently from this Rule, those Rules correspond in meaning.

[2] Like former judges, lawyers who have served as arbitrators, mediators or other third-party neutrals may be asked to represent a client in a matter in which the lawyer participated personally and substantially. This Rule forbids such representation unless all of the parties to the proceedings give their informed consent, confirmed in writing. See Rule 1.0(b) and (e). Other law or codes of ethics governing third-party neutrals may impose more stringent standards of personal or imputed disqualification. See Rule 2.4.

[3] Although lawyers who serve as third-party neutrals do not have information concerning the parties that is protected under Rule 1.6, they typically owe the parties an obligation of confidentiality under law or codes of ethics governing third-party neutrals. Thus, paragraph (c) provides that conflicts of the personally disqualified lawyer will be imputed to other lawyers in a law firm unless the conditions of this paragraph are met.

[4] Requirements for screening procedures are stated in Rule 1.0(k). Paragraph (c) (1) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[5] Notice, including a description of the screened lawyer's prior representation and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

Rule 1.13. Organization as Client

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d), if

(1) despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to the information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

COMMENT

The Entity as the Client

[1] An organizational client is a legal entity, but it cannot act except through its officers, directors, employees, shareholders and other constituents. Officers, directors, employees and shareholders are the constituents of the corporate organizational client. The duties

defined in this Comment apply equally to unincorporated associations. "Other constituents" as used in this Comment means the positions equivalent to officers, directors, employees and shareholders held by persons acting for organizational clients that are not corporations.

[2] When one of the constituents of an organizational client communicates with the organization's lawyer in that person's organizational capacity, the communication is protected by Rule 1.6. Thus, by way of example, if an organizational client requests its lawyer to investigate allegations of wrongdoing, interviews made in the course of that investigation between the lawyer and the client's employees or other constituents are covered by Rule 1.6. This does not mean, however, that constituents of an organizational client are the clients of the lawyer. The lawyer may not disclose to such constituents information relating to the representation except for disclosures explicitly or impliedly authorized by the organizational client in order to carry out the representation or as otherwise permitted by Rule 1.6.

[3] When constituents of the organization make decisions for it, the decisions ordinarily must be accepted by the lawyer even if their utility or prudence is doubtful. Decisions concerning policy and operations, including ones entailing serious risk, are not as such in the lawyer's province. Paragraph (19) makes clear, however, that, when the lawyer knows that the organization is likely to be substantially injured by action of an officer or other constituent that violates a legal obligation to the organization or is in violation of law that might be imputed to the organization, the lawyer must proceed as is reasonably necessary in the best interest of the organization. As defined in Rule 1.0(f), knowledge can be inferred from circumstances, and a lawyer cannot ignore the obvious.

[4] In determining how to proceed under paragraph (b), the lawyer should give due consideration to the seriousness of the violation and its consequences, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters, and any other relevant considerations. Ordinarily, referral to a higher authority would be necessary. In some circumstances, however, it may be appropriate for the lawyer to ask the constituent to reconsider the matter; for example, if the circumstances involve a constituent's innocent misunderstanding of law and subsequent acceptance of the lawyer's advice, the lawyer may reasonably conclude that the best interest of the organization does not require that the matter be referred to higher authority. If a constituent persists in conduct contrary to the lawyer's advice, it will be necessary for the lawyer to take steps to have the matter reviewed by a higher authority in the organization. If the matter is of sufficient seriousness and importance or urgency to the organization, referral to higher authority in the organization may be necessary even if the lawyer has not communicated with the constituent. Any measures taken should, to the extent practicable, minimize the risk of revealing information relating to the representation to persons outside the organization. Even in circumstances where a lawyer is not obligated by Rule 1.13 to proceed, a lawyer may bring to the attention of an

organizational client, including its highest authority, matters that the lawyer reasonably believes to be of sufficient importance to warrant doing so in the best interest of the organization.

[5] Paragraph (b) also makes clear that when it is reasonably necessary to enable the organization to address the matter in a timely and appropriate manner, the lawyer must refer the matter to higher authority, including, if warranted by the circumstances, the highest authority that can act on behalf of the organization under applicable law. The organization's highest authority to whom a matter may be referred ordinarily will be the board of directors or similar governing body. However, applicable law may prescribe that under certain conditions the highest authority reposes elsewhere, for example, in the independent directors of a corporation.

Relation to Other Rules

[6] The authority and responsibility provided in this Rule are concurrent with the authority and responsibility provided in other Rules. In particular, this Rule does not limit or expand the lawyer's responsibility under Rules 1.8, 1.16, 3.3 or 4.1. Paragraph (c) of this Rule supplements Rule 1.6(b) by providing an additional basis upon which the lawyer may reveal information relating to the representation, but does not modify, restrict, or limit the provisions of Rule 1.6(b)(1) - (7). Under paragraph (c) the lawyer may reveal such information only when the organization's highest authority insists upon or fails to address threatened or ongoing action that is clearly a violation of law, and then only to the extent the lawyer reasonably believes necessary to prevent reasonably certain substantial injury to the organization. It is not necessary that the lawyer's services be used in furtherance of the violation, but it is required that the matter be related to the lawyer's representation of the organization. If the lawyer's services are being used by an organization to further a crime or fraud by the organization, Rules 1.6(b)(2), 1.6(b)(3) and 1.6(b)(4) may permit the lawyer to disclose confidential information. In such circumstances Rule 1.2(d) may also be applicable, in which event, withdrawal from the representation under Rule 1.16(a)(1) may be required.

[7] Paragraph (d) makes clear that the authority of a lawyer to disclose information relating to a representation in circumstances described in paragraph (c) does not apply with respect to information relating to a lawyer's engagement by an organization to investigate an alleged violation of law or to defend the organization or an officer, employee or other person associated with the organization against a client arising out of an alleged violation of law. This is necessary in order to enable organizational clients to enjoy the full benefits of legal counsel in conducting an investigation or defending against a claim.

[8] A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraph (b) or (c), or who withdraws in circumstances that require or permit the lawyer to take action under either of these paragraphs, must proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

Government Agency

[9] The duty defined in this Rule applies to governmental organizations. Defining precisely the identity of the client and prescribing the resulting obligations of such lawyers may be more difficult in the government context and is a matter beyond the scope of these Rules. See Scope [18]. Although in some circumstances the client may be a specific agency, it may also be a branch of government, such as the executive branch, or the government as a whole. For example, if the action or failure to act involves the head of a bureau, either the department of which the bureau is a part or the relevant branch of government may be the client for purposes of this Rule. Moreover, in a matter involving the conduct of government officials, a government lawyer may have authority under applicable law to question such conduct more extensively than that of a lawyer for a private organization in similar circumstances. Thus, when the client is a governmental organization, a different balance may be appropriate between maintaining confidentiality and assuring that the wrongful act is prevented or rectified, for public business is involved. In addition, duties of lawyers employed by the government or lawyers in military service may be defined by statutes and regulation. This Rule does not limit that authority. See Scope.

Clarifying the Lawyer's Role

[10] There are times when the organization's interest may be or become adverse to those of one or more of its constituents. In such circumstances the lawyer should advise any constituent, whose interest the lawyer finds adverse to that of the organization of the conflict or potential conflict of interest, that the lawyer cannot represent such constituent, and that such person may wish to obtain independent representation. Care must be taken to assure that the individual understands that, when there is such adversity of interest, the lawyer for the organization cannot provide legal representation for that constituent individual, and that discussions between the lawyer for the organization and the individual may not be privileged.

[11] Whether such a warning should be given by the lawyer for the organization to any constituent individual may turn on the facts of each case.

Dual Representation

[12] Paragraph (g) recognizes that a lawyer for an organization may also represent a principal officer or major shareholder.

Derivative Actions

[13] Under generally prevailing law, the shareholders or members of a corporation may bring suit to compel the directors to perform their legal obligations in the supervision of the organization. Members of unincorporated associations have essentially the same right. Such an action may be brought nominally by the organization, but usually is, in fact, a legal controversy over management of the organization.

[14] The question can arise whether counsel for the organization may defend such an action. The proposition that the organization is the lawyer's client does not alone resolve the issue. Most derivative actions are a normal incident of an organization's affairs, to be defended by the organization's lawyer like any other

suit. However, if the claim involves serious charges of wrongdoing by those in control of the organization, a conflict may arise between the lawyer's duty to the organization and the lawyer's relationship with the board. In those circumstances, Rule 1.7 governs who should represent the directors and the organization.

Rule 1.14. Client with Diminished Capacity

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

COMMENT

[1] The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from a diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client's own well-being. For example, children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions.

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.

[3] The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation,

the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client's interests foremost and, except for protective action authorized under paragraph (b), must to look to the client, and not family members, to make decisions on the client's behalf.

[4] If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward, and is aware that the guardian is acting adversely to the ward's interest, the lawyer may have an obligation to prevent or rectify the guardian's misconduct. See Rule 1.2(d).

Taking Protective Action

[5] If a lawyer reasonably believes that a client is at risk of substantial physical, financial or other harm unless action is taken, and that a normal client-lawyer relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measures could include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

[6] In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician.

[7] If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem, conservator or guardian is necessary to protect the client's interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. In many circumstances, however,

appointment of a legal representative may be more expensive or traumatic for the client than circumstances in fact require. Evaluation of such circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

Disclosure of the Client's Condition

[8] Disclosure of the client's diminished capacity could adversely affect the client's interests. For example, raising the question of diminished capacity could, in some circumstances, lead to proceedings for involuntary commitment. Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client. The lawyer's position in such cases is an unavoidably difficult one.

Emergency Legal Assistance

[9] In an emergency where the health, safety or a financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer would with respect to a client.

[10] A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as if dealing with a client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible. Normally, a lawyer would not seek compensation for such emergency actions taken.

Rule 1.15. Safekeeping Property

General Duties of Lawyers Regarding Property of Clients and Third Parties

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate trust account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such funds and other property of clients or third parties shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall, promptly or otherwise as permitted by law or by agreement with the client or third person, deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, promptly upon request by the client or third person, render a full accounting regarding such property.

(c) When in connection with a representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

Required Bank Accounts

(d) Every lawyer in private practice in this state shall maintain in a financial institution doing business in Colorado, in the lawyer's own name, or in the name of a partnership of lawyers, or in the name of an entity authorized pursuant to C.R.C.P. 265 of which the lawyer is a member, or in the name of the lawyer or entity by whom the lawyer is employed or with whom the lawyer is associated:

(1) A trust account or accounts, separate from any business and personal accounts and from any fiduciary accounts that the lawyer may maintain as executor, guardian, trustee, or receiver, or in any other fiduciary capacity, into which the lawyer shall deposit funds entrusted to the lawyer's care and any advance payment of fees that has not been earned or advance payment of expenses that have not been incurred. A lawyer shall not be required to maintain a trust account if the lawyer never receives such funds or payments; and,

(2) A business account or accounts into which all funds received for professional services shall be deposited. All business accounts, as well as all deposit slips and all checks drawn thereon, shall be prominently designated as a "professional account," an "office account," or an "operating account."

(e) With respect to trust accounts established pursuant to this Rule:

(1) One or more of the trust accounts may be a Colorado Lawyer Trust Account Foundation ("COLTAF") account or accounts, as described in Rule 1.15(h)(2). All COLTAF accounts shall be designated "COLTAF Trust Account."

(2) All such trust accounts, whether general or specific, as well as all deposits slips and checks drawn thereon, shall be prominently designated as a "trust account." Nothing herein shall prohibit any additional descriptive designation for a specific trust account.

(3) Trust accounts shall be maintained only in financial institutions doing business in Colorado that are approved by the Regulation Counsel based upon policy guidelines adopted by the Board of Trustees of the Colorado Attorneys' Fund for Client Protection. Regulation Counsel shall annually publish a list of such approved institutions. A financial institution shall be approved if it shall file with the Regulation Counsel an agreement, in a form provided, to report to the Regulation Counsel in the event any properly payable trust account instrument is presented against insufficient funds, irrespective of whether the instrument is honored; any such agreement shall apply to all branches of the financial institution and shall not be canceled except on thirty-days notice in writing to the Regulation Counsel. The agreement shall further provide that all reports made by the financial institution shall be in the following format: (1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; (2) in the case of an instrument that is presented against insufficient funds but which instrument is honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby. Such reports shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any; if an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment neagainst insufficient funds. In addition, each financial institution approved by the Regulation Counsel must cooperate with the COLTAF program and must offer a COLTAF account to any lawyer who wishes to open one. In addition to the reports specified above, approved financial institutions shall agree to cooperate fully with the Regulation Counsel and to produce any trust account or business account records on receipt of a subpoena therefore in connection with any proceeding pursuant to C.R.C.P. 251. Nothing herein shall preclude a financial institution from charging a lawyer or law firm for the reasonable cost of producing the reports and records required by this Rule, but such charges shall not be a transaction cost to be charged against funds payable to the COLTAF program. Every lawyer or law firm maintaining a trust account in this state shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements by financial institutions mandated by this Rule and shall indemnify and hold harmless the financial institution for its compliance with such reporting and production requirement. A financial institution shall be immune from suit arising out of its actions or omissions in reporting overdrafts or insufficient funds or producing documents under this Rule. The agreement entered into by a financial institution with the Regulation Counsel shall not be deemed to create a duty to exercise a standard of care and shall not constitute a contract for the benefit of any third parties that may sustain a loss as a result of lawyers overdrawing lawyer trust accounts.

(4) The name of institutions in which such accounts are maintained and identification numbers of each account shall be recorded on a statement filed with the annual attorney registration payment pursuant to C.R.C.P. 227(2). Such information shall be available for use in accordance with paragraph (j) of this Rule. For each COLTAF account, the statement shall indicate the account number, the name the account is under, and the depository institution.

Trust Account Requirements and Management; COLTAF Accounts

(f) All trust accounts shall be maintained in interest-bearing, insured depository accounts; provided, that with the consent of the client or third person whose funds are in the account, an account in which interest is paid to the client or third person need not be an insured depository account. All COLTAF accounts shall be insured depository accounts. For the purpose of this Rule, "insured depository accounts" shall mean government insured accounts at a regulated financial institution, on which withdrawals or transfers can be made on demand, subject only to any notice period which the institution is required to reserve by law or regulation.

(g) A lawyer may deposit funds reasonably sufficient to pay anticipated service charges or other fees for maintenance or operation of such account into trust accounts. Such funds shall be clearly identified in the lawyer's records of the account.

(h) COLTAF Accounts:

(1) Except as may be prescribed by subparagraph (2) below, interest earned on accounts in which the funds are deposited (less any deduction for service charges or fees of the depository institution) shall belong to the clients or third persons whose funds have been so deposited; and the lawyer or law firm shall have no right or claim to such interest.

(2) If the funds are not held in accounts with the interest paid to clients or third persons as provided in subsection (h)(1) of this Rule, a lawyer or law firm shall establish a COLTAF account, which is a pooled interest-bearing insured depository account for funds of clients or third persons that are nominal in amount or are expected to be held for a short period of time in compliance with the following provisions:

(a) No interest from such an account shall be payable to a lawyer or law firm.

(b) The account shall include funds of clients or third persons that are nominal in amount or are expected to be held for a short period of time with the intent that such funds not earn interest in excess of the reasonably estimated cost of establishing, maintaining and accounting for trust accounts for the benefit of such clients or third parties.

(c) A lawyer or law firm depositing funds in a COLTAF account shall direct the depository institution:

(i) To remit interest, net of service charges or fees, if any are charged, computed in accordance with the institution's standard accounting practice, at least quarterly, to COLTAF; and

(ii) To transmit with each remittance to COLTAF a statement showing the name of the lawyer or law firm on whose account the remittance is sent and the rate of interest applied.

(d) The provisions of this subparagraph (h)(2) shall not apply in those instances where it is not feasible to establish a trust account for the benefit of COLTAF for reasons beyond the control of the lawyer or law firm, such as the unavailability of a financial institution in the community that offers such an account.

(3) If a lawyer or law firm discovers that funds of any client or third person have mistakenly been held in a trust account for the benefit of COLTAF in a sufficient amount or for a sufficiently long time so that interest on the funds being held in such account exceeds the reasonably estimated cost of establishing, maintaining and accounting for a trust account for the benefit of such client or third person (including without limitation administrative costs

of the lawyer or law firm, bank service charges, and costs of preparing tax reports of such income to the client or third person) the lawyer or law firm shall request COLTAF to calculate and remit trust account interest already received by it to the lawyer or law firm for the benefit of such client or third person in accordance with written procedures that COLTAF shall publish and make available through its website and shall provide to any lawyer or law firm upon request.

(4) Information necessary to determine compliance or justifiable reasons for noncompliance with subparagraph (h)(2) shall be included in the annual attorney registration statement. COLTAF shall assist the Colorado Supreme Court in determining whether lawyers or law firms have complied in establishing the trust account required under subparagraph (h)(2). If it appears that a lawyer or law firm has not complied where it is feasible to do so, the matter may be referred to the Regulation Counsel for investigation and proceedings in accordance with C.R.C.P. 251.

(i) Management of Trust Accounts.

(1) ATM or Debit Cards. A lawyer shall not use any debit card or automated teller machine card to withdraw funds from a trust account.

(2) All trust account withdrawals and transfers shall be made only by a lawyer admitted to practice law in this state or by a person supervised by such lawyer and may be made only by authorized bank or wire transfer or by check payable to a named payee.

(3) Cash withdrawals and checks made payable to "Cash" are prohibited.

(4) Cancelled Checks. A lawyer shall request that the lawyer's trust account bank return to the lawyer, photo static or electronic images of cancelled checks written on the trust account. If the bank provides electronic images, the lawyer shall either maintain paper copies of the electronic images or maintain the electronic images in readily obtainable format.

(5) Persons Authorized to Sign. Only a lawyer admitted to practice law in this state or a person supervised by such lawyer shall be an authorized signatory on a trust account;

(6) Reconciliation of Trust Accounts. No less than quarterly, a lawyer or a person authorized by the lawyer shall reconcile the trust account records both as to individual clients and in the aggregate with the lawyer's trust account bank statement(s).

Required Accounting Records; Retention of Records; Availability of Records

(j) A lawyer, whether practicing as a sole practitioner, in a partnership, or through an entity authorized pursuant to C.R.C.P. 265, shall maintain in a current status and retain for a period of seven years after the event that they record:

(1) Appropriate receipt and disbursement records of all deposits in and withdrawals from all trust accounts and any other bank account that concerns the lawyer's practice of law, specifically identifying the date, payor and description of each item deposited as well as the date, payee, and purpose of each disbursement. All trust account monies intended for deposit shall be deposited intact without deductions or "cash out" from the deposit and the duplicate deposit slip that evidences the deposit must be sufficiently detailed to identify each item deposited;

(2) An appropriate record-keeping system identifying each separate person or entity for whom the lawyer holds money or property in trust, for all trust accounts, showing the payor

of all funds deposited in such accounts, the names and addresses of all persons for whom the funds are or were held, the amount of such funds, the description and amounts of charges or withdrawals from such accounts, and the names of all persons to whom any such funds were disbursed;

(3) Copies of all retainer and compensation agreements with clients (including written communications setting forth the basis or rate for the fees charged by the lawyer as required by Rule 1.5(b);

(4) Copies of all statements to clients showing the disbursement of funds to them or on their behalf;

(5) Copies of all bills issued to clients;

(6) Copies of all records showing payments to any persons, not in the lawyer's regular employ, for services rendered or performed; and

(7) All bank statements and photo static copies or electronic copies of all canceled checks.

(k) The financial books and other records required by this Rule shall be maintained in accordance with one or more of the following recognized accounting methods: the accrual method, the cash basis method, and the income tax method. All such accounting methods shall be consistently applied. Bookkeeping records may be maintained by computer provided they otherwise comply with this Rule and provided further that printed copies can be made on demand in accordance with this Rule. They shall be located at the principal Colorado office of each lawyer, partnership, professional corporation, or limited liability corporation.

(l) Dissolutions and Departures. Upon the dissolution of a law firm, the lawyers in the lawfirm shall make arrangements for the maintenance or disposition of records and client files in accordance with subsection (j) of this Rule and Rule 1.16A. Upon the departure of a lawyer from a law firm, the departing lawyer and the lawyers in the law firm shall make appropriate arrangements for the maintenance or disposition of records and client files in accordance with subsection (j) of this Rule and Rule 1.16A.

(m) Availability Of Records. Any of the records required to be kept by this Rule shall be produced in response to a subpoena duces tecum issued by the Regulation Counsel in connection with proceedings pursuant to C.R.C.P. 251. When so produced, all such records shall remain confidential except for the purposes of the particular proceeding and their contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege of the lawyer's client.

COMMENT

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box except when some other form of safekeeping is warranted by special circumstances. "Property" generally refers to jewelry and other valuables entrusted to the lawyer by the client, as well as documents having intrinsic value or directly affecting valuable rights, such as securities, negotiable instruments, deeds, and wills. All property that is the property of clients or third persons should be kept separate

from the lawyer's business and personal property and, if monies, in one or more trust accounts.

[2] Trust accounts containing funds of clients or third persons held in connection with a representation must be interest-bearing for the benefit of the client or third person or for the benefit of the Colorado Lawyer Trust Account Foundation where the funds are nominal in amount or expected to be held for a short period of time. A lawyer should exercise good faith judgment in determining initially whether funds are of such nominal amount or are expected to be held by the lawyer for such a short period of time that the funds should not be placed in an interest-bearing account for the benefit of the client or third person. The lawyer should also consider such other factors as (i) the costs of establishing and maintaining the account, service charges, accounting fees, and tax report procedures; (ii) the nature of the transaction(s) involved; and (iii) the likelihood of delay in the relevant proceedings. A lawyer should review at reasonable intervals whether changed circumstances require further action respecting the deposit of such funds, including without limitation the action described in subparagraph 1.15(h)(3).

[3] Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

[4] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[5] Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party.

[6] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction. See Rule 1.16(d) for standards applicable to retention of client papers.

[7] A "client's security fund" provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer should participate.

[8] It is to be noted that the duty to keep separate from the lawyer's own property any property in which any other person claims an interest exists whether or not there is a dispute as to ownership of the property. Likewise, although the second sentence of Rule 1.15(c) deals specifically with disputed ownership, the

first sentence of that provision--requiring some form of accounting--applies even if there is no dispute as to ownership. For example, if the lawyer receives a settlement check made payable jointly to the lawyer and the lawyer's client, covering both the lawyer's fee and the client's recovery, the lawyer must provide an accounting to the client before taking the lawyer's fee from the joint funds. Typically the check will be deposited in the lawyer's trust account and, following an accounting to the client with respect to the fee, the lawyer will "sever" the fee by withdrawing the amount of the fee from the trust account and depositing it in the lawyer's operating account.

Rule 1.16. Declining or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

COMMENT

[1] A lawyer should not accept representation in a matter unless it can be performed competently, promptly, without improper conflict of interest and to completion. Ordinarily, a representation in a matter is completed when the agreed-upon assistance has been concluded. See Rules 1.2(c) and 6.5. See also Rule 1.3, Comment [4].

Mandatory Withdrawal

[2] A lawyer ordinarily must decline or withdraw from representation if the client demands that the lawyer engage in conduct that is illegal or violates the Rules of Professional Conduct or other law. The lawyer is not obliged to decline or withdraw simply because the client suggests such a course of conduct; a client may make such a suggestion in the hope that a lawyer will not be constrained by a professional obligation.

[3] When a lawyer has been appointed to represent a client, withdrawal ordinarily requires approval of the appointing authority. See also Rule 6.2. Similarly, court approval or notice to the court is often required by applicable law before a lawyer withdraws from pending litigation. Difficulty may be encountered if withdrawal is based on the client's demand that the lawyer engage in unprofessional conduct. The court may request an explanation for the withdrawal, while the lawyer may be bound to keep confidential the facts that would constitute such an explanation. The lawyer's statement that professional considerations require termination of the representation ordinarily should be accepted as sufficient. Lawyers should be mindful of their obligations to both clients and the court under Rules 1.6 and 3.3.

Discharge

[4] A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services. Where future dispute about the withdrawal may be anticipated, it may be advisable to prepare a written statement reciting the circumstances.

[5] Whether a client can discharge appointed counsel may depend on applicable law. A client seeking to do so should be given a full explanation of the consequences. These consequences may include a decision by the appointing authority that appointment of successor counsel is unjustified, thus requiring self-representation by the client.

[6] If the client has severely diminished capacity, the client may lack the legal capacity to discharge the lawyer, and in any event the discharge may be seriously adverse to the client's interests. The lawyer should make special effort to help the client consider the consequences and may take reasonably necessary protective action as provided in Rule 1.14.

Permissive Withdrawal

[7] A lawyer may withdraw from representation in some circumstances. The lawyer has the option to withdraw if it can be accomplished without material adverse effect on the client's interests. Withdrawal is also justified if the client persists in a course of action that the lawyer reasonably believes is criminal or fraudulent, for a lawyer is not required to be associated with such conduct even if the lawyer does

not further it. Withdrawal is also permitted if the lawyer's services were misused in the past even if that would materially prejudice the client. The lawyer may also withdraw where the client insists on taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

[8] A lawyer may withdraw if the client refuses to abide by the terms of an agreement relating to the representation, such as an agreement concerning fees or court costs or an agreement limiting the objectives of the representation.

Assisting the Client upon Withdrawal

[9] Even if the lawyer has been unfairly discharged by the client, a lawyer must take all reasonable steps to mitigate the consequences to the client. The lawyer may retain papers as security for a fee only to the extent permitted by law. See Rule 1.15.

Rule 1.16A. Client File Retention

(a) A lawyer in private practice shall retain a client's files respecting a matter unless:

(1) the lawyer delivers the file to the client or the client authorizes destruction of the file in a writing signed by the client and there are no pending or threatened legal proceedings known to the lawyer that relate to the matter; or

(2) the lawyer has given written notice to the client of the lawyer's intention to destroy the file on or after a date stated in the notice, which date shall not be less than thirty days after the date of the notice, and there are no pending or threatened legal proceedings known to the lawyer that relate to the matter.

(b) At any time following the expiration of a period of ten years following the termination of the representation in a matter, a lawyer may destroy a client's files respecting the matter without notice to the client, provided there are no pending or threatened legal proceedings known to the lawyer that relate to the matter and the lawyer has not agreed to the contrary.

(c) Notwithstanding paragraphs (a) and (b) above, a lawyer in a criminal matter shall retain a client's file for the following time periods:

(1) for the life of the client, if the matter resulted in a conviction and a sentence of death, life without parole, or an indeterminate sentence, including a sentence pursuant to the Colorado Sex Offender Lifetime Supervision Act of 1998, 18-1.3-1001 et seq., C.R.S.

(2) for eight years from the date of sentencing, if the matter resulted in a conviction for any other felony and the conviction and/or sentence was appealed;

(3) for five years from the date of sentencing, if the matter resulted in a conviction for any other felony and neither the conviction nor the sentence was appealed.

(d) A lawyer may satisfy the notice requirements of paragraph (a)(2) of this Rule by establishing a written file retention policy consistent with this Rule and by providing a notice of the file retention policy to the client in a fee agreement or a in writing delivered to the client not later than thirty days before destruction of the client's file or incorporated into a fee agreement.

(e) This Rule does not supersede or limit a lawyer's obligations to retain a client's file that

are imposed by law, court order, or rules of a tribunal.

COMMENT

[1] Rule 1.16A is not intended to impose an obligation on a lawyer to preserve documents that the lawyer would not normally preserve, such as multiple copies or drafts of the same document. A client's files, within the meaning of Rule 1.16A, consist of those things, such as papers and electronic data, relating to a matter that the lawyer would usually maintain in the ordinary course of practice. A lawyer's obligations with respect to client "property" are distinct. Those obligations are addressed in Rules 1.16(d), 1.15(a) and 1.15(b). "Property" generally refers to jewelry and other valuables entrusted to the lawyer by the client, as well as documents having intrinsic value or directly affecting valuable rights, such as securities, negotiable instruments, deeds, and wills.

[2] A lawyer may comply with Rule 1.16A by maintaining a client's files in, or converting the file to, electronic form, provided the lawyer is capable of producing a paper version if necessary. Rule 1.16A does not require multiple lawyers in the same law firm to retain duplicate client files or to retain a unitary file located in one place. "Law firm" is defined in Rule 1.0 to include lawyers employed in a legal services organization or the legal department of a corporation or other organization. Rule 5.1(a) addresses the responsibility of a partner in a law firm to "make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct." Generally, lawyers employed by a private corporation or other entity as in-house counsel represent such corporation or entity as employees and the client's files are considered to be in the possession of the client and not the lawyer, such that Rule 1.16A would be inapplicable. Where lawyers are employed as public defenders or by a legal services organization or a government agency to represent third parties under circumstances where the third-party client's files are considered to be files and records of the organization or agency, the lawyer must take reasonable measures to ensure that the client's files are maintained by the organization or agency in accordance with this rule.

