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 a sworn or unsworn declaration by any other person completing the service as to date, place, and manner of service;

(2) Repealed eff. March 23, 2006.

(3) If served by mail, by a sworn or unsworn declaration showing the date of the mailing with the return receipt attached, where required;

(4) If served by publication, by a sworn or unsworn declaration that includes the mailing of a copy of the process where required;

(5) If served by waiver, by a sworn or unsworn declaration admitting or waiving service by the person or persons served, or by their attorney;

(6) If served by substituted service, by a sworn or unsworn declaration as to the date, place, and manner of service, and 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.

(l) No Colorado Rule.

(m) **Time Limit for Service.** If a defendant is not served within 63 days (nine weeks) after the complaint is filed, the court-on motion or on its own after notice to the plaintiff-shall dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision (m) does not apply to service in a foreign country under rule 4(d).

(Source: Entire rule amended and adopted, April 30, 1997, effective July 1, 1997; entire rule amended and effective March 23, 2006; (h)(1) amended and effective February 7, 2008; (e)(10)(C) and (g)(2) amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1(b); (e)(1) and (e)(4) amended and effective June 21, 2012; (m) added and effective September 5, 2013; amended and adopted by the Court, En Banc, April 17, 2020, effective April 17, 2020, effective immediately.)

COMMENT

2020

Rule 4(h) on the manner of proving service was amended following the adoption in 2018 of the Uniform Unsworn Declarations Act. C.R.S. § 13-27-101 et seq. This Act defines a "sworn declaration," which includes an affidavit, and an "unsworn declaration," which "means a declaration in a signed record that is not given under oath, but is given under penalty of perjury." § 13-27-102 (6) and (7). An unsworn declaration which complies with the Act is sufficient to prove service under Rule 4(h).

Annotation

I. General Consideration.

Law reviews. For article, "Rules Committee Proposes Changes in Civil Procedure", see 21 Dicta 159 (1944). For article, "Notes on Proposed Amendments to Colorado Rules of Civil Procedure", see 27 Dicta 165 (1950). For article, "Amendments to the Colorado Rules of Civil Procedure", see 28

Dicta 242 (1951). For article, "One Year Review of Civil Procedure", see 35 Dicta 3 (1958). For article, "One Year Review of Civil Procedure and Appeals", see 37 Dicta 21 (1960). For article, "One Year Review of Civil Procedure and Appeals", see 39 Dicta 133 (1962). For article, "Substituted Service of Process on Cohabitants", see 52 U. Colo. L. Rev. 321 (1981). For article, "Jurisdiction and Service of Process Beyond Colorado Boundaries", see 11 Colo. Law. 648 (1982). For article, "Will Contests-Some Procedural Aspects", see 15 Colo. Law. 787, (1986). For article, "Prosecuting an Appeal from a Decision of the Colorado Public Utilities Commission", see 16 Colo. Law. 2163 (1987). For article, "Civil Procedure", which discusses recent Tenth Circuit decisions dealing with jurisdiction, see 65 Den. U. L. Rev. 405 (1988). For article, "The Rules Have Changed for Quiet Title Actions", see 27 Colo. Law. 69 (May 1998). For article, "2006 Amendments to the Civil Rules: Modernization, New Math, and Polishing", see 35 Colo. Law. 21 (May 2006).

Due process requires notice by actual or substituted service of process. *Weber v. Williams*, 137 Colo. 269, 324 P.2d 365 (1958).

Purpose of the requirement for serving process and a copy of the complaint upon party defendant is to give that party notice of the commencement of the proceedings so that the party has an opportunity to attend and prepare a defense. *Swanson v. Precision Sales & Serv.*, 832 P.2d 1109 (Colo. App. 1992).

Mere failure to obtain proper service does not warrant dismissal of the cause of action. *United Bank of Boulder, N.A. v. Buchanan*, 836 P.2d 473 (Colo. App. 1992).