[3] Rule 1.16A does not supersede obligations imposed by other law, court order or rules of a tribunal. The maintenance of law firm financial and accounting records covered by Rule 1.15(a) and 1.15(j) is governed exclusively by those rules. Similarly, Rule 1.16A does not supersede specific retention requirements imposed by other rules, such as Rule 5.5(d)(2) (two-year retention of written notification to client of utilization of services of suspended or disbarred lawyer), Rule 4, Chapter 23.3 C.R.C.P. (six-year retention of contingent fee agreement and proof of mailing following completion or settlement of the case) and C.R.C.P. 121, 1-26(7) (two year retention of signed originals of e-filed documents). A document may be subject to more than one retention requirement, in which case the lawyer should retain the document for the longest applicable period. Rule 1.16A

does not prohibit a lawyer from maintaining a client's files beyond the periods specified in the Rule.

[4] A lawyer may not destroy a client's file when the lawyer has knowledge of pending or threatened proceedings relating to the matter. The Rule does not affect a lawyer's obligations under Rule 1.16(d) with respect to the surrender of papers and property to which the client is entitled upon termination of the representation. A client's receipt of papers forwarded from time to time by the lawyer during the course of the representation does not alleviate the lawyer's obligations under Rule 1.16A.

[5] The destruction of a client's files under paragraph (a) of Rule 16A is subject to two sets of preconditions. First, the lawyer must have given written notice to the client of the lawyer's intention to destroy the files on or after a date certain, which date is not less than thirty days after the date the notice was given or the client has authorized the destruction of the files in a writing signed by the client. As provided in paragraph (d), the notice requirement in paragraph (a) can be satisfied by timely giving the client a written statement of the applicable file retention policy; for example, that policy could be contained in a written fee agreement. A lawyer should make reasonable efforts to locate a client for purposes of giving written notice when such notice was not provided during the representation. If the lawyer is unable to locate the client, written notice sent to the client's last known address is sufficient under paragraph (a) Rule 1.16A. Second, the lawyer may not destroy the files if the lawyer knows that there are legal proceedings pending or threatened that relate to the matter for which the lawyer created the files, if the file is subject to paragraph (c) of this Rule, or if the lawyer has agreed otherwise. If these preconditions are satisfied, the lawyer may destroy the files in a manner consistent with the lawyer's continuing obligation to maintain the confidentiality of information relating to the representation under Rules 1.6 and 1.9. Nothing in this Rule is intended to mandate that a lawyer destroy a file in the absence of a client's instruction to do so. Notwithstanding a client's instruction to destroy or return a file, a lawyer may retain a copy of the file or any document in the file.

Rule 1.17. Sale of Law Practice

A lawyer or a law firm may sell or purchase a law practice, or an area of practice, including good will, if the following conditions are satisfied:

(a) the seller ceases to engage in the private practice of law in Colorado, or in the area of practice in Colorado that has been sold;

(b) the entire practice, or the entire area of practice, is sold to one or more lawyers or law firms;

(c) the seller gives written notice to each of the seller's clients regarding:

(1) the proposed sale;

(2) the client's right to retain other counsel or to take possession of the file; and

(3) the fact that the client's consent to the transfer of the client's files will be presumed

if the client does not take any action or does not otherwise object within sixty (60) days of mailing of the notice to the client at the client's last known address; and

(d) the fees charged clients shall not be increased by reason of the sale.

COMMENT

[1] The practice of law is a profession, not merely a business. Clients are not commodities that can be purchased and sold at will. Pursuant to this Rule, when a lawyer or an entire firm ceases to practice, or ceases to practice in an area of law, and other lawyers or firms take over the representation, the selling lawyer or firm may obtain compensation for the reasonable value of the practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

Termination of Practice by the Seller

[2] The requirement that all of the private practice, or all of an area of practice, be sold is satisfied if the seller in good faith makes the entire practice, or the area of practice, available for sale to the purchasers. The fact that a number of the seller's clients decide not to be represented by the purchasers but take their matters elsewhere, therefore, does not result in a violation. Return to private practice as a result of an unanticipated change in circumstances does not necessarily result in a violation. For example, a lawyer who has sold the practice to accept an appointment to judicial office does not violate the requirement that the sale be attendant to cessation of practice if the lawyer later resumes private practice upon being defeated in a contested or a retention election for the office or resigns from a judiciary position.

[3] The requirement that the seller cease to engage in the private practice of law does not prohibit employment as a lawyer on the staff of a public agency or a legal services entity that provides legal services to the poor, or as in-house counsel to a business.

[4] The Rule permits a sale of an entire practice attendant upon retirement from the private practice of law within the jurisdiction. Its provisions, therefore, accommodate the lawyer who sells the practice upon the occasion of moving to another state.

[5] This Rule also permits a lawyer or law firm to sell an area of practice. If an area of practice is sold and the lawyer remains in the active practice of law, the lawyer must cease accepting any matters in the area of practice that has been sold, either as counsel or co-counsel or by assuming joint responsibility for a matter in connection with the division of a fee with another lawyer as would otherwise be permitted by Rule 1.5(d). For example, a lawyer with a substantial number of estate planning matters and a substantial number of probate administration cases may sell the estate planning portion of the practice but remain in the practice of law by concentrating on probate administration; however, that practitioner may not thereafter accept any estate planning matters. Although a lawyer who leaves a jurisdiction or geographical area typically would sell the entire practice, this Rule permits the lawyer to limit the sale to one or more areas of the practice, thereby preserving the lawyer's right to continue

practice in the areas of the practice that were not sold.

Sale of Entire Practice or Entire Area of Practice

[6] The Rule requires that the seller's entire practice, or an entire area of practice, be sold. The prohibition against sale of less than an entire practice area protects those clients whose matters are less lucrative and who might find it difficult to secure other counsel if a sale could be limited to substantial fee-generating matters. The purchasers are required to undertake all client matters in the practice or practice area, subject to client consent. This requirement is satisfied, however, even if a purchaser is unable to undertake a particular client matter because of a conflict of interest.

Client Confidences, Consent and Notice

[7] Negotiations between seller and prospective purchaser prior to disclosure of information relating to a specific representation of an identifiable client no more violate the confidentiality provisions of Rule 1.6 than do preliminary discussions concerning the possible association of another lawyer or mergers between firms, with respect to which client consent is not required. Providing the purchaser access to client-specific information relating to the representation and to the file, however, requires client consent. The Rule provides that before such information can be disclosed by the seller to the purchaser written notice must be mailed to the client at the client's last known address. The notice must include the identity of the purchaser, and the client must be told that the decision to consent or make other arrangements must be made within 60 days of the mailing of the notice. If nothing is heard from the client within that time, consent to the sale is presumed.

[8] [No Colorado comment.]

[9] All the elements of client autonomy, including the client's absolute right to discharge a lawyer and transfer the representation to another, survive the sale of the practice or area of practice.

Fee Arrangements Between Client and Purchaser

[10] The sale may not be financed by increases in fees charged the clients of the practice. Existing agreements between the seller and the client as to fees and the scope of the work must be honored by the purchaser.

Other Applicable Ethical Standards

[11] Lawyers participating in the sale of a law practice or a practice area are subject to the ethical standards applicable to involving another lawyer in the representation of a client. These include, for example, the seller's obligation to exercise competence in identifying a purchaser qualified to assume the practice and the purchaser's obligation to undertake the representation competently (see Rule 1.1); the obligation to avoid disqualifying conflicts, and to secure the client's informed consent for those conflicts that can be agreed to (see Rule 1.7 regarding conflicts and Rule 1.0(e) for the definition of informed consent); and the obligation to protect information relating to the representation (see Rules 1.6 and 1.9).

[12] If approval of the substitution of the purchasing lawyer for the selling lawyer is required by the rules of any tribunal in which a matter is pending, such approval must be obtained before the

matter can be included in the sale (see Rule 1.16).

Applicability of the Rule

[13] This Rule applies to the sale of a law practice by representatives of a deceased, disabled or disappeared lawyer. Thus, the seller may be represented by a non-lawyer representative not subject to these Rules. Since, however, no lawyer may participate in a sale of a law practice which does not conform to the requirements of this Rule, the representatives of the seller as well as the purchasing lawyer can be expected to see to it that they are met.

[14] Admission to or retirement from a law partnership or professional association, retirement plans and similar arrangements, and a sale of tangible assets of a law practice, do not constitute a sale or purchase governed by this Rule.

[15] This Rule does not apply to the transfers of legal representation between lawyers when such transfers are unrelated to the sale of a practice or an area of practice.

Rule 1.18. Duties to Prospective Client

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to the prospective client, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing; or

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

COMMENT

[1] Prospective clients, like clients, may disclose information to a lawyer,

place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's discussions with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] Not all persons who communicate information to a lawyer are entitled to protection under this Rule. A person who communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, is not a "prospective client" within the meaning of paragraph (a).

[3] It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit the initial interview to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

[5] A lawyer may condition conversations with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit the lawyer from representing a different client in the matter. See Rule 1.0(e) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

[6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

[7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule

1.0(k) (requirements for screening procedures). Paragraph (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[8] Notice, including a general description of the subject matter about which the lawyer was consulted, and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[9] For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see Rule 1.15.

COUNSELOR

Rule 2.1. Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation. In a matter involving or expected to involve litigation, a lawyer should advise the client of alternative forms of dispute resolution that might reasonably be pursued to attempt to resolve the legal dispute or to reach the legal objective sought.

COMMENT

Scope of Advice

[1] A client is entitled to straightforward advice expressing the lawyer's honest assessment. Legal advice often involves unpleasant facts and alternatives that a client may be disinclined to confront. In presenting advice, a lawyer endeavors to sustain the client's morale and may put advice in as acceptable a form as honesty permits. However, a lawyer should not be deterred from giving candid advice by the prospect that the advice will be unpalatable to the client.

[2] Advice couched in narrow legal terms may be of little value to a client, especially where practical considerations, such as cost or effects on other people, are predominant. Purely technical legal advice, therefore, can sometimes be inadequate. It is proper for a lawyer to refer to relevant moral and ethical considerations in giving advice. Although a lawyer is not a moral advisor as such, moral and ethical considerations impinge upon most legal questions and may decisively influence how the law will be applied.

[3] A client may expressly or impliedly ask the lawyer for purely technical advice. When such a request is made by a client experienced in legal matters, the lawyer may accept it at face value. When such a request is made by a client inexperienced in legal matters, however, the lawyer's responsibility as advisor may include indicating that more may be involved than strictly legal considerations.

[4] Matters that go beyond strictly

legal questions may also be in the domain of another profession. Family matters can involve problems within the professional competence of psychiatry, clinical psychology or social work; business matters can involve problems within the competence of the accounting profession or of financial specialists. Where consultation with a professional in another field is itself something a competent lawyer would recommend, the lawyer should make such a recommendation. At the same time, a lawyer's advice at its best often consists of recommending a course of action in the face of conflicting recommendations of experts.

Offering Advice

[5] In general, a lawyer is not expected to give advice until asked by the client. However, when a lawyer knows that a client proposes a course of action that is likely to result in substantial adverse legal consequences to the client, the lawyer's duty to the client under Rule 1.4 may require that the lawyer offer advice if the client's course of action is related to the representation. Similarly, when a matter is likely to involve litigation, it may be necessary under Rule 1.4 to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. A lawyer ordinarily has no duty to initiate investigation of a client's affairs or to give advice that the client has indicated is unwanted, but a lawyer may initiate advice to a client when doing so appears to be in the client's interest.

Rule 2.2. Intermediary

Repealed April 12, 2007, effective January 1, 2008.

Rule 2.3. Evaluation for Use by Third Persons

(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.

(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

COMMENT

Definition

[1] An evaluation may be performed at the client's direction or when impliedly authorized in order to carry out the representation. See Rule 1.2. Such an evaluation may be for the primary purpose of establishing information for the benefit of third parties; for example, an opinion concerning the title of property rendered at the behest of a vendor for the information of a prospective purchaser, or at the behest of a borrower for the information of a

prospective lender. In some situations, the evaluation may be required by a government agency; for example, an opinion concerning the legality of the securities registered for sale under the securities laws. In other instances, the evaluation may be required by a third person, such as a purchaser of a business.

[2] A legal evaluation should be distinguished from an investigation of a person with whom the lawyer does not have a client-lawyer relationship. For example, a lawyer retained by a purchaser to analyze a vendor's title to property does not have a client-lawyer relationship with the vendor. So also, an investigation into a person's affairs by a government lawyer, or by special counsel employed by the government, is not an evaluation as that term is used in this Rule. The question is whether the lawyer is retained by the person whose affairs are being examined. When the lawyer is retained by that person, the general rules concerning loyalty to client and preservation of confidences apply, which is not the case if the lawyer is retained by someone else. For this reason, it is essential to identify the person by whom the lawyer is retained. This should be made clear not only to the person under examination, but also to others to whom the results are to be made available.

Duties Owed to Third Person and Client

[3] When the evaluation is intended for the information or use of a third person, a legal duty to that person may or may not arise. That legal question is beyond the scope of this Rule. However, since such an evaluation involves a departure from the normal client-lawyer relationship, careful analysis of the situation is required. The lawyer must be satisfied as a matter of professional judgment that making the evaluation is compatible with other functions undertaken in behalf of the client. For example, if the lawyer is acting as advocate in defending the client against charges of fraud, it would normally be incompatible with that responsibility for the lawyer to perform an evaluation for others concerning the same or a related transaction. Assuming no such impediment is apparent, however, the lawyer should advise the client of the implications of the evaluation, particularly the lawyer's responsibilities to third persons and the duty to disseminate the findings.

Access to and Disclosure of Information

[4] The quality of an evaluation depends on the freedom and extent of the investigation upon which it is based. Ordinarily a lawyer should have whatever latitude of investigation seems necessary as a matter of professional judgment. Under some circumstances, however, the terms of the evaluation may be limited. For example, certain issues or sources may be categorically excluded, or the scope of search may be limited by time constraints or the noncooperation of persons having relevant information. Any such limitations that are material to the evaluation should be described in the report. If after a lawyer has commenced an evaluation, the client refuses to comply with the terms upon which it was understood the evaluation was to have been made, the lawyer's obligations are determined by law, having reference to the terms of the client's agreement and the surrounding circumstances. In no circumstances is the lawyer permitted to knowingly make a

false statement of material fact or law in providing an evaluation under this Rule. See Rule 4.1.

Obtaining Client's Informed Consent

[5] Information relating to an evaluation is protected by Rule 1.6. In many situations, providing an evaluation to a third party poses no significant risk to the client; thus, the lawyer may be impliedly authorized to disclose information to carry out the representation. See Rule 1.6(a). Where, however, it is reasonably likely that providing the evaluation will affect the client's interests materially and adversely, the lawyer must first obtain the client's consent after the client has been adequately informed concerning the important possible effects on the client's interests. See Rules 1.6(a) and 1.0(e).

Financial Auditors' Requests for Information

[6] When a question concerning the legal situation of a client arises at the instance of the client's financial auditor and the question is referred to the lawyer, the lawyer's response may be made in accordance with procedures recognized in the legal profession. Such a procedure is set forth in the American Bar Association Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information, adopted in 1975.

Rule 2.4. Lawyer Serving as Third-party Neutral

(a) A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

(b) A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

COMMENT

[1] Alternative dispute resolution has become a substantial part of the civil justice system. Aside from representing clients in dispute-resolution processes, lawyers often serve as third-party neutrals. A third-party neutral is a person, such as a mediator, arbitrator, conciliator or evaluator, who assists the parties, represented or unrepresented, in the resolution of a dispute or in the arrangement of a transaction. Whether a third-party neutral serves primarily as a facilitator, evaluator or decision maker depends on the particular process that is either selected by the parties or mandated by a court.

[2] The role of a third-party neutral is not unique to lawyers, although, in some

court-connected contexts, only lawyers are allowed to serve in this role or to handle certain types of cases. In performing this role, the lawyer may be subject to court rules or other law that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals. Lawyer-neutrals may also be subject to various codes of ethics, such as the Code of Ethics for Arbitration in Commercial Disputes prepared by a joint committee of the American Bar Association and the American Arbitration Association or the Model Standards of Conduct for Mediators jointly prepared by the American Bar Association, the American Arbitration Association and the Society of Professionals in Dispute Resolution.

[3] Unlike nonlawyers who serve as third-party neutrals, lawyers serving in this role may experience unique problems as a result of differences between the role of a third-party neutral and a lawyer's service as a client representative. The potential for confusion is significant when the parties are unrepresented in the process. Thus, paragraph (b) requires a lawyer-neutral to inform unrepresented parties that the lawyer is not representing them. For some parties, particularly parties who frequently use dispute-resolution processes, this information will be sufficient. For others, particularly those who are using the process for the first time, more information will be required. Where appropriate, the lawyer should inform unrepresented parties of the important differences between the lawyer's role as third-party neutral and a lawyer's role as a client representative, including the inapplicability of the attorney-client evidentiary privilege. The extent of disclosure required under this paragraph will depend on the particular parties involved and the subject matter of the proceeding, as well as the particular features of the dispute-resolution process selected.

[4] A lawyer who serves as a third-party neutral subsequently may be asked to serve as a lawyer representing a client in the same matter. The conflicts of interest that arise for both the individual lawyer and the lawyer's law firm are addressed in Rule 1.12.

[5] Lawyers who represent clients in alternative dispute-resolution processes are governed by the Rules of Professional Conduct. When the dispute-resolution process takes place before a tribunal, as in binding arbitration (see Rule 1.0(m)), the lawyer's duty of candor is governed by Rule 3.3. Otherwise, the lawyer's duty of candor toward both the third-party neutral and other parties is governed by Rule 4.1.

ADVOCATE

Rule 3.1. Meritorious Claims and Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of

the case be established.

COMMENT

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. What is required of lawyers, however, is that they inform themselves about the facts of their clients' cases and the applicable law and determine that they can make good faith arguments in support of their clients' positions. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

[3] The lawyer's obligations under this Rule are subordinate to federal or state constitutional law that entitles a defendant in a criminal matter to the assistance of counsel in presenting a claim or contention that otherwise would be prohibited by this Rule.

Rule 3.2. Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

COMMENT

[1] Dilatory practices bring the administration of justice into disrepute. Although there will be occasions when a lawyer may properly seek a postponement for personal reasons, it is not proper for a lawyer to routinely fail to expedite litigation solely for the convenience of the advocates. Nor will a failure to expedite be reasonable if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar. The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client.

Rule 3.3. Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or witness called by the lawyer has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

COMMENT

[1] This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(m) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2] This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

Representations by a Lawyer

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters

asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(d), see the Comment to that Rule. See also the Comment to Rule 8.4(b).

Legal Argument

[4] Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(2), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

Offering Evidence

[5] Paragraph (a)(3) requires that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer must refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit or otherwise permit the witness to present the testimony that the lawyer knows is false.

[7] The duties stated in paragraphs (a) and (b) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment [9].

[8] The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances. See Rule 1.0(f). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the

lawyer cannot ignore an obvious falsehood.

[9] Although paragraph (a)(3) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [7].

Remedial Measures

[10] Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done--making a statement about the matter to the trier of fact, ordering a mistrial or perhaps nothing.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperates in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Preserving Integrity of Adjudicative Process

[12] Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or

concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so. Thus, paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.

Duration of Obligation

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Ex Parte Proceedings

[14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

Withdrawal

[15] Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

Rule 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or

(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) the person is a relative or an employee or other agent of a client and the lawyer is not prohibited by other law from making such a request; and

(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

COMMENT

[1] The procedure of the adversary system contemplates that the evidence in a case is to be marshaled competitively by the contending parties. Fair competition in the adversary system is secured by prohibitions against destruction or concealment of evidence, improperly influencing witnesses, obstructive tactics in discovery procedure, and the like.

[2] Documents and other items of evidence are often essential to establish a claim or defense. Subject to evidentiary privileges, the right of an opposing party, including the government, to obtain evidence through discovery or subpoena is an important procedural right. The exercise of that right can be frustrated if relevant material is altered, concealed or destroyed. Applicable law in many jurisdictions makes it an offense to destroy material for purpose of impairing its availability in a pending proceeding or one whose commencement can be foreseen. Falsifying evidence is also generally a criminal offense. Paragraph (a) applies to evidentiary material generally, including computerized information. Applicable law may permit a lawyer to take temporary possession of physical evidence of client crimes for the purpose of conducting a limited examination that will not alter or destroy material characteristics of the evidence. In such a case, applicable law may require the lawyer to turn the evidence over to the police or other prosecuting authority, depending on the circumstances.

[3] With regard to paragraph (b), it is not improper to pay an expert or non-expert's expenses or to compensate an expert witness on terms permitted by law. It is improper to pay any witness a contingent fee for testifying. A lawyer may reimburse a non-expert witness not only for expenses incurred in testifying but also for the reasonable value of the witness's

time expended in testifying and preparing to testify, so long as such reimbursement is not prohibited by law. The amount of such compensation must be reasonable based on all relevant circumstances, determined on a case-by-case basis.

[4] Paragraph (f) permits a lawyer to advise relatives and employees of a client to refrain from giving information to another party because the relatives or employees may identify their interests with those of the client. See also Rule 4.2. However, other law may preclude such a request. See Rule 16, Colorado Rules of Criminal Procedure.

Rule 3.5. Impartiality and Decorum of the Tribunal

A lawyer shall not:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order, or unless a judge initiates such a communication and the lawyer reasonably believes that the subject matter of the communication is within the scope of the judge's authority under a rule of judicial conduct;

(c) communicate with a juror or prospective juror after discharge of the jury if:

(1) the communication is prohibited by law or court order;

(2) the juror has made known to the lawyer a desire not to communicate;

(3) the communication involves misrepresentation, coercion, duress or harassment; or

(4) the communication is intended to or is reasonably likely to demean, embarrass, or criticize the jurors or their verdicts; or

(d) engage in conduct intended to disrupt a tribunal.

COMMENT

[1] Many forms of improper influence upon a tribunal are proscribed by criminal law. Others are specified in the Colorado Code of Judicial Conduct, with which an advocate should be familiar. A lawyer is required to avoid contributing to a violation of such provisions.

[2] During a proceeding a lawyer may not communicate ex parte with persons serving in an official capacity in the proceeding, such as judges, masters or jurors, subject to two exceptions: (1) when a law or court order authorizes the lawyer to engage in the communication, and (2) when a judge initiates an ex parte communication with the lawyer and the lawyer reasonably believes that the subject matter of the communication is within the scope of the judge's authority to engage in the communication under a rule of judicial conduct. Examples of ex parte communications authorized under the first exception are restraining orders, submissions made in camera by order of the judge, and applications for search warrants and wiretaps. *See also* Cmt. [5]. Colo. RPC 4.2 (discussing communications authorized by law or court order with persons represented by counsel in a matter). With respect to the

second exception, Rule 2.9(A)(1) of the Colorado Code of Judicial Conduct, for example, permits judges to engage in ex parte communications for scheduling, administrative, or emergency purposes not involving substantive matters, but only if "circumstances require it," "the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication," and "the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond." Code of Jud. Conduct, Rule 2.9(A)(1). See also Code of Judicial Conduct for United States Judges, Canon 3(A)(4)(b)("A judge may. . . (b) when circumstances require it, permit ex parte communication for scheduling, administrative, or emergency purposes, but only if the ex parte communication does not address substantive matters and the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication[.]"). The second exception does not authorize the lawyer to initiate such a communication. However, a judge will be deemed to have initiated a communication for purposes of this Rule if the judge or the court maintains a regular practice of allowing or requiring lawyers to contact the judge for administrative matters such as scheduling a hearing and the lawyer communicates in compliance with that practice. When a judge initiates a communication, the lawyer must discontinue the communication if it exceeds the judge's authority under the applicable rule of judicial conduct. For example, if a judge properly communicates ex parte with a lawyer about the scheduling of a hearing, pursuant to Rule 2.9(A)(1) of the Colorado Code of Judicial Conduct, but proceeds to discuss substantive matters, the lawyer has an obligation to discontinue the communication.

[3] A lawyer may on occasion want to communicate with a juror or prospective juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

[4] The advocate's function is to present evidence and argument so that the cause may be decided according to law. Refraining from abusive or obstreperous conduct is a corollary of the advocate's right to speak on behalf of litigants. A lawyer may stand firm against abuse by a judge but should avoid reciprocation; the judge's default is no justification for similar dereliction by an advocate. An advocate can present the cause, protect the record for subsequent review and preserve professional integrity by patient firmness no less effectively than by belligerence or theatrics.

[5] The duty to refrain from disruptive conduct applies to any proceeding of a tribunal, including a deposition. See Rule 1.0(m).

Rule 3.6. Trial Publicity

(a) A lawyer who is participating or has participated in the investigation or litigation of

a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a) and Rule 3.8(f), a lawyer may state:

(1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;

(2) information contained in a public record;

(3) that an investigation of a matter is in progress;

(4) the scheduling or result of any step in litigation;

(5) a request for assistance in obtaining evidence and information necessary thereto;

(6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(7) in a criminal case, in addition to subparagraphs (1) through (6):

(i) the identity, residence, occupation and family status of the accused;

(ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;

(iii) the fact, time and place of arrest; and

(iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a) and Rule 3.8(f), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

COMMENT

[1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

[2] Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation. Rule 3.4(c) requires compliance with such rules.

[3] The Rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the Rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates.

[4] Paragraph (b) identifies specific matters about which a lawyer's statements would not ordinarily be considered to present a substantial likelihood of material prejudice, and should not in any event be considered prohibited by the general prohibition of paragraph (a). Paragraph (b) is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a).

[5] There are, on the other hand, certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(1) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(2) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(3) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(4) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(5) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or

(6) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

[6] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

[7] Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they

are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

[8] See Rule 3.8(f) for additional duties of prosecutors in connection with extrajudicial statements about criminal proceedings.

Rule 3.7. Lawyer as Witness

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony relates to the nature and value of legal services rendered in the case; or

(3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

COMMENT

[1] Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

Advocate-Witness Rule

[2] The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

[3] To protect the tribunal, paragraph (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in paragraphs (a)(1) through (a)(3). Paragraph (a)(1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph (a)(2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence,

there is less dependence on the adversary process to test the credibility of the testimony.

[4] Apart from these two exceptions, paragraph (a)(3) recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The conflict of interest principles stated in Rules 1.7, 1.9 and 1.10 have no application to this aspect of the problem.

[5] Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, paragraph (b) permits the lawyer to do so except in situations involving a conflict of interest.

Conflict of Interest

[6] In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with Rules 1.7 or 1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer the representation involves a conflict of interest that requires compliance with Rule 1.7. This would be true even though the lawyer might not be prohibited by paragraph (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by paragraph (a)(3) might be precluded from doing so by Rule 1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether or not such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent, confirmed in writing. In some cases, the lawyer will be precluded from seeking the client's consent. See Rule 1.7. See Rule 1.0(b) for the definition of "confirmed in writing" and Rule 1.0(e) for the definition of "informed consent."

[7] Paragraph (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by paragraph (a). If, however, the testifying lawyer would also be disqualified by Rule 1.7 or Rule 1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by Rule 1.10 unless the client gives informed consent under the conditions stated in Rule 1.7.

Rule 3.8. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused unless such comments are permitted under Rule 3.6(b) or 3.6(c), and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule.

(g) When a prosecutor knows of new, credible and material evidence creating a reasonable probability that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall within a reasonable time:

(1) disclose that evidence to an appropriate court or prosecutorial authority, and

(2) if the judgment of conviction was entered by a court in which the prosecutor exercises prosecutorial authority

(A) disclose the evidence to the defendant, and

(B) if the defendant is not represented, move the court in which the defendant was convicted to appoint counsel to assist the defendant concerning the evidence.

(h) When a prosecutor knows of clear and convincing evidence establishing that a defendant was convicted in a court in which the prosecutor exercises prosecutorial authority, of an offense that the defendant did not commit, the prosecutor shall take steps in the appropriate court, consistent with applicable law, to set aside the conviction.

COMMENT

[1] A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, that guilt is decided upon the basis of sufficient evidence and that special precautions are taken to prevent and to address the conviction of innocent persons. The extent of mandated remedial action is a matter of debate and varies in different jurisdictions. Many jurisdictions have adopted the ABA Standards of Criminal Justice Relating to the Prosecution Function, which are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Competent representation of the sovereign may require a prosecutor to undertake some procedural and remedial measures as a matter of obligation. Applicable law may require other measures by the prosecutor and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

[2] In some jurisdictions, a defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not seek to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented defendants. Paragraph (c) does not apply, however, to a defendant appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of an uncharged suspect who has knowingly waived the rights to counsel and silence.

[3] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[3A] A prosecutor's duties following conviction are set forth in sections (g) and (h) of this rule.

[4] Paragraph (e) is intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship.

[5] Paragraph (f) supplements the prohibition in Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding, but does not limit the protection of Rule 3.6(b) or Rule 3.6(c). In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public condemnation of the accused. Nevertheless, a prosecutor shall not be subject to disciplinary action on the basis that the prosecutor's statement violated paragraph (f), if the statement was permitted by Rule 3.6(b) or Rule 3.6(c).

[6] Like other lawyers, prosecutors are subject to Rules 5.1 and 5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Paragraph (f) reminds the prosecutor of the importance of these obligations in connection with the

unique dangers of improper extrajudicial statements in a criminal case. In addition, paragraph (f) requires a prosecutor to exercise reasonable care to prevent persons assisting or associated with the prosecutor from making improper extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor. Ordinarily, the reasonable care standard will be satisfied if the prosecutor issues the appropriate cautions to law-enforcement personnel and other relevant individuals.

[7] When a prosecutor knows of new, credible and material evidence creating a reasonable likelihood that a person outside the prosecutor's jurisdiction was convicted of a crime that the person did not commit, paragraph (g) requires disclosure to the court or other prosecutorial authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. Consistent with the objectives of Rules 4.2 and 4.3, disclosure to a represented defendant must be made through the defendant's counsel, and, in the case of an unrepresented defendant, the prosecutor must take the affirmative step of making a request to a court for the appointment of counsel to assist the defendant in taking such legal measures as may be appropriate.

[7A] What constitutes "within a reasonable time" will vary according to the circumstances presented. When considering the timing of a disclosure, a prosecutor should consider all of the circumstances, including whether the defendant is subject to the death penalty, is presently incarcerated, or is under court supervision. The prosecutor should also consider what investigative resources are available to the prosecutor, whether the trial prosecutor who prosecuted the case is still reasonably available, what new investigation or testing is appropriate, and the prejudice to an on-going investigation.

[8] Under paragraph (h), once the prosecutor knows of clear and convincing evidence that the defendant was convicted of either an offense that the defendant did not commit or of an offense that involves conduct of others for which the defendant is legally accountable (*see* C.R.S. §18-1-601 *et seq.* and 18 U.S.C. §2), but which those others did not commit, then the prosecutor must take steps in the appropriate court. Necessary steps may include disclosure of the evidence to the defendant, requesting that the court appoint counsel for an unrepresented indigent defendant and, where appropriate, notifying the court that the prosecutor has knowledge that the defendant did not commit the offense of which the defendant was convicted.

[8A] Evidence is considered new when it was unknown to a trial prosecutor at the time the conviction was entered or, if known to a trial prosecutor, was not disclosed to the defense, either deliberately or inadvertently. The reasons for the evidence being unknown (and therefore new) are varied. It may be new because: the information was not available to a trial prosecutor or the prosecution team at the time of trial; the police department investigating the case or other agency involved in the prosecution did not provide the evidence to a trial prosecutor; or recent testing was performed which was not available at the time of trial. There may be other circumstances when information would be deemed new evidence.

[9] A prosecutor's reasonable judgment made in good faith, that the new evidence is not of such nature as to trigger

the obligations of sections (g) and (h), although subsequently determined to have been erroneous, does not constitute a violation of this Rule.

[9A] Factors probative of the prosecutor's reasonable judgment that the evidence casts serious doubt on the reliability of the judgment of conviction include: whether the evidence was essential to a principal issue in the trial that produced the conviction; whether the evidence goes beyond the credibility of a witness; whether the evidence is subject to serious dispute; or whether the defendant waived the establishment of a factual basis pursuant to criminal procedural rules.

Rule 3.9. Advocate in Nonadjudicative Proceedings

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity. Further, in such a representation, the lawyer:

(a) shall conform to the provisions of Rules 3.3(a)(1), 3.3(a)(3), 3.3(b), 3.3(c), and 3.4(a) and (b);

(b) shall not engage in conduct intended to disrupt such proceeding unless such conduct is protected by law; and

(c) may engage in ex parte communications, except as prohibited by law.

COMMENT

[1] In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues and advance argument in the matters under consideration. The decision-making body, like a court, should be able to rely on the integrity of the submissions made to it and on the candor of the lawyer. For this reason the lawyer must conform to Rules 3.3(a)(1), 3.3(a)(3), 3.3(b), 3.3(c), and 3.4(a) and (b) in such representation.

[2] Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this Rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

[3] This Rule only applies when a lawyer represents a client in connection with an official hearing or meeting of a governmental agency or a legislative body to which the lawyer or the lawyer's client is presenting evidence or argument. It does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency or in connection with an application for a license or other privilege or the client's compliance with generally applicable reporting requirements, such as the filing of income-tax returns. Nor does it apply to the representation of a client in connection with an investigation or examination of the client's affairs conducted by government investigators or examiners. Representation in such matters is governed by Rules 4.1

through 4.4.

[4] This Rule recognizes that the lawyer's conduct and communications described in Rules 3.9(b) and (c) may be protected by constitutional or other legal principles.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

Rule 4.1. Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

COMMENT

False Statements

[1] A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A false statement can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Omissions or partially true but misleading statements can be the equivalent of affirmative false statements. For dishonest conduct generally see Rule 8.4.

Statements of Fact

[2] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

Crime or Fraud by Client

[3] Under Rule l.2(d), a lawyer is prohibited from counseling or assisting a client in conduct that the lawyer knows is criminal or fraudulent. Paragraph (b) states a specific application of the principle set forth in Rule 1.2(d) and addresses the situation where a client's crime or fraud takes the form of a lie or misrepresentation. Ordinarily, a lawyer can avoid assisting a client's crime or fraud by withdrawing from the representation. Sometimes it may be necessary for the lawyer to give notice of the fact of withdrawal and to disaffirm an opinion, document, affirmation or the like. In extreme cases, substantive law may require a lawyer to disclose information relating to the representation to avoid being deemed to have assisted the client's crime or fraud. If the lawyer can avoid assisting a client's crime or fraud only by disclosing this information, then under

paragraph (b) the lawyer is required to do so, unless the disclosure is prohibited by Rule 1.6.

Rule 4.2. Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

COMMENT

[1] This Rule contributes to the proper functioning of the legal system by protecting a person who has chosen to be represented by a lawyer in a matter against possible overreaching by other lawyers who are participating in the matter, interference by those lawyers with the client-lawyer relationship and the uncounselled disclosure of information relating to the representation.

[2] This Rule applies to communications with any person who is represented by counsel concerning the matter to which the communication relates.

[3] The Rule applies even though the represented person initiates or consents to the communication. A lawyer must immediately terminate communication with a person if, after commencing communication, the lawyer learns that person is one with whom communication is not permitted by this Rule.

[4] This Rule does not prohibit communication with a represented person, or an employee or agent of such a person, concerning matters outside the representation. For example, the existence of a controversy between a government agency and a private party, or between two organizations, does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does this Rule preclude communication with a represented person who is seeking advice from a lawyer who is not otherwise representing a client in the matter. A lawyer may not make a communication prohibited by this Rule through the acts of another. See Rule 8.4(a). Parties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make. Also, a lawyer having independent justification or legal authorization for communicating with a represented person, such as a contractually-based right or obligation to give notice, is permitted to do so.

[5] Communications authorized by law may include communications by a lawyer on behalf of a client who is exercising a constitutional or other legal right to communicate with the government. Communications authorized by law may also include investigative activities of lawyers representing governmental entities, directly or through investigative agents, prior to the commencement of criminal or civil enforcement proceedings.

When communicating with the accused in a criminal matter, a government lawyer must comply with this Rule in addition to honoring the constitutional rights of the accused. The fact that a communication does not violate a state or federal constitutional right is insufficient to establish that the communication is permissible under this Rule.

[6] A lawyer who is uncertain whether a communication with a represented person is permissible may seek a court order. A lawyer may also seek a court order in exceptional circumstances to authorize a communication that would otherwise be prohibited by this Rule, for example, where communication with a person represented by counsel is necessary to avoid reasonably certain injury.

[7] In the case of a represented organization, this Rule prohibits communications with a constituent of the organization who supervises, directs or regularly consults with the organization's lawyer concerning the matter or has authority to obligate the organization with respect to the matter or whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability. Consent of the organization's lawyer is not required for communication with a former constituent. If a constituent of the organization is represented in the matter by his or her own counsel, the consent by that counsel to a communication will be sufficient for purposes of this Rule. Compare Rule 3.4(f). In communicating with a current or former constituent of an organization, a lawyer must not use methods of obtaining evidence that violate the legal rights of the organization. See Rule 4.4.

[8] The prohibition on communications with a represented person only applies in circumstances where the lawyer knows that the person is in fact represented in the matter to be discussed. This means that the lawyer has actual knowledge of the fact of the representation; but such actual knowledge may be inferred from the circumstances. See Rule 1.0(f). Thus, the lawyer cannot evade the requirement of obtaining the consent of counsel by closing eyes to the obvious.

[9] In the event the person with whom the lawyer communicates is not known to be represented by counsel in the matter, the lawyer's communications are subject to Rule 4.3.

[9A] A pro se party to whom limited representation has been provided in accordance with C.R.C.P. 11(b) or C.R.C.P. 311(b), and Rule 1.2, is considered to be unrepresented for purposes of this Rule unless the lawyer has knowledge to the contrary.

Rule 4.3. Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have

a reasonable possibility of being in conflict with the interests of the client.

COMMENT

[1] An unrepresented person, particularly one not experienced in dealing with legal matters, might assume that a lawyer is disinterested in loyalties or is a disinterested authority on the law even when the lawyer represents a client. In order to avoid a misunderstanding, a lawyer will typically need to identify the lawyer's client and, where necessary, explain that the client has interests opposed to those of the unrepresented person. For misunderstandings that sometimes arise when a lawyer for an organization deals with an unrepresented constituent, see Rule 1.13(d).

[2] The Rule distinguishes between situations involving unrepresented persons whose interests may be adverse to those of the lawyer's client and those in which the person's interests are not in conflict with the client's. In the former situation, the possibility that the lawyer will compromise the unrepresented person's interests is so great that the Rule prohibits the giving of any advice, apart from the advice to obtain counsel. Whether a lawyer is giving impermissible advice may depend on the experience and sophistication of the unrepresented person, as well as the setting in which the behavior and comments occur. This Rule does not prohibit a lawyer from negotiating the terms of a transaction or settling a dispute with an unrepresented person. So long as the lawyer has explained that the lawyer represents an adverse party and is not representing the person, the lawyer may inform the person of the terms on which the lawyer's client will enter into an agreement or settle a matter, prepare documents that require the person's signature and explain the lawyer's own view of the meaning of the document or the lawyer's view of the underlying legal obligations.

[2A] The lawyer must comply with the requirements of this Rule for pro se parties to whom limited representation has been provided, in accordance with C.R.C.P. 11(b), C.R.C.P. 311(b), Rule 1.2, and Rule 4.2. Such parties are considered to be unrepresented for purposes of this Rule.

Rule 4.4. Respect for Rights of Third Persons

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

(c) Unless otherwise permitted by court order, a lawyer who receives a document relating to the representation of the lawyer's client and who, before reviewing the document, receives notice from the sender that the document was inadvertently sent, shall not examine the document and shall abide by the sender's instructions as to its disposition.

COMMENT

[1] Responsibility to a client requires a lawyer to subordinate the interests of others to those of the client, but that responsibility does not imply that a lawyer may disregard the rights of third persons. It is impractical to catalogue all such rights, but they include legal restrictions on methods of obtaining evidence from third persons and unwarranted intrusions into privileged relationships, such as the client-lawyer relationship.

[2] Paragraph (b) recognizes that lawyers sometimes receive documents that were mistakenly sent or produced by opposing parties or their lawyers. If a lawyer knows or reasonably should know that such a document was sent inadvertently, then this Rule requires the lawyer to promptly notify the sender in order to permit that person to take protective measures. Paragraph (c) imposes an additional obligation on lawyers under limited circumstances. If a lawyer receives a document and also receives notice from the sender prior to reviewing the document that the document was inadvertently sent, the receiving lawyer must refrain from examining the document and also must abide by the sender's instructions as to the disposition of the document, unless a court otherwise orders. Whether a lawyer is required to take additional steps beyond those required by paragraphs (b) and (c) is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document has been waived. Similarly, this Rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person. For purposes of this Rule, "document" includes e-mail or other electronic modes of transmission subject to being read or put into readable form.

[3] In the circumstances of paragraph (b), some lawyers may choose to return an inadvertently sent document. Where a lawyer is not required by applicable law or paragraph (c) to do so, the decision to voluntarily return such a document is a matter of professional judgment ordinarily reserved to the lawyer. See Rules 1.2 and 1.4.

Rule 4.5. Threatening Prosecution

(a) A lawyer shall not threaten criminal, administrative or disciplinary charges to obtain an advantage in a civil matter nor shall a lawyer present or participate in presenting criminal, administrative or disciplinary charges solely to obtain an advantage in a civil matter.

(b) It shall not be a violation of Rule 4.5 for a lawyer to notify another person in a civil matter that the lawyer reasonably believes that the other's conduct may violate criminal, administrative or disciplinary rules or statutes.

COMMENT

[1] The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal, disciplinary and some

administrative processes are designed for the protection of society as a whole. For purposes of this Rule, a civil matter is a controversy or potential controversy over rights and duties of two or more persons under the law whether or not an action has been commenced.

[2] Threatening to use, or using the criminal, administrative or disciplinary process to coerce adjustment of private civil matters is a subversion of that process; further, the person against whom the criminal, administrative or disciplinary process is so misused may be deterred from asserting valid legal rights and thus the usefulness of the civil process in settling private disputes is impaired. As in all cases of abuse of judicial process, the improper use of criminal, administrative or disciplinary process tends to diminish public confidence in our legal system.

[3] The Rule distinguishes between threats to bring criminal, administrative or disciplinary charges and the actual filing or presentation of such charges. Threats to file such charges are prohibited if a purpose is to obtain any advantage in a civil matter while the actual presentation of such charges is proscribed by this Rule only if the sole purpose for presenting the charges is to obtain an advantage in a civil matter.

[4] This distinction is appropriate because the abuse of the judicial process is at its greatest when a threat of filing charges is used as a lever to obtain an advantage in a collateral, civil proceeding. This leverage is either eliminated or greatly reduced when the charge actually is presented.

[5] Moreover, this Rule does not prohibit a lawyer from notifying another person involved in a civil matter that such person's conduct may violate criminal, administrative or disciplinary rules or statutes where the notifying lawyer reasonably believes that such a violation has taken place.

[6] While it may be difficult in certain circumstances to distinguish between a notification and a threat, public policy is served by allowing a lawyer to notify another person of a perceived violation without subjecting the notifying lawyer to discipline. Many minor violations can be eliminated, rectified or minimized if there is frank dialogue among participants to a dispute.

[7] Rule 4.5(b) provides a safe harbor for notifications of this type. Other factors that should be considered to differentiate threats from notifications in difficult cases include (a) an absence of any suggestion by the notifying lawyer that he or she could exert any improper influence over the criminal, administrative or disciplinary process, (b) consideration of whether any monetary recovery or other relief sought by the notifying lawyer is reasonably related to the harm suffered by the lawyer's clients. Where no such reasonable relation exists, the communication likely constitutes a proscribed threat. For example, a lawyer violates Rule 4.5 if the lawyer threatens to file a charge or complaint of tax fraud against another party where issues of tax fraud have nothing to do with the dispute. It is not a violation of Rule 4.5 for a lawyer to notify another party that the other person's writing of an insufficient funds check may have criminal as well as civil ramifications in a civil action for collection of the bad check.

LAW FIRMS AND ASSOCIATIONS

Rule 5.1. Responsibilities or a Partner of Supervisory Lawyer

(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

(c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved;

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

COMMENT

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0(c). This includes members of a partnership, the shareholders in a law firm organized as a professional corporation, and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have

a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members and the partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8.4(a).

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Rules of Professional Conduct. See Rule 5.2(a).

Rule 5.2. Responsibilities of a Subordinate Lawyer

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

COMMENT

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor, and a subordinate may be guided accordingly. For example, if a question arises whether the interests of two clients conflict under Rule 1.7, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

Rule 5.3. Responsibilities Regarding Nonlawyer Assistants

With respect to nonlawyers employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

COMMENT

[1] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer

in rendition of the lawyer's professional services. A lawyer must give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

[2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Rules of Professional Conduct. See Comment [1] to Rule 5.1. Paragraph (b) applies to lawyers who have supervisory authority, over the work of nonlawyers. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of nonlawyers that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

Rule 5.4. Professional Independence of a Lawyer

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;

(2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer;

(3) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;

(4) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and

(5) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommend employment of the lawyer in the matter.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional company, if

(1) A nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration; or

(2) A nonlawyer has the right to direct or control the professional judgment of a lawyer.

(e) A lawyer shall not practice with or in the form of a professional company except in compliance with C.R.C.P. 265.

(f) For purposes of this Rule, a "nonlawyer" includes (1) a lawyer who has been disbarred, (2) a lawyer who has been suspended and who must petition for reinstatement, (3) a lawyer who has been immediately suspended pursuant to C.R.C.P. 251.8 or 251.20(d), (4) a lawyer who is on inactive status pursuant to C.R.C.P. 227(A)(6), or (5) a lawyer who, for a period of six months or more, has been (i) on disability inactive status pursuant to C.R.C.P. 251.23 or (ii) suspended pursuant to C.R.C.P. 251.8.5, 227(A)(4), 260.6, or 251.8.6.

COMMENT

[1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment on behalf of the lawyer's client. Moreover, since a lawyer should not aid or encourage a nonlawyer to practice law, the lawyer should not practice law or otherwise share legal fees with a nonlawyer. This does not mean, however, that the pecuniary value of the interest of a deceased lawyer in the lawyer's firm or practice may not be paid to the lawyer's estate or specified persons such as the lawyer's spouse or heirs. In like manner, profit-sharing retirement plans of a lawyer or law firm which include nonlawyer office employees are not improper. These limited exceptions to the rule against sharing legal fees with nonlawyers are permissible since they do not aid or encourage nonlawyers to practice law. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c) such arrangements should not interfere with the lawyer's professional judgment on behalf of the lawyer's client. A lawyer should, however, make full disclosure of such arrangements to the client; and if the lawyer or client believes that the effectiveness of lawyer's representation has been or will be impaired thereby, the lawyer should take proper steps to withdraw from representation of the client.

[2] To assist a lawyer in preserving independence, a number of courses are available, For example, a lawyer may practice law in the form of a professional company, if in doing so the lawyer complies with all applicable rules of the Colorado Supreme Court. Although a lawyer may be employed by a business corporation with nonlawyers serving as directors or officers, and they necessarily have the right to make decisions of business policy, a lawyer must decline to accept direction of the lawyer's professional judgment from any nonlawyer. Various types of legal aid offices are administered by boards of directors composed of lawyers and nonlawyers. A lawyer should not accept employment from such an organization unless the board sets only broad policies and there is no interference in the relationship of the lawyer and the individual client the lawyer serves. Where a lawyer is employed by an organization, a written agreement that defines the relationship between the. Lawyer and the

organization and provides for the lawyer's independence is desirable since it may serve to prevent misunderstanding as to their respective roles. Although other innovations in the means of supplying legal counsel may develop, the responsibility of the lawyer to maintain the lawyer's professional independence remains constant, and the legal profession must insure that changing circumstances do not result in loss of the professional independence of the lawyer.

[3] As part of the legal profession's commitment to the principle that high quality legal services should be available to all, lawyers are encouraged to cooperate with qualified legal assistance organizations providing prepaid legal services. Participation should at all times be in accordance with the basic tenets of the profession: independence, integrity, competence, and devotion to the interests of individual clients. A lawyer so participating should make certain that a relationship with a qualified legal assistance organization in no way interferes with the lawyer's independent professional representation of the interests of the individual client. A lawyer should avoid situations in which officials of the organization who are not lawyers attempt to direct lawyers concerning the manner in which legal services are performed for individual members, and should also avoid situations in which considerations of economy are given undue weight in determining the lawyers employed by an organization or the legal services to be performed for the member or beneficiary rather than competence and quality of service. A lawyer interested in maintaining the historic traditions of the profession and preserving the function of a lawyer as a trusted and independent advisor to individual members of society should carefully assess those factors when accepting employment by, or otherwise participating in, a particular qualified legal assistance organization, and while so participating should adhere to the highest professional standards of effort and competence.

Rule 5.5. Unauthorized Practice of Law; Multijurisdictional Practice of Law

(a) A lawyer shall not:

(1) practice law in this jurisdiction without a license to practice law issued by the Colorado Supreme Court unless specifically authorized by C.R.C.P. 220, C.R.C.P. 221, C.R.C.P. 221.1, C.R.C.P. 222 or federal or tribal law;

(2) practice law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction;

(3) assist a person who is not authorized to practice law pursuant to subpart (a) of this Rule in the performance of any activity that constitutes the unauthorized practice of law; or

(4) allow the name of a disbarred lawyer or a suspended lawyer who must petition for reinstatement to remain in the firm name.

(b) A lawyer shall not employ, associate professionally with, allow or aid a person the lawyer knows or reasonably should know is a disbarred, suspended, or on disability inactive status to perform the following on behalf of the lawyer's client:

(1) render legal consultation or advice to the client;

(2) appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;

(3) appear on behalf of a client at a deposition or other discovery matter;

(4) negotiate or transact any matter for or on behalf of the client with third parties;

(5) otherwise engage in activities that constitute the practice of law; or

(6) receive, disburse or otherwise handle client funds.

(c) Subject to the limitation set forth below in paragraph (d), a lawyer may employ, associate professionally with, allow or aid a lawyer who is disbarred, suspended (whose suspension is partially or fully served), or on disability inactive status to perform research, drafting or clerical activities, including but not limited to:

(1) legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;

(2) direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; and

(3) accompanying an active member in attending a deposition or other discovery matter for the limited purpose of providing assistance to the lawyer who will appear as the representative of the client.

(d) A lawyer shall not allow a person the lawyer knows or reasonably should know is disbarred, suspended, or on disability inactive status to have any professional contact with clients of the lawyer or of the lawyer's firm unless the lawyer:

(1) prior to the commencement of the work, gives written notice to the client for whom the work will be performed that the disbarred or suspended lawyer, or the lawyer on disability inactive status, may not practice law; and

(2) retains written notification for no less than two years following completion of the work.

(e) Once notice is given pursuant to C.R.C.P. 251.28 or this Rule, then no additional notice is required.

COMMENT

[1] The definition of the practice of law is established by law and varies from one jurisdiction to another. In order to protect the public, persons not admitted to practice law in Colorado cannot hold themselves out as lawyers in Colorado or as authorized to practice law in Colorado. Rule 5.5(a)(1) recognizes that C.R.C.P. 20, C.R.C.P. 221, C.R.C.P. 221.1, and C.R.C.P. 222 permit lawyers to practice law in accordance with their terms in Colorado without a license from the Colorado Supreme Court. Lawyers may also be permitted to practice law within the physical boundaries of the State, without such a license, where they do so pursuant to Federal or tribal law. Such practice does not constitute a violation of the general proscription of Rule 5.5(a)(1).

[2] Paragraph (a)(3) does not prohibit

a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3. Likewise, it does not prohibit lawyers from providing professional advice and instruction to nonlawyers whose employment requires knowledge of law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in governmental agencies. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[3] A lawyer may employ or contract with a disbarred, suspended lawyer or a lawyer on disability inactive status, to perform services that a law clerk, paralegal or other administrative staff may perform so long as the lawyer directly supervises the work. Lawyers who are suspended but whose entire suspension has been stayed may engage in the practice of law, and the portion of the Rule limiting what suspended lawyers may do does not apply.

[4] The name of a disbarred lawyer or a suspended lawyer who must petition for reinstatement must be removed from the firm name. A lawyer will be assisting in the unauthorized practice of law if the lawyer fails to remove such name.

[5] Disbarred, suspended lawyers or lawyers on disability inactive status may have contact with clients of the licensed lawyer so long as such lawyer and the licensed lawyer provide written notice to the client that the lawyer may not practice law. Written notice to the client shall include an advisement that the person may not give advice or engage in any other conduct considered the practice of law. Proof of service shall be maintained in the licensed lawyer's file for a minimum of two years.

[6] Separate and apart from the disbarred, suspended or disabled lawyer's obligation not to practice law, the licensed lawyer who employs or hires such person has an obligation to directly supervise that individual.

Rule 5.6. Restrictions on Right to Practice

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a restriction on the lawyer's right to practice is part of the settlement of a client controversy.

COMMENT

[1] An agreement restricting the right of lawyers to practice after leaving a firm not only limits their professional autonomy but also limits the freedom of clients to choose a lawyer. Paragraph (a) prohibits such agreements except for restrictions incident to provisions concerning retirement benefits for service with the firm.

[2] Paragraph (b) prohibits a lawyer

from agreeing not to represent other persons in connection with settling a claim on behalf of a client.

[3] This Rule does not apply to prohibit restrictions that may be included in the terms of the sale of a law practice pursuant to Rule 1.17.

Rule 5.7. Responsibilities Regarding Law-related Services

(a) A lawyer shall be subject to the Rules of Professional Conduct with respect to the provision of law-related services, as defined in paragraph (b), if the law-related services are provided:

(1) by the lawyer in circumstances that are not distinct from the lawyer's provision of legal services to clients; or

(2) in other circumstances by an entity controlled by the lawyer individually or with others if the lawyer fails to take reasonable measures to assure that a person obtaining the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not exist.

(b) The term "law-related services" denotes services that might reasonably be performed in conjunction with and in substance are related to the provision of legal services, and that are not prohibited as unauthorized practice of law when provided by a nonlawyer.

COMMENT

[1] When a lawyer performs law-related services or controls an organization that does so, there exists the potential for ethical problems. Principal among these is the possibility that the person for whom the law-related services are performed fails to understand that the services may not carry with them the protections normally afforded as part of the client-lawyer relationship. The recipient of the law-related services may expect, for example, that the protection of client confidences, prohibitions against representation of persons with conflicting interests, and obligations of a lawyer to maintain professional independence apply to the provision of law-related services when that may not be the case.

[2] Rule 5.7 applies to the provision of law-related services by a lawyer even when the lawyer does not provide any legal services to the person for whom the law-related services are performed and whether the law-related services are performed through a law firm or a separate entity. The Rule identifies the circumstances in which all of the Rules of Professional Conduct apply to the provision of law-related services. Even when those circumstances do not exist, however, the conduct of a lawyer involved in the provision of law-related services is subject to those Rules that apply generally to lawyer conduct, regardless of whether the conduct involves the provision of legal services. See, e.g., Rule 8.4.

[3] When law-related services are provided by a lawyer under circumstances that are not distinct from the lawyer's provision of legal services to clients, the lawyer in providing the law-related services must adhere to the requirements

of the Rules of Professional Conduct as provided in paragraph (a)(1). Even when the law-related and legal services are provided in circumstances that are distinct from each other, for example through separate entities or different support staff within the law firm, the Rules of Professional Conduct apply to the lawyer as provided in paragraph (a)(2) unless the lawyer takes reasonable measures to assure that the recipient of the law-related services knows that the services are not legal services and that the protections of the client-lawyer relationship do not apply.

[4] Law-related services also may be provided through an entity that is distinct from that through which the lawyer provides legal services. If the lawyer individually or with others has control of such an entity's operations, the Rule requires the lawyer to take reasonable measures to assure that each person using the services of the entity knows that the services provided by the entity are not legal services and that the Rules of Professional Conduct that relate to the client-lawyer relationship do not apply. A lawyer's control of an entity extends to the ability to direct its operation. Whether a lawyer has such control will depend upon the circumstances of the particular case.

[5] When a client-lawyer relationship exists with a person who is referred by a lawyer to a separate law-related service entity controlled by the lawyer, individually or with others, the lawyer must comply with Rule 1.8(a).

[6] In taking the reasonable measures referred to in paragraph (a)(2) to assure that a person using law-related services understands the practical effect or significance of the inapplicability of the Rules of Professional Conduct, the lawyer should communicate to the person receiving the law-related services, in a manner sufficient to assure that the person understands the significance of the fact, that the relationship of the person to the business entity will not be a client-lawyer relationship. The communication should be made before entering into an agreement for provision of or providing law-related services, and preferably should be in writing.

[7] The burden is upon the lawyer to show that the lawyer has taken reasonable measures under the circumstances to communicate the desired understanding. For instance, a sophisticated user of law-related services, such as a publicly held corporation, may require a lesser explanation than someone unaccustomed to making distinctions between legal services and law-related services, such as an individual seeking tax advice from a lawyer-accountant or investigative services in connection with a lawsuit.

[8] Regardless of the sophistication of potential recipients of law-related services, a lawyer should take special care to keep separate the provision of law-related and legal services in order to minimize the risk that the recipient will assume that the law-related services are legal services. The risk of such confusion is especially acute when the lawyer renders both types of services with respect to the same matter. Under some circumstances the legal and law-related services may be so closely entwined that they cannot be distinguished from each other, and the requirement of disclosure and consultation imposed by paragraph (a)(2) of the Rule cannot be met. In such a case a lawyer will be responsible for assuring that both the lawyer's conduct and, to the extent

required by Rule 5.3, that of nonlawyer employees in the distinct entity that the lawyer controls complies in all respects with the Rules of Professional Conduct.

[9] A broad range of economic and other interests of clients maybe served by lawyers' engaging in the delivery of law-related services. Examples of law-related services include providing title insurance, financial planning, accounting, trust services, real estate counseling, legislative lobbying, economic analysis, social work, psychological counseling, tax preparation, and patent, medical or environmental consulting.

[10] When a lawyer is obliged to accord the recipients of such services the protections of those Rules that apply to the client-lawyer relationship, the lawyer must take special care to heed the proscriptions of the Rules addressing conflict of interest (Rules 1.7 through 1.11, especially Rules 1.7(a)(2) and 1.8(a), (b) and (f)), and to scrupulously adhere to the requirements of Rule 1.6 relating to disclosure of confidential information. The promotion of the law-related services must also in all respects comply with Rules 7.1 through 7.3, dealing with advertising and solicitation. In that regard, lawyers should take special care to identify the obligations that may be imposed as a result of a jurisdiction's decisional law.

[11] When the full protections of all of the Rules of Professional Conduct do not apply to the provision of law-related services, principles of law external to the Rules, for example, the law of principal and agent, govern the legal duties owed to those receiving the services. Those other legal principles may establish a different degree of protection for the recipient with respect to confidentiality of information, conflicts of interest and permissible business relationships with clients. See also Rule 8.4 (Misconduct).

PUBLIC SERVICE

Rule 6.1. Voluntary Pro Bono Publico Service

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least fifty hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the fifty hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters that are designed primarily to address the needs of persons of limited means; and

(b) provide any additional legal or public services through:

(1) delivery of legal services at no fee or a substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

Where constitutional, statutory or regulatory restrictions prohibit government and public sector lawyers or judges from performing the pro bono services outlined in paragraphs (a)(1) and (2), those individuals should fulfill their pro bono publico responsibility by performing services or participating in activities outlined in paragraph (b).

COMMENT

[1] Every lawyer, regardless of professional prominence or professional workload, has a responsibility to provide legal services to those unable to pay. Indeed, the oath that Colorado lawyers take upon admittance to the Bar requires that a lawyer will never "reject, from any consideration personal to myself, the cause of the defenseless or oppressed." In some years a lawyer may render greater or fewer hours than the annual standard specified, but during the course of his or her legal career, each lawyer should render on average per year, the number of hours set forth in this Rule. Services can be performed in civil matters or in criminal or quasi-criminal matters for which there is no government obligation to provide funds for legal representation, such as post-conviction death penalty appeal cases.

[2] Paragraphs (a)(1) and (2) recognize the critical need for legal services that exists among persons of limited means by providing that a substantial majority of the legal services rendered annually to the disadvantaged be furnished without fee or expectation of fee. Legal services under these paragraphs consist of a full range of activities, including individual and class representation, the provision of legal advice, legislative lobbying, administrative rule making and the provision of free training or mentoring to those who represent persons of limited means.

[3] Persons eligible for legal services under paragraphs (a)(1) and (2) are those who qualify for participation in programs funded by the Legal Services Corporation and those whose incomes and financial resources are slightly above the guidelines utilized by such programs but nevertheless, cannot afford counsel. Legal services can be rendered to individuals or to organizations such as homeless shelters, battered women's centers and food pantries that serve those of limited means. The term "governmental organizations" includes, but is not limited to, public protection programs and sections of governmental or public sector agencies.

[4] Because service must be provided without fee or expectation of fee, the intent of the lawyer to render free legal services is essential for the work performed to fall within the meaning of paragraphs (a)(1) and (2). Accordingly, services rendered cannot be considered pro bono under paragraph (a) if an anticipated fee is uncollected, but the award of statutory lawyers' fees in a case originally accepted

as pro bono would not disqualify such services from inclusion under this section. Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.

[5] While it is possible for a lawyer to fulfill the annual responsibility to perform pro bono services exclusively through activities described in paragraphs (a)(1) and (2), to the extent that any hours of service remain unfulfilled, the lawyer may satisfy the remaining commitment in a variety of ways as set forth in paragraph (b).

[6] Paragraph (b)(1) includes the provision of certain types of legal services to those whose incomes and financial resources place them above limited means. It also permits the pro bono lawyer to accept a substantially reduced fee for services. Examples of the types of issues that may be addressed under this paragraph include First Amendment claims, Title VII claims and environmental protection claims. Additionally, a wide range of organizations may be represented, including social service, medical research, cultural and religious groups.

[7] Paragraph (b)(2) covers instances in which lawyers agree to and receive a modest fee for furnishing legal services to persons of limited means. Acceptance of court appointments in which the fee is substantially below a lawyer's usual rate is encouraged under this section.

[8] Paragraph (b)(3) recognizes the value of lawyers engaging in activities that improve the law, the legal system or the legal profession. Serving on bar association committees, serving on boards of pro bono or legal services programs, taking part in Law Day activities, acting as a continuing legal education instructor, a mediator or an arbitrator and engaging in legislative lobbying to improve the law, the legal system or the profession are a few examples of the many activities that fall within this paragraph.

[9] Because the provision of pro bono services is a professional responsibility, it is the individual ethical commitment of each lawyer. However, in special circumstances, such as death penalty cases and class action cases, it is appropriate to allow collective satisfaction by a law firm of the pro bono responsibility. There may be times when it is not feasible for a lawyer to engage in pro bono services. At such times a lawyer may discharge the pro bono responsibility by providing financial support to organizations providing free legal services to persons of limited means. Such financial support should be reasonably equivalent to the value of the hours of service that would have otherwise been provided.

[10] Because the efforts of individual lawyers are not enough to meet the need for free legal services that exists among persons of limited means, the government and the profession have instituted additional programs to provide those services. Every lawyer should financially support such programs, in addition to either providing direct pro bono services or making financial contributions when pro bono service is not feasible.

[11] The responsibility set forth in this Rule is not intended to be enforced through disciplinary process.

Recommended Model Pro Bono Policy for Colorado Licensed Attorneys and Law Firms

Preface. Providing pro bono legal services to persons of limited means and organizations serving persons of limited means is a core value of Colorado licensed attorneys enunciated in Colorado Rule of Professional Conduct 6.1. Adoption of a law firm pro bono policy will commit the firm to this professional value and assure attorneys of the firm that their pro bono work is valued in their advancement within the firm.

The Colorado Supreme Court has adopted the following recommended Model Pro Bono Policy that can be modified to meet the needs of individual law firms. References are made to provisions that may not apply in a small firm setting. Adoption of such a policy is entirely voluntary.

At the least, a pro bono policy would:

(1) clearly set forth an aspirational goal for attorneys, as well as the number of hours for which billable credit will be awarded for firms that operate on a billable hour system (the attached model policy uses the figure of at least 50 hours per attorney per year, which mirrors the aspirational goal set out in Rule 6.1);

(2) demonstrate that pro bono service will be positively considered in evaluation and compensation decisions; and

(3) include a description of the processes that will be used to match attorneys with projects and monitor pro bono service, including tracking pro bono hours spent by lawyers and others in the firm.

The Colorado Supreme Court will recognize those firms that make a strong commitment to pro bono work by adopting a policy that includes:

(1) an annual goal of performing 50 hours of pro bono legal service by each Colorado licensed attorney in the firm, pro-rated for part-time attorneys, primarily for persons of limited means and/or organizations serving persons of limited means consistent with the definition of pro bono services as set forth in this Model Pro Bono Policy; and

(2) a statement that the firm will value at least 50 hours of such pro bono service per year by each Colorado licensed attorney in the firm, for all purposes of attorney evaluation, advancement, and compensation in the firm as the firm values compensated client representation.

The Colorado Supreme Court will also recognize on an annual basis those Colorado law firms that voluntarily advise the Court by February 15 that their attorneys, on average, during the previous calendar year, performed 50 hours of pro bono legal service, primarily for persons of limited means or organizations serving persons of limited means consistent with the definition of pro bono services as set forth in this Model Pro Bono Policy.

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I. Introduction

The firm recognizes that the legal community has a unique responsibility to ensure that all citizens have access to a fair and just legal system. In recognizing this responsibility, the firm encourages each of its attorneys to actively participate in some form of pro bono legal representation.

This commitment mirrors the core principles enunciated in the Colorado Rules of Professional Conduct:

> A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest . . . A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.
>
> Preamble, Colorado Rules of Professional Conduct.

The firm understands there are various ways to provide pro bono legal services in our community. In selecting among the various pro bono opportunities, the firm encourages and expects that attorneys (both partners and associates or other designation) will devote a minimum of fifty (50) hours each year to pro bono legal services, or a proportional amount of pro bono hours by attorneys on alternative work schedules. In fulfilling this responsibility, firm attorneys should provide a substantial majority of the fifty (50) hours of pro bono legal services to (1) persons of limited means, or (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means. Rule 6.1. The firm strongly believes that this level of participation lets our attorneys make a meaningful contribution to our legal community, and provides important opportunities to further their professional development.

II. Firm Pro Bono Committee/Coordinator (see suggested change for small firms below)

The firm has established a Pro Bono Committee responsible for implementing and administering the firm's pro bono policies and procedures. The Pro Bono Committee consists of a representative group of attorneys of the firm. In addition,

the firm has designated a Pro Bono Coordinator. The Pro Bono Committee/Pro Bono Coordinator has the following principal responsibilities:

1 encouraging and supporting pro bono legal endeavors;

2 reviewing, accepting and/or rejecting pro bono legal projects;

3 coordinating and monitoring pro bono legal projects, ensuring, among other things, that appropriate assistance, supervision and resources are available;

4 providing periodic reports on the firm's pro bono activities; and

5 creating and maintaining a pro bono matter tracking system.

Attorneys are encouraged to seek out pro bono matters that are of interest to them.

[Small firms may wish to designate only a Pro Bono Coordinator and can introduce the above paragraph as follows:** "The firm has designated a Pro Bono Coordinator responsible for implementing and administering the firm's pro bono policies and procedures" and then delete the next two sentences.]

III. Pro Bono Services Defined

The foremost objective of the firm pro bono policy is to provide legal services to persons of limited means and the nonprofit organizations that assist them, in accordance with Rule 6.1. The firm recognizes there are a variety of ways in which the firm's attorneys and paralegals can provide pro bono legal services in the community. The following, while not intended to be an exhaustive list, reflects the types of pro bono legal services the firm credits in adopting this policy:

A. Representation of Low Income Persons. Representation of individuals who cannot afford legal services in civil or criminal matters of importance to a client;

B. Civil Rights and Public Rights Law. Representation or advocacy on behalf of individuals or organizations seeking to vindicate rights with broad societal implications (class action suits or suits involving constitutional or civil rights) where it is inappropriate to charge legal fees; and

C. Representation of Charitable Organizations. Representation or counseling to charitable, religious, civic, governmental, educational, or similar organizations in matters where the payment of standard legal fees would significantly diminish the resources of the organization, with an emphasis on service to organizations designed primarily to meet the needs of persons of limited income or improve the administration of justice.

D. Community Economic Development. Representation of or counseling to micro-entrepreneurs and businesses for community economic development purposes, recognizing that business development plays a critical role in low income community development and provides a vehicle to help low income individuals to escape poverty;

E. Administration of Justice in the Court System. Judicial assignments, whether as pro bono counsel, or a neutral arbiter, or other such assignment, which attorneys receive from courts on a mandatory basis by virtue of their membership in a trial bar;

F. Law-related Education. Legal education activities designed to assist individuals who are low-income, at risk, or vulnerable to particular legal concerns or designed to prevent social or civil

injustice.

G. Mentoring of Law Students and Lawyers on Pro Bono Matters. Colorado Supreme Court Rule 260.8 provides that an attorney who acts as a mentor may earn two (2) units of general credit per completed matter in which he/she mentors a law student. An attorney who acts as a mentor may earn one (1) unit of general credit per completed matter in which he/she mentors another lawyer. However, mentors shall not be members of the same firm or in association with the lawyer providing representation to the client of limited means.

Because the following activities, while meritorious, do not involve direct provision of legal services to the poor, the firm will not count them toward fulfillment of any attorney's, or the firm's, goal to provide pro bono legal services to persons of limited means or to nonprofits that serve such persons' needs: participation in a non-legal capacity in a community or volunteer organization; services to non-profit organizations with sufficient funds to pay for legal services as part of their normal expenses; client development work; non-legal service on the board of directors of a community or volunteer organization; bar association activities; and non-billable legal work for family members, friends, or members or staff of the firm who are not eligible to be pro bono clients under the above criteria.

IV. Firm Recognition of Pro Bono Service (see suggested change for small firms below).

A. Performance Review and Evaluation. The firm recognizes that the commitment to pro bono involves a personal expenditure of time. In acknowledgment of this commitment and to support firm goals, an attorney's efforts to meet this expectation will be considered by the firm in measuring various aspects of the attorney's performance, such as yearly evaluations and bonuses where applicable. An attorney's pro bono legal work will be subject to the same criteria of performance review and evaluation as those applied to client-billable work. As with all client work, there should be an emphasis on effective results for the client and the efficient and cost-effective use of firm resources.

B. Credit for Pro Bono Legal Work. The firm will give full credit for at least fifty (50) hours of pro bono legal services, and additional hours as approved by the Pro Bono Committee and/or Coordinator, in considering annual billable hour goals, bonuses and other evaluative criteria based on billable hours.

[Small firms may wish to only include the following paragraph in lieu of the above provisions:** The firm recognizes that the commitment to pro bono involves a personal expenditure of time. In acknowledgment of this commitment and to support firm goals, your pro bono service will be considered a positive factor in performance evaluations and compensation decisions and will be subject to the same criteria of performance review and evaluation as those applied to client-billable work. As with all client work, there should be an emphasis on effective results for the client and the efficient and cost-effective use of firm resources.]

V. Administration of Pro Bono Service (see suggested change for small firms below).

A. Approval of Pro Bono Matters.

The Pro Bono Committee/Coordinator will review all proposed pro bono legal matters to ensure that:

1. there is no client or issue conflict or concern;

2. the legal issue raised is not frivolous or untenable;

3. the client does not have adequate funds to retain an attorney; and

4. the matter is otherwise appropriate for pro bono representation.

All persons seeking approval of a pro bono project must: (1) submit a request identifying the client and other entity involved; (2) describe the nature of the work to be done; and (3) identify who will be working on the matter. Once the firm undertakes a pro bono matter, the matter is treated in the same manner as the firm's regular paying work.

B. Opening a Pro Bono Matter. It is the responsibility of the attorney seeking to provide pro bono legal services to complete the conflicts check and open a new matter in accordance with regular firm procedures.

C. Pro Bono Engagement Letter. After a matter has received initial firm approval, the principal attorney on a pro bono legal matter must send an engagement letter to the pro bono client. Typically, the engagement letter should be sent after the initial client meeting during which the nature and terms of the engagement are discussed.

D. Staffing of Pro Bono Matters. Pro bono legal matters are initially staffed on a voluntary basis. It may become necessary to assign additional attorneys to the matter if the initial staffing arrangements prove to be inadequate, and the firm reserves the right to make such assignments.

E. Supervision of Pro Bono Matters. As appropriate, partner shall supervise any associate working on a pro bono legal matter and the supervising partner shall remain informed of the status of the matter to ensure its proper handling. In addition, it may be appropriate to use assistance or resources from outside the firm. The firm will assist attorneys in finding a supervisor if necessary.

F. Professional Liability Insurance. Attorneys may provide legal assistance through those pro bono organizations that provide professional liability insurance for their volunteers. The firm also carries professional liability insurance for its attorneys in instances where no coverage is available on a pro bono matter through a qualified legal aid organization. Before undertaking any pro bono legal commitments, the professional liability implications should be reviewed with the Pro Bono Committee or the Pro Bono Coordinator.

G. Paralegal Pro Bono Opportunities. Approved pro bono legal work for paralegals includes: (1) work taken on in conjunction with and under the supervision of an attorney working on a specific pro bono legal matter, or (2) work handled independently for an organization that provides pro bono legal opportunities, provided, however, that such participation does not create an attorney-client relationship and/or involve the paralegal's provision of legal advice.

H. Disbursements in Pro Bono Matters. The firm can and should bill and collect disbursements in pro bono legal matters where it is appropriate to do so based on the client's resources. The firm encourages attorneys to pursue petitions for the waiver of filing fees in civil matters

(Chief Justice Directive 98-01) when applicable, and to use pro bono experts, court reporters, investigators and other vendors when available to minimize expenses in pro bono legal matters. The firm may advance or guarantee payment of incidental litigation expenses, and may agree that the repayment of such expenses may be contingent upon the outcome of the matter in accordance with Rule 1.8(e). The Pro Bono Committee/Pro Bono Coordinator must approve in advance any expense of a non-routine, significant nature, such as expert fees or translation costs. The supervising partner in a pro bono legal matter should participate in decisions with respect to disbursements.

I. Attorney Fees in Pro Bono Matters. The firm encourages its attorneys to seek and obtain attorney fees in pro bono legal matters where possible. In the event of a recovery of attorney fees, the firm encourages the donation of these fees to an organized non-profit entity whose purpose is or includes the provision of pro bono representation to persons of limited means.

J. Departing Attorneys. When an attorney handling a pro bono case leaves the firm, he or she should work with the Pro Bono Committee/Coordinator to (1) locate another attorney in the firm to take over the representation of the pro bono client, or (2) see if the referring organization can facilitate another placement.

[Small firms may wish to title this section "Pro Bono Procedures" and include only the following paragraph in lieu of the above provisions:** All pro bono legal matters will be opened in accordance with regular firm procedures, including utilization of a conflicts check and a client engagement letter. Pro bono matters should be supervised by a partner, as appropriate. The firm encourages its attorneys to seek and obtain attorney fees in pro bono legal matters whenever possible.]

VI. CLE Credit for Pro Bono Work

C.R.C.P. 260.8 provides that attorneys may be awarded up to nine (9) hours of CLE credit per three-year reporting period for: (1) performing uncompensated pro bono legal representation on behalf of clients of limited means in a civil legal matter, or (2) mentoring another lawyer or law student providing such representation.

A. Amount of CLE Credit. Attorneys may earn one (1) CLE credit hour for every five (5) billable-equivalent hours of pro bono representation provided to the client of limited means. An attorney who acts as a mentor may earn one (1) unit of general credit per completed matter in which he/she mentors another lawyer. Mentors shall not be members of the same firm or in association with the lawyer providing representation to the client of limited means. An attorney who acts as a mentor may earn two (2) units of general credit per completed matter in which he/she mentors a law student.

B. How to Obtain CLE Credit. An attorney who seeks CLE credit under C.R.C.P. 260.8 for work on an eligible matter must submit the completed Form 8 to the assigning court, program or law school. The assigning entity must then report to the Colorado Board of Continuing Legal and Judicial Education its recommendation as to the number of general CLE credits the reporting pro bono attorney should receive.

Rule 6.2. Accepting Appointments

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

(a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;

(b) representing the client is likely to result in an unreasonable financial or otherwise oppressive burden on the lawyer; or

(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

COMMENT

[1] A lawyer ordinarily is not obliged to accept a client whose character or cause the lawyer regards as repugnant. The lawyer's freedom to select clients is, however, qualified. All lawyers have a responsibility to assist in providing pro bono publico service. See Rule 6.1. An individual lawyer fulfills this responsibility by accepting a fair share of unpopular matters or indigent or unpopular clients. A lawyer may also be subject to appointment by a court to serve unpopular clients or persons unable to afford legal services.

Appointed Counsel

[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see Rule 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client. A lawyer may also seek to decline an appointment if acceptance would be unreasonably burdensome, for example, when it would impose a financial sacrifice so great as to be unjust.

[3] An appointed lawyer has the same obligations to the client as retained counsel, including the obligations of loyalty and confidentiality, and is subject to the same limitations on the client-lawyer relationship, such as the obligation to refrain from assisting the client in violation of the Rules.

Rule 6.3. Membership in Legal Services Organization

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) where the decision or action could have a material adverse effect on the representation of a client of a lawyer provided by the organization whose interests are adverse to a client of the lawyer.

COMMENT

[1] Lawyers should be encouraged to support and participate in legal service organizations. A lawyer who is a director, officer or a member of such an organization does not thereby have a client-lawyer relationship with persons served by the organization. However, there is potential conflict between the interests of such persons and the interests of the lawyer's clients. If the possibility of such conflict disqualified a lawyer from serving on the board of a legal services organization, the profession's involvement in such organizations would be severely curtailed.

[2] It may be necessary in appropriate cases to reassure a client of the organization that the representation will not be affected by conflicting loyalties of a member of the board. Established, written policies in this respect can enhance the credibility of such assurances.

Rule 6.4. Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact to the organization but need not identify the client.

COMMENT

[1] Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. See also Rule 1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure to the organization when the lawyer knows a private client might be materially benefited.

Rule 6.5. Nonprofit and Court-annexed Limited Legal Services Programs

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rules 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

COMMENT

[1] Legal services organizations, courts and various nonprofit organizations have established programs through which lawyers provide short-term limited legal services -- such as advice or the completion of legal forms that will assist persons to address their legal problems without further representation by a lawyer. In these programs, such as legal-advice hotlines, advice-only clinics or pro se counseling programs, a client-lawyer relationship is established, but there is no expectation that the lawyer's representation of the client will continue beyond the limited consultation. Such programs are normally operated under circumstances in which it is not feasible for a lawyer to systematically screen for conflicts of interest as is generally required before undertaking a representation. See, e.g., Rules 1.7, 1.9 and 1.10.

[2] A lawyer who provides short-term limited legal services pursuant to this Rule must secure the client's informed consent to the limited scope of the representation. See Rule 1.2(c). If a short-term limited representation would not be reasonable under the circumstances, the lawyer may offer advice to the client but must also advise the client of the need for further assistance of counsel. Except as provided in this Rule, the Rules of Professional Conduct, including Rules 1.6 and 1.9(c), are applicable to the limited representation.

[3] Because a lawyer who is representing a client in the circumstances addressed by this Rule ordinarily is not able to check systematically for conflicts of interest, paragraph (a) requires compliance with Rules 1.7 or 1.9(a) only if the lawyer knows that the representation presents a conflict of interest for the lawyer, and with Rule 1.10 only if the lawyer knows that another lawyer in the lawyer's firm is disqualified by Rules 1.7 or 1.9(a) in the matter.

[4] Because the limited nature of the services significantly reduces the risk of conflicts of interest with other matters being handled by the lawyer's firm, paragraph (b) provides that Rule 1.10 is inapplicable to a representation governed by this Rule except as provided by paragraph (a)(2). Paragraph (a)(2) requires the participating lawyer to comply with Rule 1.10 when the lawyer knows that the lawyer's firm is disqualified by Rules 1.7 or 1.9(a). By virtue of paragraph (b), however, a lawyer's participation in a short-term limited legal services program will not preclude the lawyer's firm from

undertaking or continuing the representation of a client with interests adverse to a client being represented under the program's auspices. Nor will the personal disqualification of a lawyer participating in the program be imputed to other lawyers participating in the program.

[5] If, after commencing a short-term limited representation in accordance with this Rule, a lawyer undertakes to represent the client in the matter on an ongoing basis, Rules 1.7, 1.9(a) and 1.10 become applicable.

INFORMATION ABOUT LEGAL SERVICES

Rule 7.1. Communications Concerning a Lawyer's Services

(a) A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it:

(1) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(2) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated; or

(3) is likely to create an unjustified expectation about results the lawyer can achieve;

(b) No lawyer shall, directly or indirectly, pay all or a part of the cost of communications concerning a lawyer's services by a lawyer not in the same firm unless the communication discloses the name and address of the non-advertising lawyer, the relationship between the advertising lawyer and the non-advertising lawyer, and whether the advertising lawyer may refer any case received through the advertisement to the non-advertising lawyer.

(c) Unsolicited communications concerning a lawyer's services mailed to prospective clients shall be sent only by regular U.S. mail, not by registered mail or other forms of restricted delivery, and shall not resemble legal pleadings or other legal documents.

(d) Any communication that states or implies the client does not have to pay a fee if there is no recovery shall also disclose that the client may be liable for costs. This provision does not apply to communications that only state that contingent or percentage fee arrangements are available, or that only state the initial consultation is free.

(e) A lawyer shall not knowingly permit, encourage or assist in any way employees, agents or other persons to make communications on behalf of the lawyer or the law firm in violation of this Rule or Rules 7.2 through 7.4.

(f) In connection with the sale of a private law practice under Rule 1.17, an opinion of the purchasing lawyer's suitability and competence to represent existing clients shall not violate this Rule if the lawyer complies with Rule 1.17(d).

COMMENT

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2 and solicitations governed by Rule 7.3.

[2] The touchstone of this Rule, as well as Rules 7.2 through 7.4, is that all

communications regarding a lawyer's services must be truthful. Truthful communications regarding a lawyer's services provide a valuable public service and, in any event, are constitutionally protected. False and misleading statements regarding a lawyer's services do not serve any valid purpose and may be constitutionally proscribed.

[3] It is not possible to catalog all types and variations of communications that are false or misleading. Nevertheless, certain types of statements recur and deserve special attention.

[4] One of the basic covenants of a lawyer is that the lawyer is competent to handle those matters accepted by the lawyer. Rule 1.1. It is therefore false and misleading for a lawyer to advertise for clients in a field of practice where the lawyer is not competent within the meaning of Rule 1.1.

[5] Characterizations of a lawyer's fees such as "cut-rate", "lowest" and "cheap" are likely to be misleading if those statements cannot be factually substantiated. Similarly, characterizations regarding a lawyer's abilities or skills have the potential to be misleading where those characterizations cannot be factually substantiated. Equally problematic are factually unsubstantiated characterizations of the results that a lawyer has in the past obtained. Such statements often imply that the lawyer will be able to obtain the same or similar results in the future. This type of statement, due to the inevitable factual and legal differences between different representations, is likely to mislead prospective clients.

[6] Statements that a law firm has a vast number of years of experience, by aggregating the experience of all members of the firm, provide little meaningful information to prospective clients and have the potential to be misleading.

[7] Statements such as "no recovery, no fee" are misleading if they do not additionally mention that a client may be obligated to pay costs of the lawsuit. Any communication that states or implies the client does not have to pay a fee if there is no recovery shall also disclose that the client may be liable for costs.

[8] Finally, Rule 7.1(c) proscribes unsolicited communications sent by restricted means of delivery. It is misleading and an invasion of the recipient's privacy for a lawyer to send advertising information to a prospective client by registered mail or other forms of restricted delivery. Such modes falsely imply a degree of exigence or importance that is unjustified under the circumstances.

Rule 7.2. Advertising

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of communications permitted by this Rule;

(2) pay the usual charges of a not-for-profit lawyer referral service or legal service organization.

(3) pay for a law practice in accordance with Rule 1.17; and

(4) refer clients to another lawyer or a nonlawyer pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

(c) Any communication made pursuant to this Rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

COMMENT

[1] To assist the public in obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television is now one of the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this Rule. But see Rule 7.3 (a) for the prohibition against the solicitation of a prospective client through a real-time electronic exchange that is not initiated by the prospective client.

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Paying Others to Recommend a Lawyer

[5] Lawyers are not permitted to pay others for channeling professional work. Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, banner ads, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. See Rule 5.3 for the duties of lawyers and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them.

[6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists prospective clients to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by laypersons to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for prospective clients. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services (i) permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of prospective clients; (ii) require each participating lawyer to carry reasonably adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client inecomplaints; and (iv) do not refer prospective clients to lawyers who own, operate or are employed by the referral service.)

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with prospective clients, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead prospective clients to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts

that would violate Rule 7.3.

[8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral arrangements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(d), a lawyer who receives referrals from a lawyer or nonlawyer must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. Conflicts of interest created by such arrangements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

Rule 7.3. Direct Contact with Prospective Clients

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

(c) A lawyer shall not solicit professional employment from a prospective client believed to be in need of legal services which arise out of the personal injury or death of any person by written, recorded, or electronic communication. This Rule 7.3(c) shall not apply if the lawyer has a family or prior professional relationship with the prospective client or if the communication is issued more than 30 days after the occurrence of the event for which the legal representation is being solicited. Any such communication must comply with the following:

(1) no such communication may be made if the lawyer knows or reasonably should know that the person to whom the communication is directed is represented resented by a lawyer in the matter; and

(2) if a lawyer other than the lawyer whose name or signature is contained in the communication will actually handle the case or matter, or if the case or matter will be referred to another lawyer or law firm, any such communication shall include a statement so advising the prospective client.

(d) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall:

(1) include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2);

(2) not reveal on the envelope or on the outside of a self-mailing brochure or pamphlet the nature of the prospective client's legal problem.

A copy of or recording of each such communication and a sample of the envelopes, if any, in which the communications are enclosed shall be kept for a period of four years from the date of dissemination of the communication.

(e) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

COMMENT

[1] There is a potential for abuse inherent in direct in-person, live telephone or real-time electronic contact by a lawyer with a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the layperson to the private importuning of the trained advocate in a direct interpersonal encounter. The prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[2] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyer advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded communications which may be mailed or autodialed make it possible for a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client to direct in-person, telephone or real-time electronic persuasion that may overwhelm the client's judgment.

[3] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to prospective client, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be

permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone or real-time electronic conversations between a lawyer and a prospective client can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[4] There is far less likelihood that a lawyer would engage in abusive practices against an individual who is a former client, or with whom the lawyer has close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(c) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal- service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its members or beneficiaries.

[5] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(b)(2), or which involves contact with a prospective client who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication to a client as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the prospective client may violate the provisions of Rule 7.3(b).

[6] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[7] The requirement in Rule 7.3(d)(1) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General

announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

[8] Paragraph (e) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (e) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter, but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See Rule 8.4(a).

Rule 7.4. Communication of Fields of Practice

(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law or that the lawyer is a specialist in particular fields of law. Such communication shall be in accordance with Rule 7.1.

(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.

(c) A lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation.

(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:

(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and

(2) the name of the certifying organization is clearly identified in the communication.

(e) In any advertisement in which a lawyer affirmatively claims to be certified in any area of the law, such advertisement shall contain the following disclosure: "Colorado does not certify lawyers as specialists in any field." This disclaimer is not required where the information concerning the lawyer's services is contained in a law list, law directory or a publication intended primarily for use of the legal profession.

COMMENT

[1] Paragraph (a) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services. If a lawyer practices only in certain fields, or will not accept matters except in a specified field or fields, the lawyer is permitted to so indicate. A lawyer is generally permitted to state that the lawyer is a "specialist," practices a "specialty" or "specializes in" particular fields, but such communications are subject to the "false and misleading" standard applied in Rule 7.1 to communications concerning a lawyer's services.

[2] Paragraph (b) recognizes the long-established policy of the Patent and Trademark Office for the designation of lawyers practicing before the Office. Paragraph (c) recognizes that designation of Admiralty practice has a long historical tradition associated with maritime commerce and the federal courts.

[3] Paragraph (d) permits a lawyer to state that the lawyer is certified as a specialist in a field of law if such certification is granted by an organization approved by an appropriate state authority or accredited by the American Bar Association or another organization, such as a state bar association, that has been approved by the state authority to accredit organizations that certify lawyers as specialists. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

[4] A claim of certification contained in a lawyer's letterhead does not require the disclaimer in Rule 7.4(e) unless the letterhead is used in an advertisement.

Rule 7.5. Firm Names and Letterheads

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

COMMENT

[1] A firm may be designated by the names of all or some of its members, by the names of deceased members where there has been a continuing succession in the firm's identity or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a lawyer not associated with the firm or a predecessor of the firm, or the name of a nonlawyer.

[2] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

Rule 7.6. Political Contributions to Obtain Legal Engagements or Appointments by Judges

A lawyer or law firm shall not accept a government legal engagement or an appointment by a judge if the lawyer or law firm makes a political contribution or solicits political contributions for the purpose of obtaining or being considered for that type of legal engagement or appointment.

COMMENT

[1] Lawyers have a right to participate fully in the political process, which includes making and soliciting political contributions to candidates for judicial and other public office. Nevertheless, when lawyers make or solicit political contributions in order to obtain an engagement for legal work awarded by a government agency, or to obtain appointment by a judge, the public may legitimately question whether the lawyers engaged to perform the work are selected on the basis of competence and merit. In such a circumstance, the integrity of the profession is undermined.

[2] The term "political contribution" denotes any gift, subscription, loan, advance or deposit of anything of value made directly or indirectly to a candidate, incumbent, political party or campaign committee to influence or provide financial support for election to or retention in judicial or other government office. Political contributions in initiative

and referendum elections are not included. For purposes of this Rule, the term "political contribution" does not include uncompensated services.

[3] Subject to the exceptions below, (i) the term "government legal engagement" denotes any engagement to provide legal services that a public official has the direct or indirect power to award; and (ii) the term "appointment by a judge" denotes an appointment to a position such as referee, commissioner, special master, receiver, guardian or other similar position that is made by a judge. Those terms do not, however, include (a) substantially uncompensated services; (b) engagements or appointments made on the basis of experience, expertise, professional qualifications and cost following a request for proposal or other process that is free from influence based upon political contributions; and (c) engagements or appointments made on a rotational basis from a list compiled without regard to political contributions.

[4] The term "lawyer or law firm" includes a political action committee or other entity owned or controlled by a lawyer or law firm.

[5] Political contributions are for the purpose of obtaining or being considered for a government legal engagement or appointment by a judge if, but for the desire to be considered for the legal engagement or appointment, the lawyer or law firm would not have made or solicited the contributions. The purpose may be determined by an examination of the circumstances in which the contributions occur. For example, one or more contributions that in the aggregate are substantial in relation to other contributions by lawyers or law firms, made for the benefit of an official in a position to influence award of a government legal engagement, and followed by an award of the legal engagement to the contributing or soliciting lawyer or the lawyer's firm would support an inference that the purpose of the contributions was to obtain the engagement, absent other factors that weigh against existence of the proscribed purpose. Those factors may include among others that the contribution or solicitation was made to further a political, social, or economic interest or because of an existing personal, family, or professional relationship with a candidate.

[6] If a lawyer makes or solicits a political contribution under circumstances that constitute bribery or another crime, Rule 8.4(b) is implicated.

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.1. Bar Admission and Disciplinary Matters

An applicant for admission, readmission, or reinstatement to the bar, or a lawyer in connection with an application for admission, readmission, or reinstatement to the bar or in connection with a disciplinary matter, shall not:

(a) knowingly make a false statement of material fact; or

(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information

from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

COMMENT

[1] The duty imposed by this Rule extends to persons seeking admission to the bar as well as to lawyers. Hence, if a person makes a material false statement in connection with an application for admission, it may be the basis for subsequent disciplinary action if the person is admitted, and in any event may be relevant in a subsequent admission application. The duty imposed by this Rule applies to a lawyer's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a lawyer to knowingly make a misrepresentation or omission in connection with a disciplinary investigation of the lawyer's own conduct. Paragraph (b) of this Rule also requires correction of any prior misstatement in the matter that the applicant or lawyer may have made and affirmative clarification of any misunderstanding on the part of the admissions or disciplinary authority of which the person involved becomes aware.

[2] This Rule is subject to the provisions of the fifth amendment of the United States Constitution and corresponding provisions of state constitutions. Rule 8.1(b) does not prohibit a good faith challenge to the demand for such information. A person relying on such a provision or challenge in response to a question, however, should do so openly and not use the right of nondisclosure as a justification for failure to comply with this Rule.

[3] A lawyer representing an applicant for admission to the bar, or representing a lawyer who is the subject of a disciplinary inquiry or proceeding, is governed by the rules applicable to the client-lawyer relationship, including Rule 1.6 and, in some cases, Rule 3.3.

Rule 8.2. Judicial and Legal Officials

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer or of a candidate for election, or appointment to, or retention in, judicial or legal office.

(b) A lawyer who is a candidate for retention in judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

COMMENT

[1] Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such

matters contributes to improving the administration of justice. Conversely, false statements by a lawyer can unfairly undermine public confidence in the administration of justice.

[2] When a lawyer seeks judicial office, the lawyer should be bound by applicable limitations on political activity.

[3] To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized.

Rule 8.3. Reporting Professional Misconduct

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This Rule does not require disclosure of information otherwise protected by Rule 1.6 or information gained by a lawyer or judge while serving as a member of a lawyers' peer assistance program that has been approved by the Colorado Supreme Court initially or upon renewal, to the extent that such information would be confidential if it were communicated subject to the attorney-client privilege.

COMMENT

[1] Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct. Lawyers have a similar obligation with respect to judicial misconduct. An apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. Reporting a violation is especially important where the victim is unlikely to discover the offense.

[2] A report about misconduct is not required where it would involve violation of Rule 1.6. However, a lawyer should encourage a client to consent to disclosure where prosecution would not substantially prejudice the client's interests.

[3] If a lawyer were obliged to report every violation of the Rules, the failure to report any violation would itself be a professional offense. Such a requirement existed in many jurisdictions but proved to be unenforceable. This Rule limits the reporting obligation to those offenses that a self-regulating profession must vigorously endeavor to prevent. A measure of judgment is, therefore, required in complying with the provisions of this Rule. The term "substantial" refers to the seriousness of the possible offense and not the quantum of evidence of which the lawyer is aware. A report should be made to the bar disciplinary agency unless some other agency, such as a peer review

agency, is more appropriate in the circumstances. Similar considerations apply to the reporting of judicial misconduct.

[4] The duty to report professional misconduct does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

[5] Information about a lawyer's or judge's misconduct or fitness may be received by a lawyer in the course of that lawyer's participation in an approved lawyers or judges assistance program. In that circumstance, providing for an exception to the reporting requirements of paragraphs (a) and (b) of this Rule encourages lawyers and judges to seek treatment through such a program. Conversely, without such an exception, lawyers and judges may hesitate to seek assistance from these programs, which may then result in additional harm to their professional careers and additional injury to the welfare of clients and the public. These Rules do not otherwise address the confidentiality of information received by a lawyer or judge participating in an approved lawyers assistance program; such an obligation, however, may be imposed by the rules of the program or other law.

Rule 8.4. Misconduct

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) engage in conduct, in the representation of a client, that exhibits or is intended to appeal to or engender bias against a person on account of that person's race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status, whether that conduct is directed to other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process; or

(h) engage in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer's fitness to practice law.

COMMENT

[1] Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so

through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take.

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offenses carry no such implication. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

[3] A lawyer who, in the course of representing a client, knowingly manifests by word or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, violates paragraph (g) and also may violate paragraph (d). Legitimate advocacy respecting the foregoing factors does not violate paragraphs (d) or (g). A trial judge's finding that peremptory challenges were exercised on a discriminatory basis does not alone establish a violation of this Rule.

[4] A lawyer may refuse to comply with an obligation imposed by law upon a good faith belief that no valid obligation exists. The provisions of Rule 1.2(d) concerning a good faith challenge to the validity, scope, meaning or application of the law apply to challenges of legal regulation of the practice of law.

[5] Lawyers holding public office assume legal responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers. The same is true of abuse of positions of private trust such as trustee, executor, administrator, guardian, agent and officer, director or manager of a corporation or other organization.

Rule 8.5. Disciplinary Authority; Choice of Law

(a) A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

(b) In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

(1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

COMMENT

Disciplinary Authority

[1] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. See, Rules 6 and 22, ABA Model Rules for Lawyer Disciplinary Enforcement. A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.5(a) appoints an official to be designated by this Court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

[1A] The second sentence of Rule 8.5(a) does not preclude prosecution for the unauthorized practice of law of a lawyer who is not admitted in this jurisdiction, and who does not comply with C.R.C.P. 220, C.R.C.P. 221, C.R.C.P. 221.1, or C.R.C.P. 222, but who provides or offers to provide any legal services in this jurisdiction.

Choice of Law

[2] A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice. Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers who act reasonably in the face of uncertainty.

[4] Paragraph (b)(1) provides that as to a lawyer's conduct relating to a proceeding pending before a tribunal, the lawyer shall be subject only to the rules of the jurisdiction in which the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer shall be subject to the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] When a lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect will occur, the lawyer shall not be subject to discipline under this Rule.

[6] If two admitting jurisdictions were to proceed against a lawyer for the same conduct, they should, applying this Rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer on the basis of two inconsistent rules.

[7] The choice of law provision applies to lawyers engaged in transnational practice, unless international law, treaties or other agreements between competent regulatory authorities in the affected jurisdictions provide otherwise.

Rule 9. Title -- How Known and Cited

These rules shall be known and cited as the Colorado Rules of Professional Conduct or Colo. RPC.

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CHAPTER 21

Library

CHAPTER 21

LIBRARY

Rule 261. Abstracts and Briefs

The Clerk shall file with the Librarian of the Supreme Court Library a complete set of the printed abstracts of record and briefs filed in all cases, which shall be suitably bound in volumes uniform in size, as near as practicable, with the reports of this Court, which shall become a part of the Court Library. The Clerk shall also cause one set of the printed briefs and abstracts to be bound for the files of this Court.

Rule 262. Withdrawal of Books

No books may be withdrawn or removed from the Library by any person, except members of the Court for use in their chambers.

Rule 263. Silence in Library

Silence is required in the Library. Employees shall observe and enforce this Rule.

Rule 264. Proof of Parts of Book

Whenever proof of the laws of any other state, territory or foreign government is required, and the official print thereof is on file in the Supreme Court Library, a verbatim copy thereof, either typewritten or by other duplicating methods, certified by the Librarian or Clerk of this Court to be the same as that contained in the official volume cited, shall have the same force and effect as such printed volume.

CHAPTER 22

Professional Service Companies

Adopted by the

SUPREME COURT OF COLORADO

November 22, 1995,

Effective December 1, 1995

CHAPTER 22

PROFESSIONAL SERVICE COMPANIES

Rule 265. Professional Service Companies

(a) Rendering Legal Service Through a Professional Company. One or more attorneys who are licensed to practice law in Colorado may render legal services in Colorado through a professional company, as that term is defined in Section (e), provided that such professional company is established and operated in accordance with the provisions of this Rule and the Colorado Rules of Professional Conduct.

(1) Professional Company Name. The name of the professional company shall comply with the provisions of the Colorado Rules of Professional Conduct regarding the names of law firms.

(2) Owners' Liability for Professional Acts, Errors, or Omissions. Each of the owners of the professional company shall be deemed to agree, by reason of the rendering of legal services by any attorney through the professional company, that each of them who is an owner at the time of the commission of any act, error, or omission in the rendering of legal services by any owner or other person for whose acts, errors, or omissions the professional company is liable, assumes, jointly and severally to the extent provided by this Rule the liability of the professional company for such act, error, or omission. Notwithstanding the preceding sentence, any owner who has not directly participated in the act, error, or omission in the rendering of legal services for which liability is incurred by the professional company does not assume such liability, except as provided in subsection (a)(3)(D), if, at the time the act, error, or omission occurs the professional company has professional liability insurance that meets the minimum requirements stated in subsection (a)(3).

(3) Professional Liability Insurance Policy Requirements. The professional liability insurance contemplated in subsection (a)(2) shall meet the following minimum requirements:

(A) Professional Acts Coverage. The professional liability insurance shall insure the professional company against liability imposed upon it arising out of the rendering of legal services by any attorney through the professional company and against the liability imposed upon it arising out of the acts, errors, and omissions of all nonattorney employees assisting in the rendering of legal services by any attorney through the professional company.

(B) Policy Language. The policy or policies for the professional liability insurance may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other matters.

(C) Limits of Coverage. The professional liability insurance shall be in an amount for each claim of at least the lesser of $100,000 multiplied by the number of attorneys who render legal services through the professional company or $500,000. If the policy or policies for the professional liability insurance provide for an aggregate top limit of liability per year

for all claims, the top limit shall not be less than the lesser $300,000 multiplied by the number of attorneys who render legal services through the professional company or $2,000,000.

(D) Deductibles and Defense Costs. The policy or policies for the professional liability insurance may provide for a deductible or self-insured retained amount and may provide for the payment of defense or other costs out of the stated limits of the policy. The liability assumed by each owner of the professional company who has not directly participated in the act, error or omission in the rendering of legal services for which liability is incurred by the professional company shall be the lesser of the actual liability of the professional company in excess of insurance available to pay such damages or the sum of the following:

(I) such deductible or retained self-insurance; and

(II) the amounts, if any, by which the payment of defense costs has reduced the insurance remaining available for the payment of damages incurred by reason of the liability of the professional company below the minimum limit of insurance required by subsection (a)(3)(C).

(E) Determination of Coverage. An act, error, or omission in the rendering of legal services shall be deemed to be covered by professional liability insurance for the purpose of this Rule if the policy or policies include such act, error, or omission as a covered activity, regardless of whether claims previously made against the policy have exhausted the aggregate top limit for the applicable time period or whether the individual claimed amount or ultimate liability exceeds either the per claim or aggregate top limit.

(F) Limitation of Vicarious Liability. The liability assumed by the owners of a professional company under this Rule is limited to the liability of the professional company for acts, errors, or omissions incurred in the rendering of legal services by any owner or other person for whose acts, errors, or omissions the professional company is liable and shall not extend to any other liability incurred by the professional company. Liability, if any, for any and all acts, errors, and omissions, other than acts, errors, or omissions incurred in the rendering of legal services by any owner or other person for whose acts, errors, or omissions the professional company is liable, shall be as otherwise provided by law and shall not be changed, affected, limited, or extended by this Rule.

(b) Compliance with Rules of Professional Conduct. Nothing in this Rule shall be deemed to diminish or change the obligation of each attorney rendering legal services through a professional company to comply with the Colorado Rules of Professional Conduct promulgated by this Court.

(c) Violation of Rule: Termination of Authority. Any violation of or failure to comply with any of the provisions of this Rule by the professional company may be grounds for this Court to terminate or suspend the right of any attorney who is an owner of such professional company to render legal services in Colorado through a professional company.

(d) Professional Company Constituencies. A professional company may have one or more owners that are professional companies, so long as each such owner that is a professional company and the professional company of which they are owners are both established and operated in accordance with the provisions of this Rule.

(e) "Professional Company" Defined. For purposes of this Rule, a professional company is a corporation, limited liability company, limited liability partnership, limited partnership association, or other entity that may be formed under Colorado law to transact business or any entity that can be formed under the law of any other jurisdiction and through which attorneys may render legal services in that jurisdiction, except that the term excludes a general partnership that is not a limited liability partnership and excludes every other entity the owners of which are subject to personal liability for the obligations of the entity.

CHAPTER 23

Group Legal Services

CHAPTER 23

GROUP LEGAL SERVICES

Rule 266. Group Legal Services Committee -- Appointment

Repealed September 3, 1987, effective October 1, 1987.

CHAPTER 23.3

Rules Governing Contingent Fees

CHAPTER 23.3

RULES GOVERNING CONTINGENT FEES

Rule 1. Definitions

In this rule, the term "contingent fee agreement" means a written agreement for legal services of an attorney or attorneys (including any associated counsel), under which compensation is to be contingent in whole or in part upon the successful accomplishment or disposition of the subject matter of the agreement.

Rule 2. Construction

Unless expressly prohibited by this rule, no written contingent fee agreement shall be regarded as champertous if made in an effort in good faith reasonably to comply with this rule. The Colorado Rules of Professional Conduct may be considered in reviewing disputed contingent fee agreements.

Rule 3. Prohibitions

No contingent fee agreement shall be made (a) in respect to the procuring of an acquittal upon any favorable disposition of a criminal charge, (b) in respect of the procuring of a dissolution of marriage, determination of invalidity of marriage or legal separation, (c) in connection with any case or proceeding where a contingency method of a determination of attorneys' fees is otherwise prohibited by law, the Colorado Rules of Professional Conduct, or governmental agency rule, or (d) if it is unconscionable, unreasonable, and unfair.

Rule 4. Procedure

(a) Before a contingent fee agreement is entered into the attorney shall disclose to the prospective client in writing:

(1) The nature of other types of fee arrangements;

(2) The nature of specially awarded attorney fees;

(3) The nature of expenses and the estimated amount of expenses to handle the matter to conclusion;

(4) The potential for an award of costs and attorneys' fees to the opposing party.

(5) What is meant by "associated counsel"; and

(6) What is meant by "subrogation" and effect of any subrogation interest or lien.

(b) Each contingent fee agreement shall be in writing in duplicate. Each duplicate

copy shall be signed both by the attorney and by each client. One signed duplicate copy shall be mailed or delivered to each client within ten days after the making of the agreement. One such copy (and proof that the duplicate copy has been delivered or mailed to the client) shall be retained by the attorney for a period of six years after the completion or settlement of the case or the termination of the services, whichever event first occurs.

(c) A written disbursement statement shall issue to the client at the time of final disbursement.

Rule 5. Contents

Each contingent fee agreement shall contain (a) the name and mail address of each client; (b) the name and mail address of the attorney or attorneys to be retained; (c) a statement of the nature of the claim, controversy and other matters with reference to which the services are to be performed; (d) a statement of the contingency upon which the client is to be liable to pay compensation otherwise than from amounts collected for him by the attorney; (e) a statement of the precise percentage to be charged subject to the limitations of Rule 3(d); and (f) a stipulation that the client, except as permitted by the Rules of Professional Conduct, including Rule 1.8(e), is to be liable for expenses, such stipulation including an estimate of such expenses, authority of the attorney to incur the expenses and make disbursements, a maximum limitation not to be exceeded without the client's further written authority. The final disbursement statement shall reflect the amount received, expenses incurred in handling of the case and computation of the contingency fee.

Rule 6. Sanction for Non-Compliance

No contingent fee agreement shall be enforceable by the involved attorney unless there has been substantial compliance with all of the provisions of this Chapter 23.3.

Rule 7. Forms

The following forms may be used and shall be sufficient. The authorization of these forms shall not prevent use of other forms consistent with this Chapter 23.3.

Form 1
Disclosure Statement

Type of Attorney Fee Agreements:

I have been informed and understand that there are several types of attorney fee arrangements: (1) time based, (2) fixed, (3) contingent, or (4) combinations of these types of fee arrangements. "Time based" means a fee that is determined by the amount of time involved such as so much per hour, day or week. "Fixed" means a fee that is based on an agreed amount regardless of the time or effort involved or the result obtained. "Contingent"

means a certain agreed percentage or amount that is payable only upon attaining a recovery regardless of the time or effort involved. I understand that not all attorneys offer all of these different types of fee arrangements, and I acknowledge that I have the right to contact other attorneys to determine if they may provide such other fee arrangements for my case or matter. After such consideration or consultation, I have elected the fee arrangement set forth in the accompanying contingent fee agreement.

Specially Awarded Attorney Fees:

I have been informed and understand that the court or an arbitrator may sometimes award attorney fees in addition to amount of recovery being claimed. I understand that the fee agreement I enter into with my attorney should contain a provision as to how any specially awarded attorney fees will be accounted for and handled.

Expenses:

I have been informed and understand that there may be expenses (aside from any attorney fee) in pursuing my claim. Examples of such expenses are: fees payable to the court, the cost of serving process, fees charged by expert witnesses, fees of investigators, fees of court reporters to take and prepare transcripts of depositions, and expenses involved in preparing exhibits. I understand that an attorney is required to provide me with an estimate of such expenses before I enter into an attorney fee agreement and that my attorney fee agreement should include a provision as to how and when such expenses will be paid. I understand that the fee agreement should tell me whether a fee payable from the proceeds of the amount collected on my behalf will be based on the "net" or "gross" recovery. "Net recovery" means the amount remaining after expenses and deductions. "Gross recovery" means the total amount of the recovery before any deductions. The estimated amount of the expenses to handle my case will be set forth in the contingent fee agreement.

The Potential of Costs and Attorney's Fees Being Awarded to The Opposing Party:

I have been informed and understand that a court or arbitrator sometimes awards costs and attorney fees to the opposing party. I have been informed and understand that should that happen in my case, I will be responsible to pay such award. I understand that the fee agreement I enter into with my attorney should provide whether an award against me will be paid out of the proceeds of any amount collected on my behalf. I also understand that the agreement should provide whether the fee I am obligated to pay my attorney will be based on the amount of recovery <u>before</u> or <u>after</u> payment of the awarded costs and attorney fees to an opposing party.

Associated Counsel:

I have been informed and understand that my attorney may sometimes hire another attorney

to assist in the handling of a case. That other attorney is called an "associated counsel." I understand that the attorney fee agreement should tell me how the fees of associated counsel will be handled.

Subrogation:

I have been informed and understand that other persons or entities may have a subrogation right in what I recover in pursuing my claim. "Subrogation" means the right to be paid back. I understand that the subrogation right may arise in various ways such as when an insurer or a federal or state agency pays money to or on behalf of a claiming party like me in situations such as medicare, medicaid, worker's compensation, medical/health insurance, no-fault insurance, uninsured/underinsured motorist insurance, and property insurance situations. I understand that sometimes a hospital, physician or an attorney will assert a "lien" (a priority right) on a claim such as the one I am pursuing. Subrogation rights and liens need to be considered and provided for in the fee agreement I reach with my attorney. The fee agreement should tell me whether the subrogation right or lien is being paid by my attorney out of the proceeds of the recovery made on my behalf and whether the fee I am obligated to pay my attorney will be based on the amount of recovery before or after payment of the subrogation right or lien.

I acknowledge that I received a complete copy of this Disclosure Statement and read it this _____ of _____, 20___.

_____
(Signature)

Alternative Attorney Compensation:

I have been informed and understand that if, after entering into a fee agreement with my attorney, I terminate the employment of my attorney or my attorney justifiably withdraws, I may nevertheless be obligated to pay my attorney for the work done by my attorney on my behalf. The fee agreement should contain a provision stating how such alternative compensation, if any, will be handled.

I acknowledge that I received a complete copy of this Disclosure Statement and read it this day of , 20 .

_____
(Signature)

Form 2
CONTINGENT FEE AGREEMENT
(To be Executed in Duplicate)

Dated _____, 20_____

The Client _____ retains the
(Name) (Street & No.) (City or Town)
Attorney _____
(Name) (Street & No.) (City or Town)

to perform the legal services mentioned in paragraph (1) below. The attorney agrees to perform them faithfully and with due diligence.

(1) The claim, controversy, and other matters with reference to which the services are to be performed are:

(2) The contingency upon which compensation is to be paid is:

(3) The client is not to be liable to pay compensation otherwise than from amounts collected for the client by the attorney, except as follows:

In the event the client terminates this contingent fee agreement without wrongful conduct by the attorney which would cause the attorney to forfeit any fee, or if the attorney justifiably withdraws from the representation of the client, the attorney may ask the court or other tribunal to order the client to pay the attorney a fee based upon the reasonable value of the services provided by the attorney. If the attorney and the client cannot agree how the attorney is to be compensated in this circumstance, the attorney will request the court or other tribunal to determine: (1) if the client has been unfairly or unjustly enriched if the client does not pay a fee to the attorney; and (2) the amount of the fee owed, taking into account the nature and complexity of the client's case, the time and skill devoted to the client's case by the attorney, and the benefit obtained by the client as a result of the attorney's efforts. Any such fee shall be payable only out of the gross recovery obtained by or on behalf of the client and the amount of such fee shall not be greater than the fee that would have been earned by the attorney if the contingency described in this contingent fee agreement had occurred.

(4) The client will pay the attorney (including any associated counsel) ____*____ percent of the (gross amount collected) (net amount collected) [indicate which]. ("Gross amount collected" means the amount collected before any subtraction of expenses and disbursements) ("Net amount collected" means the amount of the collection remaining after subtraction of expenses and disbursements [including] [not including] court-awarded costs or attorneys' fees.) [indicate which]. "The amount collected" (includes) (does not include) [indicate which] specially awarded attorneys' fees and costs awarded to the client.

(5) Costs and attorneys' fees awarded to an opposing party against the client before completion of the case will be paid (by the client) (by the attorney) [indicate which] when ordered. Any award of costs or attorneys' fees, regardless of when awarded, (will) (will not)

[indicate which] be subtracted from the amount collected before computing the amount of the contingent fee under this agreement.

(6) The client is to be liable to the attorney for reasonable expenses and disbursements. Such expenses and disbursements are estimated to be $ _____. Authority is given to the attorney to incur expenses and make disbursements up to a maximum of $ ____ which limitation will not be exceeded without the client's further written authority. The client will reimburse the attorney for such expenditures (upon receipt of a billing), (in specified installments), (upon final resolution), (etc.) [indicate which].

WE HAVE EACH READ THE ABOVE AGREEMENT BEFORE SIGNING IT.
Witnesses to Signatures:

_____
(Signature of Client)

_____ _____
Witness to Client's Signature (Signature of Attorney)

_____
Witness to Attorney's Signature

* [Here insert the percentages to be charged in the event of collection. These may be on a flat basis or on a descending scale in relation to amount collected.]

(7) The client (authorizes) (does not authorize) [indicate which] the attorney to pay from the amount collected the following: (e.g., all physicians, hospitals, subrogation claims and liens, etc.). Where the applicable law specifically requires the attorney to pay the claims of third parties out of any amount collected for the client, the attorney shall have the authority to do so notwithstanding any lack of authorization by the client, but if the amount or validity of the third party claim is disputed by the client, the attorney shall deposit the funds into the registry of an appropriate court for determination. Any amounts paid to third parties (will) (will not) [indicate which] be subtracted from the amount collected before computing the amount of the contingent fee under this agreement.

WE HAVE EACH READ THE ABOVE AGREEMENT BEFORE SIGNING IT.
Witnesses to Signatures:

_____
(Signature of Client)

_____ _____
Witness to Client's Signature (Signature of Attorney)

_____
Witness to Attorney's Signature

* [Here insert the percentages to be charged in the event of collection. These may be on a flat basis or on a descending scale in relation to amount collected.]

FINAL DISBURSEMENT STATEMENT

GROSS RECOVERY $_____

Itemization of expenses incurred in handling of case:

_____$_____
_____$_____
_____$_____
_____$_____

Total Expenses $_____

Amount of Expenses
Advanced by Attorney $_____

Amount of Expenses
paid by Client $_____

NET RECOVERY $_____

Computation of Contingent Fee:
_____% of (Net) (Gross)
Recovery = $_____

Total Fee
(and expenses advanced
by attorney)* $_____

DISBURSEMENT TO CLIENT_____ $_____

_____
(Signature of Attorney)

_____

(Signature of Client)

By signature of client acknowledges receipt
of a copy of this disbursement statement.

*(If fee is on "Net Recovery" and attorney has advanced expenses which are being reimbursed from the "gross recovery.")

COMMITTEE COMMENT

The Rules contained in this Chapter 23.3 set forth the minimum requirements of all enforceable contingency fee agreements in Colorado. The Rules do not prohibit additional terms, provided that such terms are not inconsistent with these Rules or the Colorado Rules of Professional Conduct.

One type of provision that is sometimes included in contingent fee agreements is a "conversion clause." A conversion clause is a provision that converts the fee due from the contingent amount set forth in the contract to some other type of fee, often an hourly based fee, when the contract is terminated before the contingency occurs.

There are a number of factors that must be considered to determine the ethical propriety and legal enforceability of a conversion clause. These factors are set forth and analyzed in detail in Formal Opinion 100, issued by the Colorado Bar Association Ethics Committee. Opinions of the CBA Ethics Committee are available on the Internet at www.cobar.org. This Committee notes that any conversion clause that purports to remove the contingency by making the attorney's fees payable without regard to the occurrence of the contingency, is presumptively invalid, unless the client is relatively sophisticated, has the demonstrated means to pay the attorney's fee even before the occurrence of the contingency, and has specifically negotiated the conversion clause.

The Colorado Supreme Court has held that an attorney cannot recover a fee based upon quantum meruit or unjust enrichment, unless the contingent fee agreement provides notice to the client of the possibility of such a fee. *Dudding v. Norton Frickey & Associates*, 11 P.3d 441 (Colo. 2000). Section (3) of the form Contingent Fee Agreement, which is a part of Chapter 23.3, provides notice to the client of the possibility of a quantum meruit or unjust enrichment fee recovery.

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CHAPTER 23.5

Rules of Procedure for Judicial Bypass of Parental Notification Requirements

CHAPTER 23.5

RULES OF PROCEDURE FOR JUDICIAL BYPASS OF PARENTAL NOTIFICATION REQUIREMENTS

Rule 1. Applicability

This rule applies to proceedings instituted pursuant to Section 12-37.5-107 (2) (g), C.R.S. which allows for judicial bypass of the parental notification requirements set forth in the Colorado Parental Notification Act, Sections 12-37.5-101, *et. seq.* concerning abortions to be performed on unemancipated minors.

Rule 2. Petition for Waiver of Parental Notification Requirements

(a) Procedure. An unemancipated minor who seeks waiver of the parental notification requirements for an abortion shall file on her own, or have filed on her behalf, a "petition" with any district court or Denver Juvenile Court (both hereinafter referred to as "district court"), as provided in Rule 6 (Form 1) of these rules. These rules of procedure and forms, as well as instructions for using the judicial bypass procedure, shall be available free of charge at the offices of all clerks of the state district courts and on the Judicial Department's official website (www.courts.state.co.us). The clerk of court's office shall provide assistance to minors seeking to file a judicial bypass petition in a manner that protects the minor's right to anonymity and confidentiality in the proceedings.

(b) Expedited Proceedings. Court proceedings under this rule shall be given preference over other pending matters and shall be heard and decided as soon as practicable but in no event later than four calendar days after the petition was filed. If the court fails to act within four calendar days, the court in which the proceeding is pending shall immediately issue an order setting forth that the parental notification requirements have been dispensed with by operation of law, pursuant to Section 12-37.5-107 (2) (f), C.R.S.

(c) Setting. At the time the petition is filed, the clerk shall immediately transfer the court file to the assigned judge for setting and inform the person filing the petition of the date, time and location of the hearing. The hearing shall be set as soon as practicable but in no event later than four calendar days after the date of filing. The hearing time shall accommodate the minor's schedule as practicable and shall be set before a district court or Denver juvenile court judge, and not a magistrate.

(d) Transfer of Court File. At the time the petition is filed, the clerk shall place the petition in a sealed envelope marked "SEALED MATERIALS - CONFIDENTIAL" identifying the file by case number only. The envelope shall be date stamped and forwarded immediately to the assigned judge for setting of the hearing. The clerk shall inform the judge

of the four-day time limitation for the case and of any request for counsel and/or a guardian ad litem at that time.

(e) Contents of Petition. The petition shall include the following:

(1) the name and age of the minor;

(2) the length of the pregnancy;

(3) information to establish that the minor is unemancipated;

(4) a statement concerning whether the minor has been informed of the risks and consequences of the abortion;

(5) a statement that the minor seeks to have an abortion without notifying her parent(s), guardian or foster parent;

(6) the name, address and telephone number of the attending physician should the minor request to have the court inform the physician directly of its decision;

(7) a statement that the minor is sufficiently mature to decide whether to have an abortion without the notification of her parent(s), guardian or foster parent, and/or that parental notification would not be in her best interest;

(8) any request for court appointed counsel and/or a guardian ad litem; and

(9) contact information for confidential notification by the court of any court proceedings and/or rulings.

(f) Grounds for waiver. In review of the petition, the court shall enter an order dispensing with the notice requirements of Section 12-37.5-104, C.R.S. if:

(1) the court determines, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to have an abortion; or

(2) the court determines, by a preponderance of the evidence, that the giving of parental notice would not be in the best interest of the minor.

(g) Orders. Any order allowing for or denying a waiver of the parental notification requirements, either on the record or in writing, shall include specific factual and legal conclusions in support of the decision. The order shall issue within four calendar days of the filing of the petition. If the court fails to act within four days, an order shall immediately be issued by the court setting forth that the parental notification requirements have been dispensed with by operation of law. A certified copy of any order issued shall be provided to the minor by the method requested in the petition, the minor's attorney, if represented, and the guardian ad litem, if one has been appointed. A certified copy of the order also shall be provided to the attending physician of the minor, as set forth in the petition. If the court denies the petition, the minor and/or her attorney, if she is represented, shall be notified of the right to appeal and provided with a copy of the notice of appeal form (Form 3) contained in Rule 6 of these rules.

(h) Appointment of Counsel and/or Guardian Ad Litem. The court may appoint counsel for the minor, if she is not represented. In addition, the court may appoint a guardian ad litem for the minor. Any appointed attorney or guardian ad litem shall be retained at no cost to the minor, shall act within the time frames provided in these rules and shall maintain the confidentiality of the court record and proceedings.

Rule 3. Appeal to the Court of Appeals

(a) Procedure. An appeal of an order denying a petition filed under these rules may be made to the Colorado Court of Appeals by the minor, or someone acting on her behalf, by promptly filing a "notice of appeal," as provided in Rule 6 (Form 3) of these rules. A copy of the district court order shall be attached to the notice of appeal. An advisory copy of the notice of appeal shall be filed with the district court. The appeal shall be decided on the record. A petitioner brief may be filed but is not required. Oral argument may be held at the discretion of the court.

(b) Setting. Upon receipt of the notice of appeal, the clerk of the Court of Appeals shall immediately request a transcript or any analog or digital recording of the district court proceedings. The clerk of the district court shall arrange for preparation of the transcript directly with the reporter if the proceeding was stenographically recorded. The clerk of the district court shall certify the contents and forward the entire district court file, including any prepared transcript or recording, in its sealed envelope to the clerk of the Court of Appeals via overnight or hand delivery forthwith, to be received in no event later than 48 hours after the notice of appeal was filed.

(c) Decision. A decision shall issue no later than five calendar days after the notice of appeal was filed. If no decision is rendered within five days, the court shall immediately issue an order setting forth that the parental notification requirements have been dispensed with by operation of law, pursuant to Section 12-37.5-107 (2) (f), C.R.S. A certified copy of any order issued shall be provided to the minor by the method requested in the petition, the minor's attorney, if represented, and the guardian ad litem, if one has been appointed. A certified copy of the order also shall be provided to the attending physician of the minor, as set forth in the petition.

Rule 4. No Fees or Costs

No court fees or costs of any kind, including transcript fees, shall be assessed against the minor in connection with the filing of the petition or an appeal pursuant to these rules.

Rule 5. Confidentiality of Court Record and Proceedings

(a) Court proceedings. All district court and appellate court proceedings shall be closed to the public. All hearings shall be held in a location where there is privacy and limited access.

(b) Court record. The entire district court and appellate court record relating to the petition, excluding any published decisions but including, without limitation, the petition, pleadings, submissions, transcripts, court reporter notes and tapes, tape recordings, exhibits, orders, evidence, findings, conclusions, and any other material to be maintained, shall be stored in a closed file contained in a sealed envelope and conspicuously marked "SEALED MATERIALS - CONFIDENTIAL." The envelope shall be identified within the clerk's office only through reference to the case number. Access to the court file shall be limited to essential court personnel, the minor, the minor's attorney, any appointed guardian ad litem, and/or the court for use only in connection with court proceedings conducted under these

rules. The court record shall not be open to public inspection or public disclosure, unless otherwise ordered by the court.

Rule 6. Forms

The following forms may be used and shall be sufficient. The authorization of these forms shall not prevent the use of other forms which substantively comply with the requirements of these rules of procedure.

❑ District Court ❑ Denver Juvenile Court _____County, Colorado Court Address: _____ **IN THE MATTER OF THE PETITION OF:** _____ **[Name of Minor]** **For a Waiver of Parental Notification Requirements Concerning an Abortion**	▲ **COURT USE ONLY** ▲
Attorney, if Minor Represented (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom
PETITION FOR WAIVER OF PARENTAL NOTIFICATION REQUIREMENTS OF §12-37.5-104, C.R.S.	

The Petitioner, a minor, states:

1. I am ___ years old.
2. I am approximately ____ weeks pregnant and desire to terminate the pregnancy by abortion.
3. I want to have the abortion without telling my parent(s), guardian or foster parent.
4. I am ❑ am not ❑ married.
5. I do ❑ do not ❑ financially support myself.
6. I live with my:
   - ❑ parent(s)
   - ❑ guardian
   - ❑ foster parent(s)
   - ❑ relative: _____ (state relationship)
   - ❑ other: _____(state relationship)
7. I have ❑ have not ❑ been informed about the risks and consequences of having the abortion.
8. (Check one or both):
   - ❑ I believe I am mature enough to decide on my own to have an abortion without telling my parent(s), guardian or foster parent.
   - ❑ It would not be in my best interest to tell my parent(s), guardian or foster parent of the abortion.
9. The name, business address and telephone number of the clinic or doctor who would perform the abortion are (this information is optional if you want to have the court's decision sent directly to the clinic or doctor):
   _____
   _____.
10. ❑ I ask the Court to appoint a lawyer to represent me at no cost to me.

❑ I have a lawyer and ask the Court to appoint that person to continue to represent me. My lawyer's name, business address, telephone and fax numbers are: _____

_____

❑ I do not want to be represented by a lawyer.

11. I understand that the court proceedings and my court file are confidential and cannot be disclosed to anyone, including my parent(s), guardian or foster parent.

12. The Court can let me know of any Court proceedings or decisions in the following way:

❑ Via Fax: #_____; Attn:_____

❑ Via Telephone: #_____; Attn:_____

❑ Via E-mail: _____

❑ Via Beeper or Pager #_____

❑ Via First Class Mail: _____

_____

❑ Via My Attorney

13. I ask that the Court provide me with a certified copy of the court's order in the following way (check one):

❑ Via First Class Mail: _____

_____

❑ Via My Attorney

❑ Via the Court File for pickup by me or _____ who has my permission to pick up the certified copy on my behalf from the court file at the courthouse

14. The best days and times for me to come to court are:

_____

_____

WHEREFORE, I request to the Court enter an order allowing me to have the abortion without telling my parent(s), guardian or foster parent.

Respectfully submitted this ____ day of _____, 20___.

_____
Signature of Minor

_____
Signature of Attorney, if Petitioner is represented

❑ District Court ❑ Denver Juvenile Court _____County, Colorado Court Address: _____ **IN THE MATTER OF THE PETITION OF:** _____ [Name of Minor] **For a Waiver of Parental Notification Requirements Concerning an Abortion**	▲ **COURT USE ONLY** ▲
Attorney, if Minor Represented (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom
SETTING NOTICE	

The hearing in the above-captioned matter has been set as follows:

Judge _____ of Division ____ will hold a hearing on the Petition at _____ a.m./p.m. on _____. The hearing will be held at: _____

_____.

If you need to change the date or time of your hearing, you or your lawyer must contact the court at _____ to reschedule the hearing.

A copy of this Setting Notice shall be placed by the clerk in the court file.

LAWYER ASSIGNMENT
(To be filled out by the Judge)

The name, address, and telephone of the court-appointed lawyer assigned to represent the minor is:

_____

_____.

The judge will notify the lawyer of his/her appointment and the date of the hearing.

Colorado Court of Appeals 2 East Fourteenth Avenue, Suite 300 Denver, Colorado 80203-2115 _____ District Court, Judge _____, Case # _____ **IN THE MATTER OF THE PETITION OF:** **_____ [Name of Minor]** **For a Waiver of Parental Notification Requirements Concerning an Abortion**	▲ **COURT USE ONLY** ▲
Attorney, if Minor Represented (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom
NOTICE OF APPEAL	

The Petitioner, a minor, states:

1. The district court has denied my petition to have an abortion without telling my parent(s), guardian or foster parent.
2. I ask that I be given permission by this court to have the abortion without telling my parent(s), guardian or foster parent on the grounds stated in the Petition filed with the district court on _____, 20__.
3. I believe the district court was wrong in its decision because:_____
   _____
   _____
   _____
   _____.
4. A copy of the district court's decision is attached to this Notice of Appeal.
5. ❑ I ask the court to appoint a lawyer to represent me at no cost to me.
   ❑ I have a lawyer and ask the court to appoint that person to continue to represent me. My lawyer's name, business address, telephone and fax numbers are: _____
   _____
   ❑ I do not want to be represented by a lawyer.
6. I understand that the court proceedings and my court file are confidential and cannot be disclosed to anyone, including my parent(s), guardian or foster parent.
7. I request that the court contact me about its decision in the following way (check one):
   ❑ Via Fax: #_____; Attn:_____
   ❑ Via Telephone: #_____; Attn:_____
   ❑ Via E-mail: _____
   ❑ Via Beeper or Pager #_____
   ❑ Via First Class Mail: _____
   _____

- ❑ Via My Attorney

8. I request that the Court provide me with a certified copy of the court's order in the following way (check one):
   - ❑ Via First Class Mail: _____
     _____
   - ❑ Via My Attorney
   - ❑ Via the Court File for pickup by me or _____ who has my permission to pick up the certified copy from the court file at the courthouse
9. The name, business address, and telephone number of the clinic or doctor who would perform the abortion are (this information is not necessary but optional if you want to have the court's decision sent directly to the clinic or doctor): _____
   _____.

WHEREFORE, I request that this court reverse the district court and allow me to have the abortion without telling my parents.

Respectfully submitted this ____ day of _____, 20__.

_____
Signature of the Minor

_____
Signature of Attorney, if minor is represented

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CHAPTER 24

The Colorado Rules of Judicial Discipline

Adopted by the

SUPREME COURT OF COLORADO

March 22, 2012,

Effective Immediately

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CHAPTER 24

COLORADO RULES OF JUDICIAL DISCIPLINE

PART A. GENERAL PROVISIONS

Rule 1. Scope, Objectives and Title

(a) Scope. The Colorado Rules of Judicial Discipline (the "Rules") apply to all of the responsibilities and proceedings of the Colorado Commission on Judicial Discipline (the "Commission"), pursuant to Article VI, Section 23(3) of the Colorado Constitution (the "Constitution"), involving the removal, retirement, suspension, censure, reprimand, or other discipline of judges, and disabilities affecting the performance of their judicial duties.

(b) Constitutional Mandate. The Constitutional mandate of the Commission is to protect the public from improper conduct of judges; preserve the integrity of the judicial process; maintain public confidence in the judiciary; create a greater awareness of proper judicial behavior on the part of the judiciary and the public; and provide for the fair and expeditious disposition of complaints of judicial misconduct or judicial disabilities.

(c) Title. These Rules shall be known and cited as the Colorado Rules of Judicial Discipline or Colo. RJD.

Rule 2. Definitions

In these rules, unless the context or subject matter otherwise requires:

(a) The term **"Judge"** means any justice or judge of any court of record of this state serving on a full time, part-time, senior, or retired basis against whom a complaint has been filed or initiated or who has been convicted of a felony or other offense involving moral turpitude. This definition does not include judges of the county court of the City and County of Denver, municipal judges, or magistrates. The conduct of municipal judges and magistrates is subject to the disciplinary and disability jurisdiction of Attorney Regulation under Colo. RPC 251.1(b).

(b) **"Attorney Regulation"** means the Office of Attorney Regulation Counsel.

(c) **"Chair"** means a member selected by the Commission to administer the business of the Commission and preside at all meetings of the Commission, any member selected to preside at a hearing, or any person designated as "acting chair."

(d) **"Code"** means the Colorado Code of Judicial Conduct, as amended.

(e) **"Colo. RPC"** means the Colorado Rules of Professional Conduct.

(f) **"Complaint"** means information in any form from any source received by the Commission that alleges, or from which a reasonable inference can be drawn, that a Judge may have committed misconduct or may have a disability that is adversely affecting the Judge's performance.

(g) **"Complainant"** means a person who files a complaint.

(h) **"C.R.C.P."** means the Colorado Rules of Civil Procedure.

(i) **"Executive director"** means the person appointed by the Commission to serve as its executive director.

(j) **"Hearing"** means a meeting of the Commission or special masters convened for the purpose of taking evidence or considering legal arguments.

(k) **"Mail"** or **"mailed"** means first-class mail, personal delivery, or delivery by commercial mail service.

(l) **"Meeting"** means an assembly of the Commission or special masters in person or by conference call or any combination thereof.

(m) **"Member"** means a member or special member of the Commission.

(n) **"Notice"** means a letter or other writing sent by mail, unless otherwise specified in the Rules, to a Judge at the Judge's chambers or last known residence, to an address designated by the Judge, or to the Judge's counsel of record.

(o) **"Participant"** means a member, special member, the executive director, Commission staff, complainant, Judge, the Judge's counsel, special counsel, special master, witness, investigator, or any other person who obtains knowledge of a proceeding in the course of an investigation or prosecution by the Commission.

(p) **"Presenter"** means one or more members who are designated by the Commission or by the executive director to evaluate and report on a complaint to the Commission.

(q) **"Proceedings"** include a complaint, a response to a complaint, an investigation of a complaint, a meeting, a hearing, a disciplinary disposition, a disciplinary sanction, a disability disposition, or a communication with respect thereto.

(r) **"Special counsel"** means an attorney or attorneys appointed by the Commission with respect to the investigation or disposition of a complaint or the prosecution of a complaint in formal proceedings.

(s) **"Special master"** means a person appointed by the Supreme Court to preside over hearings.

(t) **"Special members"** are persons appointed by the Commission to serve as alternates to members.

Rule 3. Organization and Administration

(a) **Composition.** The Commission shall be made up of ten members as provided in the Constitution.

(b) **Officers.** The Commission shall elect from its membership a chair, a vice-chair, and a secretary, each of whom shall serve renewable one-year terms. The vice-chair shall act as chair in the absence of the chair, and in the absence of both, the members present may select an acting chair.

(c) **Special Members.** The Commission may appoint a special member to serve in the place of a member who recuses or is disqualified with respect to a complaint, or who may be temporarily unable to perform his or her duties as a member.

(d) **Executive Director.** The Commission shall appoint an executive director whose

duties and responsibilities, subject to general oversight by the Commission, shall be:

(1) To establish and maintain a permanent office;

(2) To receive information, allegations, and complaints;

(3) To screen complaints under Rule 13 and refer screened complaints to the Commission for consideration;

(4) To conduct investigations;

(5) To recommend dispositions;

(6) To maintain Commission records;

(7) To maintain statistics concerning the operation of the Commission and make them available to the Commission and to the Supreme Court;

(8) To prepare the Commission's budget and administer its funds;

(9) To employ the Commission's staff;

(10) To prepare an annual report of the Commission's activities for presentation to the Commission, to the Supreme Court, and to the public;

(11) To employ special counsel, investigators, or other experts as necessary to investigate and process matters before the Commission and before the Supreme Court; and

(12) To perform such other duties as the Commission or the Supreme Court may require.

(e) **Meetings.** Meetings shall be held at the call of the chair, the vice-chair, or the executive director, or at the request of three members of the Commission. The Commission may conduct meetings in person or by conference call.

(f) **Quorum.** Six members must be present in person or by conference call for the transaction of business by the Commission.

Rule 4. Jurisdiction and Powers

(a) Jurisdiction.

(1) Filing Date. The Commission has jurisdiction over a Judge regarding allegations of misconduct or a disability and the application of dispositions and sanctions thereto, based on events that occurred while the Judge was an active or senior judge, if a complaint is filed by a complainant (or commenced on the Commission's motion) while the Judge is an active or senior judge, or within one year following (A) the end of the Judge's term of office, (B) the effective date of the Judge's retirement or resignation, or (C) the end of the Judge's participation in the senior judge program.

(2) Continuing Jurisdiction. The jurisdiction of the Commission to fulfill its Constitutional mandate under of Rule 1(b) regarding a pending disciplinary or disability proceeding shall not terminate upon the expiration of the Judge's term of office, the Judge's retirement or resignation, or the appointment or reappointment of the Judge to the senior judge program. Such jurisdiction shall continue until a disposition or sanction is determined.

(b) Attorney Regulation. Conduct by a Judge or former Judge that involves grounds for disciplinary action under Rule 5 and/or may involve grounds for a violation of Colo. RPC may be referred by the Commission to Attorney Regulation. Such referral shall not preclude the Commission from proceedings concerning conduct under its jurisdiction coincident with

Attorney Regulation's jurisdiction over violations of Colo. RPC. Nothing in these Rules shall be construed to limit the jurisdiction of Attorney Regulation over an attorney with respect to conduct subject to Colo. RPC, which occurred before, during, or after the attorney's service as a judge.

(c) General Powers. The Commission shall have the authority and duty to investigate and resolve complaints in accordance with the Constitution and these Rules.

(d) Evidentiary Powers. Any member or special master may administer oaths and affirmations, compel by subpoena the attendance and testimony of witnesses, including the Judge as a witness, and provide for the inspection of documents, books, accounts, and other records.

(e) Contempt Powers. A Judge's refusal to comply with a disposition ordered under Colo.RJD 35 or the willful misconduct of a Judge or any other person during any stage of the Commission's investigation or consideration of a complaint in preliminary, formal, or disability proceedings, including, but not limited to, misrepresentation of a material fact, resistance to or obstruction of any lawful process, disruptive behavior, breach of confidentiality, or failure to comply with any of these Rules, may be grounds for direct or indirect contempt, as provided in C.R.C.P.107. In formal proceedings or disability proceedings, direct contempt may be addressed summarily by the special masters. To address allegations of indirect contempt, the Commission shall request the Supreme Court to appoint a special master. The Commission shall be represented in contempt proceedings by special counsel who shall file a motion with the special master, verified by the executive director or a member of the Commission, alleging the grounds for contempt. The special master may ex parte order a citation to issue to the person charged to appear and show cause at a designated date, time, and place why the person should not be held in contempt. The motion and citation shall be served on the person charged at least seven days before the time required for the person to appear before the special master. The special master ineshall conduct a hearing and file recommended findings of fact and conclusions of law regarding the alleged contempt with the Supreme Court. The Supreme Court shall consider the special master's recommendations and dismiss the citation or order remedial or punitive sanctions as it deems appropriate under C.R.C.P. 107.

(f) Administrative Powers. The Commission may adopt administrative policies, procedural rules, or forms for its internal operation or proceedings that do not conflict with the provisions of these Rules.

(g) Communications. The Commission may distribute information to the judiciary and the public concerning its authority and procedures.

Rule 5. Grounds for Discipline

(a) In General. Grounds for judicial discipline shall include:

(1) Willful misconduct in office, including misconduct which, although not related to judicial duties, brings the judicial office into disrepute or is prejudicial to the administration of justice;

(2) Willful or persistent failure to perform judicial duties, including incompetent

performance of judicial duties;

(3) Intemperance, including extreme or immoderate personal conduct; recurring loss of temper or control; abuse of alcohol, prescription drugs, or other legal substances; or the use of illegal or non-prescribed narcotic or mind-altering drugs; or

(4) Any conduct that constitutes a violation of the Code.

(b) Failure to Cooperate During Proceedings. A Judge's failure to cooperate with the Commission during the investigation or consideration of a complaint may be grounds for discipline.

(c) Failure to Comply with a Commission Order. A Judge's failure or refusal to comply with an order issued under these Rules during disciplinary proceedings or with a disciplinary order resulting from such proceedings may be (i) grounds for initial or supplemental disciplinary measures or (ii) probable cause to proceed with formal action.

(d) Contempt Proceedings not Precluded. Determinations by the Commission under sections (b) and (c) of this Rule are in addition to and do not preclude contempt proceedings under Colo. RJD 4(e).

(e) Misconduct Distinguished from Disputed Rulings. Complaints that dispute a Judge's pre-trial orders, evidentiary or procedural rulings, findings of fact, conclusions of law, sentencing, or other matters that are under the jurisdiction of the trial court or which are subject to appellate review shall not constitute grounds for judicial discipline, unless the Judge's conduct includes one or more of the grounds provided in section 5(a) of this Rule.

Rule 6. Confidentiality and Privilege

Rule deleted and replaced by Rule 6.5.

Rule 6.5. Confidentiality and Privilege

(a) Confidentiality. The proceedings of the Commission and special masters, including all papers, investigative notes and reports, pleadings, and other written or electronic records, shall be confidential unless and until the Commission files a recommendation with the Supreme Court for one or more sanctions of a Judge's conduct under Rule 36, at which time the recommendation together with the supporting record of the proceedings shall no longer be confidential.

(b) Privilege. Papers or pleadings filed with the Commission, the work product of investigations, testimony given in proceedings, minutes and decisions of the Commission, records of special counsel, hearings conducted by the special masters, and the report of the special masters are privileged and, therefore, cannot be the subject of any legal action against a participant, including a claim for defamation.

(c) Disability Proceedings. In disability proceedings, all orders transferring a Judge to or from disability inactive status shall be matters of public record; otherwise, disability proceedings shall remain confidential and shall not be made public, except by order of the Supreme Court.

(d) Disclosures. Subject to certification, when required by subsection (e)(2) of this

Rule, confidentiality does not apply to (i) the disclosure of the records and proceedings reasonably necessary for the Commission or its executive director to fulfill the Commission's Constitutional mandate under Rule 1(b); or (ii) disclosures in the interest of justice or public safety, including the following:

(1) Disclosure of the allegations in a complaint and related materials reasonably necessary to conduct the investigation of the complaint;

(2) When the Commission has determined that there is a demonstrated need to notify another person in order to protect that person; or to notify an appropriate government agency, including law enforcement or Attorney Regulation, in order to protect the public or the judiciary or to further the administration of justice;

(3) In response to an inquiry by the Supreme Court concerning the qualifications of a Judge for appointment or reappointment to other judicial responsibilities (including the senior judge program), by an agency or official authorized to investigate the qualifications of a Judge who has applied for or has been nominated for another judicial position, or by the Governor with respect to the qualifications of a Judge recommended by a nominating commission for appointment to another judicial position, the Commission shall disclose disciplinary dispositions under Rule 35 (other than complaints resulting in dismissals) and sanctions under Rule 36, together with the status of any pending complaints directed at the Judge which the Commission, as of the date of such request, is investigating under Rule 14;

(4) In response to an inquiry by the executive director of the Office of Judicial Performance Evaluation ("Judicial Performance") if the Commission determines, in its discretion, that disclosure to Judicial Performance is consistent with its Constitutional mandate under Rule 1(b) and on the condition that Judicial Performance will not publicly disclose such information or its source without independent verification by Judicial Performance;

(5) If a Judge has been convicted of a crime or public discipline has been imposed on a Judge by Attorney Regulation or by a foreign jurisdiction and the Commission determines that public disclosure is appropriate;

(6) Upon request of an agency authorized to investigate the qualifications of persons for admission to practice law;

(7) Upon request of any attorney discipline enforcement agency;

(8) Upon request of any law enforcement agency;

(9) Upon a Judge's written waiver of confidentiality and consent to disclosure; or

(10) When the Commission or the executive director has knowledge of potential grounds for misconduct under state or federal law, a chief justice directive, or other rule applicable to the conduct of an employee of the state judicial branch (other than a judge) and provides such information to the Office of the State Court Administrator;

(e) When Certification Required.

(1) The Commission is permitted to disclose nonpublic information pursuant to subsections (d)(1) through (d)(5) of this Rule without prior notice to, or waiver and consent by, the Judge.

(2) The Commission is permitted to provide nonpublic information requested pursuant to subsections (d)(6) through (d)(8) of this Rule without prior notice to, or waiver

and consent by, the Judge, only if a senior official of the requesting agency provides a verified certificate to the Commission on the agency's letterhead in support its request, which addresses:

(i) Whether there is an ongoing investigation of (A) alleged misconduct by the Judge, (B) an alleged violation of federal or state law, or (C) the Judge's qualifications to practice law;

(ii) The reasons the information is essential to that investigation;

(iii) Whether the agency has attempted to obtain the Judge's waiver of confidentiality and consent to disclosure or why a request for waiver and consent would be inappropriate or impractical;

(iv) Why disclosure of the existence of the investigation to the Judge would significantly prejudice the investigation; and

(v) Other factors relevant to the request.

(3) If an agency authorized to request disclosure by subsections (d)(6) through (d)(8) of this Rule has not obtained a waiver and consent from the Judge or provided the certification required in subsection (e)(2), then the Commission may decline the request or may notify the Judge in writing of the request which identifies the requesting agency and describes the information proposed to be released. The notice shall advise the Judge that the Commission will release the information, unless the Judge objects to the disclosure within fourteen days after mailing of the notice. If the Judge objects to the disclosure, then the information shall remain confidential unless, upon motion by the requesting agency or the Commission with notice to the Judge, the Supreme Court enters an order requiring release.

(f) Public Knowledge. The Commission may, by motion filed with the Supreme Court, assert that the allegations of a complaint have become generally known to the public and that, in the interests of justice, the nature of the disciplinary proceedings should be disclosed. The Judge shall have fourteen days after the filing of such motion within which to object to such disclosure or to propose conditions or limitations on such disclosure. The Supreme Court, in its discretion, may deny such motion or order disclosure of the nature of the allegations, the Judge's response, and, when determined, the disposition of the complaint, subject to such terms as it deems appropriate.

(g) Available Records. After the filing of a recommendation with the Supreme Court pursuant to section (a) of this Rule, the record of proceedings shall be available to the public unless the Supreme Court enters a protective order concerning specifically identified information, but only upon a showing of good cause for such protective order by the Commission, special counsel, special masters, or the Judge.

(h) Prior Discipline. In investigating a complaint, determining a disposition under Rule 35, or in recommending a sanction under Rule 36, the Commission and special masters may consider the nature of any discipline previously imposed on the Judge by the Commission or the Supreme Court.

(i) Summaries. In the annual report required by Rule 3(d)(10), the Commission may publish summaries of proceedings which have resulted in disciplinary dispositions or sanctions. A summary may include a brief statement of facts, references to the applicable canons and rules in the Code, and a description of the disciplinary action taken, but shall not

disclose the date or location of the factual basis for the disciplinary measures or the identity of the Judge, the complainant, witnesses, or other parties to the proceedings.

(j) Duty of Officials and Employees. All officials and employees within the Commission, executive director's office, special counsel's office, special masters' offices, and the Supreme Court shall conduct themselves in a manner that maintains the confidentiality mandated by these Rules.

Rule 7. Notice of Action

Upon termination of any proceedings hereunder, the Judge, the Judge's counsel, special counsel, and the complainant shall be notified of the action taken by the Commission or the Supreme Court and all participants shall be advised of the confidentiality of Commission proceedings.

Rule 8. Service

(a) Service on Judge. All papers and pleadings in proceedings may be served on a Judge in person or by mail, except that a notice of formal charges served by mail must be served by certified mail. Mail shall be sent to the chambers or last known residence of a Judge, or to an address designated by the Judge. If counsel has been designated for a Judge, all notices, papers, and pleadings may be served on the Judge's counsel in lieu of service upon the Judge.

(b) Service on Commission. Service of papers and pleadings on the Commission or any member shall be by delivering or mailing the papers to the Commission's office.

(c) Service on Special Counsel. Service of papers and pleadings on special counsel shall be by delivering or mailing to special counsel's office.

(d) When Service Accomplished. When service is by mail, a pleading or other document is timely served if mailed within the time permitted for service.

Rule 8.5. Procedural Rights of Judge

(a) Counsel. A Judge may confer with and be represented by counsel at any stage of disciplinary or disability proceedings. If counsel has entered an appearance, all communications and pleadings from the Commission, executive director, and special counsel shall be directed to the Judge's counsel. In formal proceedings and disability proceedings, a Judge may testify, introduce evidence, and examine and cross-examine witnesses, and the Judge's counsel may introduce evidence and examine and cross-examine witnesses.

(b) Guardian ad litem. If it appears to the Commission at any time that a Judge may not be competent to act, the Commission shall appoint a guardian ad litem for the Judge at the Commission's expense. The guardian ad litem may claim and exercise any right or privilege that could be claimed or exercised by the Judge, including the selection of counsel, a request for an independent medical examination, or the commencement of disability proceedings under Rule 33.5. Any notice to be served on the Judge shall also be served on

the guardian ad litem.

Rule 9. Disqualification of an Interested Party

A Judge who is a member shall be disqualified from participation in any proceedings involving the Judge's own discipline or disability. A justice of the Supreme Court shall be disqualified from participating in formal proceedings concerning the justice's own discipline or disability. A member or the executive director may recuse himself or herself in any proceeding involving a Judge who is a close personal acquaintance, their current or recent professional or business associate, or where there are other actual or potential conflicts of interest.

Rule 10. Immunity

Members, the executive director, Commission staff, its investigators, special counsel, and special masters shall be absolutely immune from suit for all conduct in the course of their official duties.

Rule 11. Amendment of Rules

The Commission may petition the Supreme Court to amend or alter these Rules as may be necessary to implement the Commission's Constitutional mandate. Any person may request the adoption, amendment, or repeal of a Rule by filing a petition with the Commission describing the proposed change.

PART B. PRELIMINARY PROCEEDINGS

Rule 12. Filing a Complaint

Any organization or person may file a complaint with the Commission alleging judicial misconduct or disability on the part of a Judge. The Commission on its own motion may initiate a complaint against a Judge. A complaint need not be in any specific form; however, the Commission shall prepare and distribute printed forms for the convenience of complainants. Complaints must include allegations of facts which, if true, would constitute one or more grounds for discipline of a Judge.

Rule 13. Screening of Complaints

The Commission, or, at its discretion, the executive director, shall determine whether a complaint provides sufficient cause to warrant further investigation and evaluation. The Commission or the executive director shall dismiss complaints that (a) do not include allegations of facts which, if true, would constitute grounds for disciplinary action; (b) are based on disputed rulings under the jurisdiction of the trial or appellate courts; (c) are

frivolous; or (d) are otherwise beyond the jurisdiction of the Commission. If a complaint survives screening, the executive director or one or more presenters shall provide an evaluation of the complaint to the Commission. A Judge need not be notified of the action taken by the Commission at this stage of the proceedings.

Rule 14. Preliminary Investigation

(a) Investigation and Notice. The Commission shall consider the evaluation provided by the executive director or presenter(s) and if it finds that there are sufficient grounds to initiate disciplinary proceedings, it shall commence a preliminary investigation which may be conducted by one or more presenters, the executive director, the Commission staff, and/or one or more investigators. The Judge shall be given notice of the preliminary investigation, the nature of the charge, and the name of the complainant or a statement that the preliminary investigation was commenced on the Commission's own motion. The Judge shall be afforded a reasonable opportunity during the course of the investigation to respond to or appear before the Commission. A copy of the Rules shall be included with the notice or incorporated by reference into the notice. The Commission or the executive director, in their discretion, may determine when the complainant should be notified of the preliminary investigation.

(b) Investigations by State Court Administrator. The results of an investigation by the Office of the State Court Administrator regarding the conduct of a Judge and/or other employees of the judicial branch may be considered by the Commission in its preliminary investigation and in subsequent proceedings.

Rule 15. Independent Medical Examination

If the preliminary investigation indicates that a Judge may have a physical or mental disability which seriously impairs the performance of judicial duties, the Commission may order the Judge to submit to one or more independent examinations by physicians or other persons with appropriate professional qualifications to evaluate the Judge's physical and/or mental condition.

Rule 16. Determination

(a) Report. The presenter(s) shall report their observations and findings regarding a complaint to the other members.

(b) Decision. The Commission shall consider the report of the presenter(s) and all other relevant evidence regarding the complaint and by majority vote:

(1) Dismiss the complaint under Rule 35(a);

(2) Apply a disciplinary disposition under subsections (b) or (d) through (h) of Rule 35;

(3) Initiate disability proceedings under Rule 33.5; or

(4) Determine that there is probable cause to proceed with formal action against the

Judge, in which case it shall appoint special counsel, who upon further investigation and evaluation of the allegations, may initiate formal proceedings as provided in these Rules or recommend a disposition under Rule 35.

(c) Voting. The standard of proof for a decision under section (b) of this Rule shall be the preponderance of the evidence. A decision shall require a majority vote of those members present or participating by conference call, provided that no member who served as a presenter on the complaint may vote on a section (b) decision.

Rule 17. Disqualification of a Judge

When a complaint is filed against a Judge, the Commission may order the Judge disqualified, on request of the complainant or the Commission's own motion, in any litigation in which the complainant is involved. Disqualification will be ordered only when the circumstances warrant such relief. After completion of the disqualifying litigation, the order for disqualification shall terminate unless extended by the Commission.

PART C. FORMAL PROCEEDINGS

Rule 18. Statement of Charges, Notice and Pleadings in Formal Proceedings

Special counsel shall commence formal proceedings against the Judge by filing a statement of charges with the Commission and serving a copy of the statement of charges together with a notice of formal charges upon the Judge. The statement of charges shall state in ordinary and concise language the grounds for the charges. The notice shall advise the Judge of his or her right to file a written response to the statement of charges. Pleadings in formal proceedings shall follow the general format for civil pleadings, and the original of all pleadings and a copy of the notice of formal charges shall be filed in the office of the executive director.

Rule 18.5. Special Masters

(a) Appointment. After special counsel has filed a statement of charges, the Commission shall request the Supreme Court to appoint three special masters to preside over formal proceedings, including hearings to receive evidence and consider legal arguments, in accordance with these Rules. The special masters may be active, senior, or retired judges of courts of record, and, unless otherwise designated, the judge first named in the Supreme Court's order shall be the presiding special master. The presiding special master is authorized to act on behalf of the special masters in resolving pre-hearing issues, including but not limited to discovery disputes; conducting pre-hearing conferences; and ruling on evidentiary, procedural, and legal issues that arise during hearings.

(b) One Special Master. The Commission may request the Supreme Court to appoint one special master for designated purposes in any proceeding.

Rule 19. Response of Judge

The Judge shall file a response to the statement of charges with the executive director within twenty-one days after service of the statement of charges and notice of formal charges. The special masters may consider the failure or refusal to respond as an admission of the charges.

Rule 20. Setting for Hearing

After the filing of the Judge's response or the expiration of the time for its filing, the special masters shall order a hearing to be held, without unreasonable delay, before the special masters regarding the matters contained in the statement of charges and the response, if any. The special masters shall set the date and location of the hearing and shall serve notice thereof on all parties within a reasonable time before the date set.

Rule 21. Discovery

Rule deleted and replaced by Rule 21.5.

Rule 21.5. Discovery

(a) Purpose and Scope. Except as provided herein, Rule 26 of the Colorado Rules of Civil Procedure shall not apply to proceedings conducted pursuant to these Rules. This Rule shall govern discovery in judicial discipline and disability proceedings.

(b) Meeting. A meeting of the parties shall be held no later than 14 days after the case is at issue to confer with each other about the nature and basis of the claims and defenses and discuss the matters to be disclosed.

(c) Disclosures. No later than 21 days after the case is at issue, the parties shall disclose:

(1) The name and, if known, the address, and telephone number of each person likely to have discoverable information relevant to disputed facts alleged in the pleadings, and the nature of the information;

(2) A listing, together with a copy or description of all documents, written or electronic records, and tangible things in the possession, custody, or control of the Commission or the Judge that are relevant to the disputed facts in the proceedings; and

(3) A statement of whether the parties anticipate the use of expert witnesses, identifying the subject areas of the proposed experts.

(d) Limitations. Except upon order by the presiding special master for good cause shown, discovery shall be limited as follows:

(1) Special counsel may take one deposition of the Judge and two other persons in addition to the depositions of experts. The Judge or the Judge's counsel may take one deposition of the complaining witness and two other persons in addition to the depositions of experts. The scope and manner of proceeding by way of deposition and the use thereof

shall otherwise be governed by C.R.C.P. 26, 28, 29, 30, 31, 32, and 45.

(2) A party may serve on the adverse party 30 written interrogatories, each of which shall consist of a single question. The scope and manner of proceeding by means of written interrogatories and the use thereof shall otherwise be governed by C.R.C.P. Rules 26 and 33.

(3) When the mental or physical condition of the Judge has become an issue in the proceeding, the presiding special master, on motion of any party or any of the special masters, may order the Judge to submit to a physical or mental examination by a suitable licensed or certified examiner. The order may be made only upon a determination that reasonable cause exists and after notice to the Judge. The Judge will be provided the opportunity to respond to the motion; and the Judge may request a hearing before the special masters. The hearing shall be held within 14 days of the date of the Judge's request, and shall be limited to the issue of whether reasonable cause exists for such an order.

(4) A party may serve the adverse party requests for production of documents pursuant to C.R.C.P. 34, except such requests for production shall be limited to 20 in number, each of which shall consist of a single request.

(5) A party may serve on the adverse party 20 requests for admission, each of which shall consist of a single request. The scope and manner of proceeding by means of requests for admission and the use thereof shall otherwise be governed by C.R.C.P. 36.

(e) Good Cause. In determining good cause pursuant to section (d) of this Rule, the presiding special master shall consider the following:

(1) Whether the scope of the proposed discovery is reasonable and likely to produce evidence that is material to the issues in the proceedings;

(2) Whether the discovery sought is unreasonably cumulative, unreasonably duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(3) Whether the burden or expense of the proposed discovery outweighs its likely benefit; and

(4) Whether the party seeking discovery has had ample opportunity by disclosure or discovery in the proceedings to obtain the information sought.

(f) Supplementation of Disclosures and Discovery Responses. A party is under a duty to supplement its disclosures under section (c) of this Rule when the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the disclosure or discovery process. A party is under a duty to amend a prior response to an interrogatory, request for production, or request for admission when the party learns that the prior response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process. With respect to experts, the duty to supplement or correct extends to information contained in the expert's report or summary disclosed in pre-hearing proceedings and to information provided through any deposition of or interrogatory responses by the expert. Supplementation shall be provided in a timely manner.

(g) Protective Orders. Upon motion by a party or by the person from whom disclosure is due or discovery is sought, accompanied by a certificate that the movant has in

good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute, and for good cause shown, the special masters may take any action which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden of expense, including the issuance of one or more of the following orders:

(1) That the disclosure or discovery not be had;

(2) That the disclosure or discovery may be had only on specified terms and conditions, including designation of the time or place;

(3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(4) That certain matters not be inquired into, or that the scope of the disclosure or discovery be limited to certain matters;

(5) That discovery be conducted with no one present except persons designated by the special masters; and

(6) That a deposition, if sealed, be opened only by order of the special masters.

If the motion for a protective order is denied in whole or in part, the special masters, on such terms and conditions as are just, may order that any party or other person provide or permit discovery. The provisions of C.R.C.P. 37(a)(4) apply to an award of expenses incurred with regard to the motion.

Rule 22. Subpoena and Inspection

The Judge and the Commission shall be entitled to compel by subpoena the attendance and testimony of witnesses, including the Judge as witness, and to provide for the inspection of documents, books, accounts, and other records. Subpoenas may be issued by the chair, the executive director, or a special master and shall be served in the manner provided by law for the service of subpoenas in a civil action.

Rule 23. Witness Fees and Expenses

All witnesses in formal proceedings shall receive fees and expenses in the amount allowed by law for civil litigation in the district courts, except as provided in this Rule. Fees and expenses of witnesses shall be borne by the party calling them. The Commission may, upon a showing of good cause, reimburse a Judge for reasonable expenses incurred for consultations with or testimony by a physician or mental health professional with respect to whether the Judge's conduct is adversely affected by a physical or mental disability. If the Judge is exonerated of allegations of misconduct in a matter that does not involve disability issues and the Commission determines that the Judge's payment of witness fees and expenses would work a financial hardship or injustice upon the Judge, then it may pay or reimburse such fees and expenses.

Rule 24. Special Masters

Rule deleted and replaced by Rule 18.5.

Rule 25. Prehearing Procedures

The Commission or special masters may direct the parties to appear for prehearing procedures which shall generally follow C.R.C.P. 16, but in a manner suitable for formal proceedings.

Rule 26. Hearing

(a) In General. At the time and place disclosed by notice, the special masters shall proceed with the hearing, whether or not the Judge has filed a response or appears at the hearing. Special counsel shall present the case in support of the formal charges. The presiding special master shall rule on all motions and objections made during the hearing, subject to the right of the Judge, the Judge's counsel, or special counsel to appeal a ruling to all of the special masters. The vote of the majority of special masters shall prevail on all findings of fact and conclusions of law.

(b) Failure to Appear. The special masters may determine, in their discretion, whether the failure of the Judge to appear at the hearing may be considered an admission of the allegations in the statement of charges, unless such failure was due to circumstances beyond the Judge's control.

Rule 27. Procedures and Rules

Formal proceedings shall be conducted in accordance with C.R.C.P., except where the special masters determine that certain provisions of C.R.C.P. would be impractical or unnecessary. The order of presentation in a hearing shall be the same as in civil cases. All witnesses shall give testimony under oath, and rules of evidence applicable in civil proceedings shall apply. Procedural errors or defects not affecting the substantial rights of a Judge shall not be grounds for invalidation of the proceedings.

Rule 28. Procedural Rights of Judge

Rule deleted. Rule 28(a) and (28)(c) were replaced by Rule 8.5. Rule 28(b) regarding the record was relocated to Rule 33.

Rule 29. Amendment to Pleadings

The special masters may in the interest of justice allow or require amendments to pleadings at any time in accordance with C.R.C.P.

Rule 30. Additional Evidence

The special masters may order a hearing for the taking of additional evidence at any time while the matter is pending before it. The order shall set the time and place of the

hearing and shall indicate matters on which the evidence is to be taken. A copy of such order shall be served on the Judge and special counsel at least fourteen days prior to the date of hearing.

Rule 31. Standard of Proof

The standard of proof in all formal proceedings and disability proceedings shall be clear and convincing evidence.

Rule 32. Report of the Special Masters

At the conclusion of the hearing in formal proceedings, the special masters shall issue and file with the executive director a report which shall include written findings of fact regarding the evidence in support of and in defense to the allegations in the complaint, a report of any prior disciplinary action by the Commission against the Judge, and conclusions of law; and shall propose a dismissal of the charges or one or more dispositions or sanctions. The Commission shall consider the special masters' report, in accordance with Rule 36. The executive director shall certify the special masters' report as part of the record of proceedings to be filed with the Supreme Court, in accordance with Rule 37.

Rule 33. Record of Proceedings

The record of proceedings shall consist of the pleadings, verbatim electronic or written transcripts of proceedings, affidavits, exhibits, findings of fact and conclusions of law, legal briefs, and any other documentation designated by the Commission for the Supreme Court's consideration. The special masters shall determine whether the verbatim record will be made by court reporter or electronic recording. The Judge shall be provided, on request and without cost, copies of electronic recordings that are made of any portion of the proceedings. The Judge may, in addition, have all or any portion of the testimony in the proceedings transcribed at the Judge's own expense. Special counsel's work product, the investigation file, discovery, and deliberations of the Commission or the special masters shall not be included in the record of proceedings unless so ordered by the Supreme Court.

Rule 33.5. Disability Proceedings

(a) Initiation of a Disability Proceeding. A disability proceeding can be initiated by a complaint, by a claim of inability to defend in a disciplinary proceeding, by an order of involuntary commitment or adjudication of incompetency, or as a result of information discovered during the course of disciplinary proceedings.

(b) Proceedings to Determine Disability Generally. The Commission shall conduct all disability proceedings in accordance with the procedures for disciplinary proceedings, except:

(1) The purpose of the disability proceedings shall be to determine whether the Judge

suffers from a physical or mental condition that adversely affects the Judge's ability to perform judicial functions or to assist with his or her defense in disciplinary proceedings;

(2) All of the proceedings shall be confidential;

(3) The Commission may appoint a lawyer to represent the Judge if the Judge is without representation;

(4) In lieu of a Rule 18.5 appointment of three special masters, the Supreme Court may, in its discretion, appoint one special master, who is qualified to oversee disability proceedings (and who need not be a judge of a court of record), to conduct a hearing to take and consider evidence, promptly transmit a report concerning the alleged disability to the Supreme Court, and otherwise act as provided in this Rule for action by three special masters; and

(5) If the Supreme Court concludes that the Judge is incapacitated to hold judicial office, it may enter orders appropriate to the nature and probable length of the period of disability, including:

(i) Retirement of the Judge for a disability interfering with the performance of his or her duties which is, or is likely to become, of a permanent character;

(ii) Transfer of the Judge to temporary judicial disability inactive status. Such transfer shall be for a period of 182 days (26 weeks) (the "temporary transfer period"). The special master(s) shall take appropriate measures to review the Judge's disability status during the temporary transfer period, and issue a report to the Supreme Court on the degree of the Judge's disability no later than 70 days (10 weeks) after the beginning of the temporary transfer period. If the special master(s) find that the Judge remains disabled, the special master(s) shall again review the Judge's condition within the 35 days (5 weeks) preceding the end of the temporary transfer period and report to the Supreme Court on or before expiration of the 182 days. The Court may order more frequent reports during the temporary transfer period, in its discretion. For good cause, the Court may extend the temporary transfer period, but not to exceed an additional 182 days, and require periodic reports from the special master(s) during and at the end of the extension. In each report, the special master(s) shall determine whether the Judge is no longer disabled or that the disability is continuing, and shall recommend whether the Judge should be returned to active status or, retired due to a disability under subsection (b)(5)(i) of this Rule. The Court shall consider the recommendations and enter any order appropriate under the circumstances;

(iii) Transfer of the Judge to lawyer disability inactive status, if the Supreme Court concludes that the Judge is unable to practice law; or

(iv) Suspension of the disciplinary proceeding, pursuant to subsection (c)(2) of this Rule.

(c) Inability to Properly Defend in a Disciplinary Proceeding.

(1) If, in the course of a disciplinary proceeding, a Judge, the Judge's counsel or personal representative, or special counsel, if appointed, alleges that the Judge is unable to assist in his or her defense due to mental or physical disability, the Commission shall promptly notify the Supreme Court and suspend the disciplinary proceeding. The Supreme Court shall immediately transfer the Judge to lawyer and judicial disability inactive status and appoint a special master, or special masters, under subsection (b)(4) of this Rule, who

shall consider all relevant factors and/or stipulations of the parties, conduct a hearing if necessary, and report to the Supreme Court concerning the Judge's alleged disability. The 182 day temporary transfer period, provided in subsection (b)(5)(ii) of this Rule, shall not commence until and unless the special master(s) determine that the Judge cannot assist with his or her defense under subsection (c)(2) of this Rule.

(2) The Supreme Court shall consider the report of the special master(s) to determine whether the Judge can assist in such defense. If it finds that the Judge can assist, the disciplinary proceeding shall be resumed but the Judge shall remain on lawyer and judicial inactive status, pending the results of the disciplinary proceeding. If it finds that the Judge cannot assist, the disciplinary proceeding shall remain in suspension and the Judge shall be placed on (i) temporary judicial disability inactive status, subject to the provisions of subsection (b)(5)(ii) of this Rule, and (ii) on lawyer disability inactive status. If the Supreme Court, under subsection (b)(5(ii), subsequently determines that the Judge is no longer disabled, the Judge shall be restored to lawyer and judicial active status and the Commission may resume the disciplinary proceeding.

(d) Involuntary Commitment or Adjudication of Incompetency. If a Judge has been declared incompetent by judicial order or has been involuntarily committed to an institution by judicial order on the grounds of incompetency or disability, the Supreme Court shall, after considering all relevant factors, enter an order appropriate in the circumstances, including but not limited to: (i) retiring the Judge under subsection (b)(5)(i) of this Rule; (ii) transferring the Judge to temporary judicial disability inactive status and evaluating the Judge's disability under provisions of subsection (b)(5)(ii); and/or (iii) transferring the Judge to lawyer disability inactive status under subsection (b)(5)(iii). A copy of the order shall be served on the Judge, his or her guardian, and the director of such institution.

(e) Stipulated Disposition for Disability.

(1) The special masters may designate one or more experts whom the special masters deem, in their discretion, to be appropriately qualified in medicine, psychiatry, or psychology, and who shall examine the Judge prior to considering evidence of the alleged disability.

(2) After receipt of the examination report, the Commission or special counsel and the Judge may agree upon a stipulated disposition which includes proposed findings of fact, conclusions of law, and an order. The stipulated disposition shall be submitted to the special master(s) who shall forward it to the Supreme Court for approval or rejection.

(3) If the Supreme Court approves the stipulated disposition, it shall enter an order in accordance with its terms. If the stipulated disposition is rejected by the Supreme Court, the disability proceedings shall resume, but any statements by or on behalf of the Judge in the proposed disposition shall not be used as an admission of any material fact.

(f) Interim Appointment. The Supreme Court may designate another judge to assume the Judge's duties during the Judge's disability inactive status.

(g) Reinstatement from Judicial Disability Inactive Status.

(1) A Judge may petition the Court at any time, on good cause, for reinstatement to active judicial and lawyer status.

(2) Upon the filing of a petition for transfer to active judicial status, the Supreme

Court may take or direct whatever action it deems necessary or proper to determine whether the disability has been removed, including but not limited to an examination of the Judge by a physician or mental health practitioner designated by the Supreme Court or consideration of the findings of the special master(s) under subsection (b)(5)(ii) of this Rule.

(3) With the filing of a petition for reinstatement to active judicial status, the Judge shall be required to disclose the name of each physician or mental health practitioner and hospital or other institution by whom or in which the Judge has been examined or treated since the transfer to judicial disability inactive status. The Judge shall furnish to the Supreme Court written consent to the release of information and records relating to the disability, if requested by the Supreme Court or by court-appointed experts. The Judge shall bear the burden of proof to establish grounds for reinstatement.

(4) A Judge who is returned to active judicial status will be eligible to apply for another judicial position or for the senior judge program.

(5) Reinstatement to active lawyer status shall be under the jurisdiction of Attorney Regulation, pursuant to C.R.C.P. 251.30.

(h) Waiver of Medical Privilege. Asserting a mental or physical condition as a defense to or in mitigation of judicial misconduct constitutes a waiver of medical privilege in any disciplinary proceeding.

(i) Public Orders. All recommendations of the special master(s) and orders of the Supreme court under this Rule shall be public. However, the pleadings, briefs, and evidence considered by the special master(s), including but not limited to testimony, medical reports, and other documentation, shall remain confidential.

PART D. DISPOSITIONS AND SANCTIONS

Rule 34. Temporary Suspension

(a) Request to Supreme Court. The Commission, the chair, or the executive director (if so authorized by the Commission) may request the Supreme Court to order temporary suspension of a Judge, with pay, pending the resolution of preliminary or formal proceedings. The request shall include a statement of the reasons in support of the suspension, which may include the Judge's failure to cooperate with the Commission. Upon receipt of such a request, the Supreme Court may require additional information from the Commission.

(b) Order to Show Cause. Upon a finding that the Supreme Court has been fully advised and that a temporary suspension is appropriate, the Supreme Court (1) shall issue an order for temporary suspension and (2) direct the Commission to issue an order to the Judge to show cause to the Commission why the Judge should not continue to be temporarily suspended from any or all judicial duties pending the outcome of preliminary or formal proceedings before the Commission. The Supreme Court may issue an order for temporary suspension and an order to show cause to the Commission on its own motion.

(c) Hearing. The Commission shall hold a hearing on the order to show cause within twenty-one days of its issuance or such later time as mutually agreed by the Commission and the Judge, and then advise the Supreme Court of its findings and conclusions with respect

to temporary suspension.

(d) Further Order. The Supreme Court may issue further orders concerning the suspension, as it may deem appropriate.

(e) Voluntary Suspension. The Commission may inquire whether a Judge will voluntarily submit to temporary suspension, and a written consent, if obtained, shall be filed with the Supreme Court.

Rule 35. Dispositions

Upon consideration of all the evidence and the report of the presenter(s), the Commission may order any of the following dispositions:

(a) Dismissal. Dismiss an unjustified or unfounded complaint, which may include an appropriate expression of concern by the Commission regarding the circumstances;

(b) Diversion Plan. Direct the Judge to follow a diversion plan, including but not limited to education, counseling, drug and alcohol testing, medical treatment, medical monitoring, or docket management, which may be accompanied by the deferral of final disciplinary proceedings;

(c) Disability Proceedings. Initiate disability proceedings under Rule 33.5 or stipulate to voluntary retirement by the Judge for a disability under Rule 33.5(e);

(d) Private Admonishment. Admonish the Judge privately for an appearance of impropriety, even though the Judge's behavior otherwise meets the minimum standards of judicial conduct;

(e) Private Reprimand. Reprimand the Judge privately for misconduct that does not meet the minimum standards of judicial conduct;

(f) Private Censure. Censure the Judge privately for misconduct which involves a substantial breach of the standards of judicial conduct;

(g) Costs and Fees. Assess costs or fees of an investigation, examination or proceeding; or

(h) Other Action. Take or direct such other action, including any combination of dispositions that the Commission believes will reasonably improve the conduct of the Judge. A Judge who disagrees with a disposition under this Rule has the right to request that the complaint be resolved through formal proceedings.

Rule 36. Sanctions

The Commission, including any member who was a presenter with respect to the complaint, shall consider the report issued by the special masters under Rule 32 and recommend that the Supreme Court dismiss the charges or order one or more of the following sanctions:

(a) **Removal.** Remove the Judge from office;

(b) **Suspension.** Suspend the Judge without pay for a specified period;

(c) **Disability Proceedings.** Remand the matter to the Commission for disability proceedings or stipulate to voluntary retirement by the Judge for a disability under Rule

33.5(e);

(d) **Public Reprimand or Censure.** Reprimand or censure the Judge publicly, either in person or by written order;

(e) **Diversion or Deferred Discipline.** Require compliance with a diversion plan or deferred discipline plan;

(f) **Costs and Fees.** Assess costs and expenses against the Judge; or

(g) **Other Discipline.** Impose any other sanction or combination of sanctions, including dispositions under Rule 35, that the Supreme Court determines will curtail or eliminate the Judge's misconduct.

(h) **Voting.** The Commission's recommendation of one or more sanctions shall require a majority vote of the members participating in person or by conference call, except that a recommendation for removal shall require a majority vote of all members of the Commission.

Rule 36.5. Conviction of a Crime

(a) Suspension. Whenever a Judge has been convicted in any court of Colorado, any other state, or the United States of a felony or other offense involving moral turpitude, the Supreme Court on its own motion or upon petition filed by any person and a finding that such a conviction was had, shall enter an order suspending the Judge from office until such time as the judgment of conviction becomes final, and the payment of the Judge's salary shall also be suspended from the date of such order.

(b) Final Conviction. If the judgment of conviction becomes final, the Supreme Court shall enter an order removing the Judge from office and declaring the Judge's office vacant. The Judge's salary from the date of suspension to the date of removal from office shall be forfeited.

(c) Reversal or Acquittal. If the judgment of conviction is reversed with directions to enter a judgment of acquittal or a judgment of dismissal, or acquittal is entered following remand for a new trial, the Judge shall be entitled to receive the salary that was forfeited pursuant to Rule 36.5(b). While reversal of a conviction does not entitle the Judge to resume his or her previous judicial office or to be paid a salary after removal from office, the Judge will be eligible for consideration by a judicial nominating commission for open positions and will be eligible to apply for the Senior Judge program.

(d) Effect of Pleas. A plea of guilty or *nolo contendere* to such a charge, including a plea involving a deferred judgment or deferred sentence, shall be equivalent to a final conviction for the purpose of this Rule.

PART E. SUPREME COURT ACTION

Rule 37. Recommendation and Notice

Upon consideration of the report of the special masters, the Commission shall file the record of proceedings and recommend sanctions or a private disposition to the Supreme

Court.

(a) Filing the Record of Proceedings. The executive director shall file the record of the proceedings, as defined under Rule 33, with the clerk of the Supreme Court, and the clerk shall docket the record under the caption "In re [name and title of judge].

(b) Recommendation for Sanctions. The Commission shall file a recommendation for sanctions under Rule 36 with the Supreme Court. The executive director shall promptly serve a copy of the recommendation and notice of the date of its filing on the Judge (or the Judge's counsel) and on special counsel. The Commission's recommendation and the record of proceedings shall become public upon filing with the Court and the clerk shall docket the recommendation for the Supreme Court's expedited consideration. The notice of filing shall specify the period during which a party may file exceptions to the recommendation, as provided in Rule 38. The executive director shall file proof of service of the recommendation and the notice with the clerk.

(c) Private Disposition. The Commission may recommend a private disposition under Rule 35, which may include dismissal. It shall notify the Judge (or the Judge's counsel) and the Supreme Court of its recommendation. The record of proceedings shall be sealed until the Supreme Court determines whether to approve the disposition. If the Supreme Court approves the disposition, the record shall remain sealed and the disposition shall remain confidential, except for the case number and caption. If the Supreme Court does not approve the disposition, the case shall be remanded to the Commission for recommendation of appropriate sanctions and the record shall remain sealed until such a recommendation is filed.

(d) Stipulated Resolution. The Commission and the Judge may stipulate to a resolution of formal proceedings, subject to approval by the Supreme Court.

Rule 38. Exceptions

Exceptions to the recommendation shall be filed by the Judge, the Judge's counsel, or special counsel with the clerk of the Supreme Court and served on each other party to the proceedings within 21 days after service of the notice required by Rule 37. Exceptions shall be supported by an opening brief based on the record of the proceedings. A party opposing the exceptions shall have 21 days after the filing of the opening brief within which to file an answer brief, a copy of which shall be served all parties. A party shall have 14 days after the filing of the answer brief within which to file a reply brief, a copy of which shall be served on all parties. If no exceptions are filed, the matter will stand submitted upon the special masters' recommendation and the record. In other respects, the filing and consideration of exceptions to the special masters' recommendation shall be governed by the Colorado Appellate Rules, unless the Supreme Court determines that the application of a particular rule would be impracticable, inappropriate, or inconsistent in disciplinary proceedings.

Rule 39. Additional Findings

If the Supreme Court desires an expansion of the record or additional findings as to certain issues or the entire matter, it may remand the proceedings to the Commission with

appropriate directions and continue the proceedings pending receipt of the additional information. The Commission shall refer the remand to the special masters for additional findings and forward the additional findings to the Supreme Court. The Supreme Court may order oral argument, in its discretion.

Rule 40. Decision

The Supreme Court shall consider the evidence and the law, including the record of the proceedings and additions thereto; the special masters' report; the Commission's recommendation; and any exceptions filed under Rule 38. The Supreme Court shall issue a written decision, in which it may dismiss the complaint; adopt or reject the recommendation of the Commission; adopt the recommendation of the Commission with modifications; or remand the proceedings to the Commission for further action. The decision of the Supreme Court, including such sanctions as may be ordered, shall be final and shall be published. A stipulated resolution of formal proceedings shall be published and the record of proceedings shall be public, unless the Court finds good cause for the resolution to remain confidential and the record of proceedings to be sealed.

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Colorado Code of Judicial Conduct

Repealed and Readopted by the

SUPREME COURT OF COLORADO

May 27, 2010,

Effective July 1, 2010

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APPENDIX TO CHAPTER 24

COLORADO CODE OF JUDICIAL CONDUCT

Preamble

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Colorado Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

Scope

[1] The Colorado Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.

[2] The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as "may" or "should," the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

[3] The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the

Rules. Therefore, when a Comment contains the term "must," it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

[4] Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

[5] The Rules of the Colorado Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

[6] Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

[7] The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other.

Terminology

The first time any term listed below is used in a Rule in its defined sense, it is followed by an asterisk (*).

"Appropriate authority" means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported. In Colorado, the Commission on Judicial Discipline is the authority responsible for investigating judicial misconduct and disciplining judges, except with respect to Denver County court and municipal judges, over whom it has no jurisdiction pursuant to Colo. Const. Article VI § 26; § 13-10-105, C.R.S.; C.J.R.D. 4(a). See Rules 1.1, 2.14 and 2.15.

"Contribution" means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance which, if obtained by the recipient otherwise, would require a financial expenditure. See Rule 3.7.

"De minimis," in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality. See Rule 2.11.

"Domestic partner" means a person with whom another person maintains household and an intimate relationship, other than a person to whom he or she is legally married. See Rules 2.11, 3.13, and 3.14.

"Economic interest" means ownership of more than a one percent legal or equitable

interest in a party, or a legal or equitable interest in a party of a fair market value exceeding $5,000, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(1) Ownership in a mutual or common investment fund that holds securities, or of securities held in a managed fund, is not an "economic interest" in such securities unless the judge participates in the management of the fund;

(2) securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant is not an "economic interest" in securities held by the organization;

(3) the proprietary interest of a policy holder in a mutual insurance company, of a depositer in a financial institution, or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or a similar proprietary interest is an "economic interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest; and

(4) ownership of government securities is an "economic interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

See Rules 1.3 and 2.11.

"Fiduciary" includes relationships such as executor, administrator, trustee, or guardian. See Rules 2.11, 3.2, and 3.8.

"Impartial," "impartiality," and **"impartially"** mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.

"Impending matter" is a matter that is imminent or expected to occur in the near future. See Rules 2.9, 2.10, 3.13, and 4.1.

"Impropriety" includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality. See Canon 1 and Rule 1.2.

"Independence" means a judge's freedom from influence or controls other than those established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and Rule 1.2.

"Judicial candidate" means a sitting judge who is seeking selection for judicial office by appointment or retention. See Rules 2.11, 4.1, 4.2, and 4.3.

"Knowingly," "knowledge," "known," and **"knows"** mean actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Rules 2.11, 2.15, 2.16, 3.6, and 4.1.

"Law" encompasses court rules and orders as well as statutes, constitutional provisions, and decisional law. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, 3.15, 4.1, 4.2, and 4.4.

"Member of the judge's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close

familial relationship. See Rules 3.7, 3.8, 3.10, and 3.11.

"Member of a judge's family residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Rules 2.11 and 3.13.

"Nonpublic information" means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Rule 3.5.

"Pending matter" is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Rules 2.9, 2.10, 3.13, and 4.1.

"Personally solicit" means a direct request made by a judge or judicial candidate for financial support or in kind services, whether made by letter, telephone, or any other means of communication. See Rule 4.1.

"Political organization" means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this Code, the term does not include a judicial candidate's retention committee created as authorized by Rule 4.3. See Rule 4.1.

"Public election" includes primary and general elections, partisan elections, nonpartisan elections, and retention elections. See Rule 4.2.

"Third degree of relationship" includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rule 2.11.

Application

The Application section establishes when the various Rules apply to a judge or judicial candidate.

I. Applicability of This Code

(A) The provisions of the Code apply to all full-time judges. Parts II through V of this section identify those provisions that apply to three distinct categories of part-time judges. The three categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. Canon 4 applies to judicial candidates.

(B) A judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, including an officer such as a magistrate, referee, or member of the administrative law judiciary.

COMMENT

[1] The Rules in this Code have been formulated to address the ethical

obligations of any person who serves a judicial function, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions.

[2] The determination of which category and, accordingly, which specific Rules apply to an individual judicial officer, depends upon the facts of the particular judicial service.

[3] This code does not apply to a person appointed by the court to serve as a master in a particular case. This code does not apply to municipal judges except to the extent it is made applicable by statute, municipal charter or ordinance. However, reference to the code by all judicial officers, including municipal judges, is recommended to provide guidance concerning the proper conduct for judges.

II. Senior and Retired Judges

Senior judges, while under contract pursuant to the senior judge program, and retired judges, while recalled and acting temporarily as a judge, are not required to comply:

(A) with Rule 3.9 (Service as Arbitrator or Mediator); or

(B) with Rule 3.8 (Appointments to Fiduciary Positions).

III. Part-Time Judges

A judge who serves on a part-time basis

(A) is not required to comply:

(1) with Rules 3.8 (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), 3.11 (A) and (B) (Financial, Business, or Remunerative Activities); and

(B) shall not practice law in the court on which the judge serves or in any comparable level court in the same judicial district on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto;

(C) shall not practice law with respect to any controversies which will or appear likely to come before the court on which the judge serves or any court of the same or comparable jurisdiction within the same judicial district on which the judge serves.

COMMENT

[1] This Canon limits a part-time judge from practicing law in any comparable level court in the same judicial district as the judge serves. However, this prohibition shall not apply to any temporary assignment of a part-time judge to a comparable level court outside the judicial district the judge serves. In addition, this prohibition shall not apply to a one-time assignment of a part-time judge to a court of higher jurisdiction (such as a one-time assignment under order in a district court case) either within, or outside of, the judicial district in which the judge serves. A part-time judge serving on temporary assignment is not thereby precluded from

practicing law in the court to which that judge may be temporarily assigned. During such period of temporary assignment, however, the judge shall not actively participate as counsel in any case pending before the court to which the judge is temporarily assigned.

[2] A part-time judge who practices law must avoid undertaking or continuing any relationship which precludes the judge from maintaining the integrity of the bench which he or she serves and at the same time providing the undivided loyalty to clients which the exercise of professional judgment on behalf of a client demands. Being "of counsel" is deemed to be the practice of law, whereas acting as a mediator or arbitrator is not deemed to be the practice of law. Necessarily, the professional responsibilities of a part-time judge who practices law limit the practice of law by the judge's partners and associates.

IV. Appointed Judges

An Appointed Judge who serves pursuant to C.R.C.P. 122 and section 13-3-111, C.R.S., for the period of the appointment, and in his or her capacity as Appointed Judge,

(A) is not required to comply with the following canons:

(1) 2.10 (A) (Judicial Statements on Pending and Impending Cases), except as to the case where he or she is appointed, and should require similar abstention from comment on the part of those personnel who are subject to the Appointed Judge's direction and control;

(2) 3.2 (Appearances Before Governmental Bodies and Consultation with Governmental Officials); 3.3 (Testifying as a Character Witness); 3.4 (Appointments to Governmental Positions); 3.7 (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities); 3.8 (Appointments to Fiduciary Positions); 3.9 (Service as Arbitrator of Mediator); 3.10 (Practice of Law); 3.11 (Financial, Business, or Remunerative Activities); 3.12 (Compensation for Extrajudicial Activities); 3.13 (C) (Reporting of Certain Gifts, Loans, Bequests, Benefits, or Other things of Value); 3.14 (Reimbursement of Expenses and Waivers of Fees or Charges); and 3.15 (Reporting Requirements);

(3) 4.1 (A)(5, 12, 13) (Political and Campaign Activities of Judges in General); 4.2 (Political and Campaign Activities of a Judge Standing for Retention); and 4.4 (Campaign Committees).

(B) should refrain as follows:

(1) from financial and business dealings that relate directly to any issues in the case to which the Appointed Judge is appointed;

(2) from accepting any gift, bequest, favor or loan from any party to or the lawyer appearing in the case to which the appointed judge is appointed, and should require a spouse, domestic partner or family member residing in the judge's household to refrain from accepting gifts, bequests, favors, or loans in the same manner as the judge.

V. Time for Compliance

A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply shall comply

with those Rules as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge.

COMMENT

[1] If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year.

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

Rule 1.1: Compliance with the Law

(A) A judge shall comply with the law,* including the Code of Judicial Conduct.

(B) Conduct by a judge that violates a criminal law may, unless the violation is minor, constitute a violation of the requirement that a judge must comply with the law.

(C) Every judge subject to the Code of Judicial Conduct, upon being convicted of a crime, except misdemeanor traffic offenses or traffic ordinance violations not including the use of alcohol or drugs, shall notify the appropriate authority* in writing of such conviction within ten days after the date of the conviction. In addition, the clerk of any court in this state in which the conviction was entered shall transmit to the appropriate authority within ten days after the date of the conviction a certificate thereof. This obligation to self-report convictions is a parallel but independent obligation of judges admitted to the Colorado bar to report the same conduct to the Office of Attorney Regulation pursuant to C.R.C.P. 251.20.

Rule 1.2: Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence,* integrity,* and impartiality* of the judiciary, and shall avoid impropriety and the appearance of impropriety.

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both

the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Impropriety occurs when the conduct compromises the ability of the judge to carry out judicial responsibilities with integrity, impartiality and competence. Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

Rule 1.3: Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests* of the judge or others, or allow others to do so.

COMMENT

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by providing information to such entities concerning the professional qualifications of a person being considered for judicial office.

[4] Special considerations arise when

judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

CANON 2

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

Rule 2.1: Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law,* shall take precedence over all of a judge's personal and extrajudicial activities.

COMMENT

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

Rule 2.2: Impartiality and Fairness

A judge shall uphold and apply the law,* and shall perform all duties of judicial office fairly and impartially.*

COMMENT

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure pro se litigants the opportunity to have their matters fairly heard.

Rule 2.3: Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

COMMENT

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

Rule 2.4: External Influences on Judicial Conduct

(A) A judge shall not be swayed by public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person

or organization is in a position to influence the judge.

COMMENT

[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

Rule 2.5: Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties, competently and diligently.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

COMMENT

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Rule 2.6: Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.*

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

COMMENT

[1] The right to be heard is an essential component of a fair and impartial system

of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The steps that are permissible in ensuring a self-represented litigant's right to be heard according to law include but are not limited to liberally construing pleadings; providing brief information about the proceeding and evidentiary and foundational requirements; modifying the traditional order of taking evidence; attempting to make legal concepts understandable; explaining the basis for a ruling; and making referrals to any resources available to assist the litigant in preparation of the case. Self-represented litigants are still required to comply with the same substantive law and procedural requirements as represented litigants.

[3] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[4] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).

Rule 2.7: Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.*

COMMENT

[1] Judges must be available to decide the matters that come before the courts. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's

respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

Rule 2.8: Decorum, Demeanor, and Communication with Jurors

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

COMMENT

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

Rule 2.9: Ex Parte Communications

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending* or impending matter,* except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law* or by consent of the parties to do so.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

COMMENT

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may initiate, permit, or consider ex parte communications expressly authorized by law or by consent of the parties, including when serving on therapeutic or problem-solving courts such as many mental health courts, drug courts, and truancy courts. In this capacity, judges may assume a more interactive role with the parties, treatment providers, probation officers, social workers, and others.

[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

[7] As it applies to paragraph 5(C), the definition of judicially noticed facts is set forth in Rule 201 of the Colorado Rules of Evidence.

Rule 2.10: Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity, subject to Canon 1.

COMMENT

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

Rule 2.11: Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality* might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge* of facts that are in dispute in the proceeding.

(2) The judge knows* that the judge, the judge's spouse or domestic partner,* or a person within the third degree of relationship* to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis* interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary,* or the judge's spouse, domestic partner, parent, child, or other member of the judge's family residing in the judge's household,* has an economic interest* in the subject matter in controversy or in a party to

the proceeding.

(4) The judge, while a judge or a judicial candidate,* has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

(D) In limited circumstances, the rule of necessity applies and allows judges to hear a case in which all other judges also would have a disqualifying interest or the case could not otherwise be heard.

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (5) apply. The term "recusal" is sometimes used interchangeably with the term "disqualification."

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. The rule of necessity is an exception to the principle that every litigant is entitled to be heard by a judge who is not subject to disqualifications which might reasonably cause the judge's impartiality to be questioned. The rule of necessity has been invoked for trial court and court of appeals judges where disqualifications exist as to all members of the court and there is no

other judge available. It has been invoked as to the supreme court when all or a majority of its members have a conflict of interest; the importance of having the court render a decision overrides the existence of the conflict, which might otherwise leave litigating parties in limbo. Under the rule of necessity, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable. Rather than deny a party access to court, judicial disqualification yields to the demands of necessity.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a one percent legal or equitable interest in a party, or a legal or equitable interest in a party of a fair market value exceeding $5,000, or a relationship as a director, advisor, or other active participant in the affairs of a party, except that:

(1) Ownership in a mutual or common investment fund that holds securities, or of securities held in a managed fund, is not an "economic interest" in such securities unless the judge participates in the management of the fund;

(2) securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant is not an "economic interest" in securities held by the organization;

(3) the proprietary interest of a policy holder in a mutual insurance company, of a depositer in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or a similar proprietary interest is an "economic interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest; and

(4) ownership of government securities is an "economic interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

Rule 2.12: Supervisory Duties

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

COMMENT

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

Rule 2.13: Administrative Appointments

(A) In making administrative appointments, a judge:

(1) shall exercise the power of appointment impartially* and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(B) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

COMMENT

[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.

Rule 2.14: Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial

assistance program.

COMMENT

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

Rule 2.15: Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge* that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.*

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct shall take appropriate action.

COMMENT

[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer

may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

Rule 2.16: Cooperation with Disciplinary Authorities

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person known* or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

COMMENT

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

CANON 3

A JUDGE SHALL CONDUCT THE JUDGE'S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

Rule 3.1: Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law* or this Code. However, when engaging in extrajudicial activities, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality;*

(D) engage in conduct that would appear to a reasonable person to be coercive; or

(E) make use of court premises, staff, stationery, equipment, or other resources, except

for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

COMMENT

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

Rule 3.2: Appearances before Governmental Bodies and Consultation with Government Officials

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(A) in connection with matters concerning the law, the legal system, or the administration of justice;

(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(C) when the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary* capacity.

COMMENT

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, Rule 2.11, outlining the circumstances under which a judge must disqualify himself or herself, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

Rule 3.3: Testifying as a Character Witness

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

COMMENT

[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

Rule 3.4: Appointments to Governmental Positions

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

COMMENT

[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments

to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

[2] A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

[3] Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives. Every governmental board, committee and commission is different and must be evaluated independently to determine whether judicial participation is appropriate. In considering the appropriateness of accepting extrajudicial assignments, a judge should ensure that the mission and work of the board or commission relates to the law, the legal system, or the administration of justice. To effectuate the Code's goal of encouraging judges to participate in their communities, the relationship between the board's mission and the law, legal system, or the administration of justice should be construed broadly. Any judicial ethics advisory opinions issued before adoption of this Code requiring a narrow link or stringent nexus are no longer valid. A judge should avoid participating in governmental boards or commissions that might lead to the judge's frequent disqualification or that might call into question the judge's impartiality. The changing nature of some organizations and of their relationship to the law makes it necessary for a judge to regularly reexamine the activities of each organization with which the judge is affiliated to determine if it is proper to continue the affiliation.

Rule 3.5: Use of Nonpublic Information

A judge shall not intentionally disclose or use nonpublic information* acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

COMMENT

[1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

[2] This rule is not intended, however, to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel, or other judicial officers if consistent with other provisions of this Code.

Rule 3.6: Affiliation with Discriminatory Organizations

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows* or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

COMMENT

[1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation, persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

[5] This Rule does not apply to national or state military service.

Rule 3.7: Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but

not limited to the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting* contributions* for such an organization or entity, but only from members of the judge's family,* or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(B) A judge may encourage lawyers to provide pro bono publico legal services.

COMMENT

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph 4(A). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] Identification of a judge's position

in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

Rule 3.8: Appointments to Fiduciary Positions

(A) A judge shall not accept appointment to serve in a fiduciary* position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family,* and then only if such service will not interfere with the proper performance of judicial duties.

(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

COMMENT

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

Rule 3.9: Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.*

COMMENT

[1] This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

Rule 3.10: Practice of Law

A judge shall not practice law except as permitted by law or this Code. A judge may act pro se but should not defend himself or herself when sued in an official capacity. The judge may, without compensation, give legal advice to and draft or review documents for a member of the judge's family,* but is prohibited from serving as the family member's lawyer in any forum.

COMMENT

[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

[2] A judge who drafts or reviews documents as permitted by this rule must comply with C.R.C.P. 11(b).

Rule 3.11: Financial, Business, or Remunerative Activities

(A) A judge may hold and manage investments of the judge and members of the judge's family.*

(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or members of the judge's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or

(4) result in violation of other provisions of this Code.

COMMENT

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their

families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

Rule 3.12: Compensation for Extrajudicial Activities

A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law* unless such acceptance would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.*

COMMENT

[1] A judge is permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

Rule 3.13: Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law* or would appear to a reasonable person to undermine the judge's independence,* integrity,* or impartiality.*

(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following without publicly reporting such acceptance:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending* or impending* before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and

discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner,* or other family member of a judge residing in the judge's household,* but that incidentally benefit the judge.

(C) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15:

(1) gifts incident to a public testimonial;

(2) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge; and

(3) gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

COMMENT

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) to publicly report it.

[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no

opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public, or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

Rule 3.14: Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law,* a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner,* or guest.

(C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.

COMMENT

[1] Educational, civic, religious, fraternal, and charitable organizations

often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(a) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;

(b) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(c) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(d) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(e) whether information concerning the activity and its funding sources is available upon inquiry;

(f) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(g) whether differing viewpoints are presented; and

(h) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

Rule 3.15: Reporting Requirements

(A) A judge shall publicly report the source and amount or value of:

(1) compensation received for extrajudicial activities as permitted by Rule 3.12;

(2) gifts and other things of value as permitted by Rule 3.13(C), unless the value of such

items does not exceed the statutory amount specified in Title 24, Article VI of the Colorado Revised Statutes; and

(3) reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(A).

(B) When public reporting is required by paragraph (A), a judge shall report the date, place, and nature of the activity for which the judge received any compensation; the description of any gift, loan, bequest, benefit, or other thing of value accepted; and the source of reimbursement of expenses or waiver or partial waiver of fees or charges.

(C) The public report required by paragraph (A)(1) shall be made at least annually. Public reports required by paragraph (A)(2) and (3) shall be made quarterly.

(D) Reports made in compliance with this Rule shall be filed as public documents in the office of the clerk of the court on which the judge serves or other office designated by law*.

(E) Full time magistrates shall file reports required by paragraph A in the office of the clerk of the court on which the magistrate serves annually on or before January 15.

COMMENT

[1] In Colorado, judges' public reporting requirements are governed both by this Code and by statute. See § 24-6-202 and -203, C.R.S.

[2] Pursuant to section 24-6-202, all judges are required to file an annual disclosure with the secretary of state.

[3] Pursuant to section 24-6-203, judges are required to file quarterly disclosures reporting gifts, loans, tickets to events, and reimbursement for travel and lodging expenses.

[a] Money, including a loan, pledge, or advance of money or a guarantee of a loan of money with a value of $25 or more must be reported. § 24-6-203(3)(a), C.R.S.

[b] Any gift of any item of real or personal property, other than money, with a value of $50 or more must be reported. § 24-6-203(3)(b).

[c] Any loan of any item of real or personal property, other than money, if the value of the loan is $50 or more. § 24-6-203(3)(c).

[d] Waiver or partial waiver of the cost of attending CLEs or other educational conferences or seminars is included within the statutory requirement that judges report tickets to sporting, recreational, educational or cultural events with a value of $50 or more, or a series of tickets with a value of $100 or more. § 24-6-203(3)(e), C.R.S.

[e] Payment of or reimbursement for actual and necessary expenditures for travel and lodging at a convention or meeting at which the judge is scheduled to participate must be reported unless the payment or reimbursement is made from public funds, a joint governmental agency, an association of judges, or the judicial branch. § 24-6-203(3)(f), C.R.S.

[4] The disclosure reports filed with the secretary of state's office may be posted electronically on its website when technically feasible.

CANON 4

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN

POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.

Rule 4.1: Political and Campaign Activities of Judges and Judicial Candidates in General

(A) Except as permitted by law,* or by this Canon, a judge or a judicial candidate* shall not:

(1) act as a leader in, or hold an office in, a political organization;*

(2) make speeches on behalf of a political organization;

(3) publicly endorse or oppose a candidate for any public office;

(4) solicit funds for, pay an assessment to, or make a contribution* to a political organization or a candidate for public office;

(5) attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;

(6) publicly identify himself or herself as a candidate of a political organization;

(7) seek, accept, or use endorsements from a political organization;

(8) personally solicit* or accept campaign contributions;

(9) use or permit the use of campaign contributions for the private benefit of the judge or others;

(10) use court staff, facilities, or other court resources as a judicial candidate;

(11) knowingly,* or with reckless disregard for the truth, make any false or misleading statement;

(12) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending* or impending* in any court; or

(13) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial* performance of the adjudicative duties of judicial office.

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A), except as permitted by Rule 4.3.

COMMENT

General Considerations

[1] A judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[2] When a person becomes a judicial

candidate, this Canon becomes applicable to his or her conduct.

Participation in Political Activities

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.

[4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3.

[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate, and is not prohibited by paragraphs (A)(2) or (A)(3).

Statements and Comments Made during a Campaign for Judicial Office

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their retention committees. Paragraph (A)(11) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(11), (A)(12), or (A)(13), the candidate may make a factually accurate public response. In making any such response, the judge should maintain the dignity appropriate to judicial office.

[9] Paragraph (A)(12) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that

may appropriately affect the outcome of a matter.

Pledges, Promises, or Commitments Inconsistent with Impartial Performance of the Adjudicative Duties of Judicial Office

[10] The role of a judge is different from that of a legislator or executive branch official Campaigns for retention to judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 are intended to help preserve the integrity and independence of the judiciary, and to honor Colorado's merit-based system of selecting and retaining judges.

[11] Paragraph (A)(13) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[12] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

Rule 4.2: Political and Campaign Activities of a Judge Who is a Candidate for Retention

(A) A judicial candidate* in a retention public election* shall:

(1) act at all times in a manner consistent with the independence,* integrity,* and impartiality* of the judiciary;

(2) comply with all applicable federal and state election, election campaign, and election campaign fund-raising laws and regulations;

(3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.3, before their dissemination; and

(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.3, that the candidate is prohibited from doing by Rule 4.1.

Rule 4.3: Retention Campaign Committees

(A) A judge who is a candidate for retention in office should abstain from any campaign activity in connection with the judge's own candidacy unless there is active opposition to his or her retention in office. If there is active opposition to the retention of a candidate judge:

(1) The judge may speak at public meetings;

(2) the judge may use advertising media, provided that the advertising is within the bounds of proper judicial decorum;

(3) a nonpartisan citizens' committee or committees advocating a judge's retention in office may be organized by others, either on their own initiative or at the request of the judge;

(4) any committee organized pursuant to subsection (A)(3) may raise funds for the judge's campaign, but the judge should not solicit funds personally or accept any funds except those paid to the judge by a committee for reimbursement of the judge's campaign expenses;

(5) the judge should not be advised of the source of funds raised by the committee or committees;

(6) the judge should review and approve the content of all statements and materials produced by the committee or committees before their dissemination.

COMMENT

[1] Judicial candidates are prohibited from personally soliciting funds in support of their retention or personally accepting retention campaign contributions. See Rule 4.1(A)(8).

[2] Retention campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Judicial candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their retention campaign committees.

[3] At the start of a retention campaign, the candidate must instruct the retention campaign committee to solicit or accept only such contributions as are reasonable in amount, appropriate under the circumstances, and in conformity with applicable law. Although lawyers and others who might appear before a judge who is retained are permitted to make campaign contributions, the judge should not be informed of the source of any funds.

Rule 4.4: Activities of Judges Who Become Candidates for Nonjudicial Office

(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law* to continue to hold judicial office.

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

COMMENT

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial

campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The "resign to run" rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the "resign to run" rule.

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