The question of proper service is a factual question to be resolved based upon a preponderance of the evidence. If a court's jurisdiction is contested by means of a C.R.C.P. 12(b)(1) motion and there are contested issues of fact, the trial court is required to hold an evidentiary hearing to resolve those issues. *Werth v. Heritage Int'l Holdings, PTO*, 70 P.3d 627 (Colo. App. 2003).

Knowledge of a defendant of the pendency of an action cannot be substituted for service of process, for courts acquire jurisdiction in actions "in rem" as well as in actions "in personam" by lawful service of lawful process or by voluntary appearance. *Weber v. Williams*, 137 Colo. 269, 324 P.2d 365 (1958).

A judgment rendered without service, or upon the unauthorized appearance of an attorney, is void, and all proceedings had thereunder are as to all

persons, irrespective of notice or bona fides, absolute nullities. *Weber v. Williams*, 137 Colo. 269, 324 P.2d 365 (1958).

Absence of legal service or authorized appearance is jurisdictional, and, without jurisdiction, no judgment whatever will be entered, nor rights acquired thereunder. *Weber v. Williams*, 137 Colo. 269, 324 P.2d 365 (1958); *United Bank of Boulder, N.A. v. Buchanan*, 836 P.2d 473 (Colo. App. 1992).

When jurisdiction has been obtained by the service of process, actual or constructive, all subsequent proceedings are an exercise of jurisdiction, and however erroneous, they are not void, but voidable only, and not subject to collateral attack. *Brown v. Tucker*, 7 Colo. 30, 1 P. 221 (1883).

It is not incumbent upon a defendant to do anything to make service of process upon him valid or regular. *Coppinger v. Coppinger*, 130 Colo. 175, 274 P.2d 328 (1954); *Weber v. Williams*, 137 Colo. 269, 324 P.2d 365 (1958).

Proper service question of fact. Whether personal or substituted service on a party has been properly made is a question of fact to be resolved by the trial court. *Stubblefield v. District Court*, 198 Colo. 569, 603 P.2d 559 (1979); People in Interest of S.C., 802 P.2d 1101 (Colo. App. 1989).

Service on wrong person confers no jurisdiction. Where the person intended to be sued is named as defendant and service is had on a different person who is not acting for, nor an agent of, the defendant, such service confers no jurisdiction over either the person named in the process or the person actually served. *Havens v. Hardesty*, 43 Colo. App. 162, 600 P.2d 116 (1979).

Distinction between subject matter jurisdiction and personal jurisdiction. Long-arm statute, §13-1-124, together with defendant's note submitting to jurisdiction of Colorado courts for purposes of enforcement, conferred subject matter jurisdiction. However, in absence of valid service of process, court lacked personal jurisdiction and judgment was void. *United Bank of Boulder, N.A. v. Buchanan*, 836 P.2d 473 (Colo. App. 1992).

An objection to lack of personal jurisdiction relates to the power of a court to compel a defendant to appear and to defend or face entry of a default judgment. And, an objection to service of process is directed to the manner of notifying a defendant that a plaintiff seeks to have a court exercise personal jurisdiction over the defendant. *United Bank of Boulder, N.A. v. Buchanan*, 836 P.2d 473 (Colo. App. 1992).

Applied in *Blank v. District Court*, 190 Colo. 114, 543 P.2d 1255 (1975); *Burrows v. Greene*, 198 Colo. 167, 599 P.2d 258 (1979); *People v. Hurst*, 200 Colo. 537, 618 P.2d 1113 (1980); *People v. Dutton*, 629 P.2d 103 (Colo. 1981).

II. To What Applicable.

Law reviews. For article, "Actions Concerning Real Estate Including Service of Process: Rule 105 and Rule 4 ", see 23 Rocky Mt. L. Rev. 614 (1951). For article, "Standard Pleading Samples to Be Used in Quiet Title Litigation", see 30 Dicta 39 (1953).

Service of notice in proceedings under §14-10-105 of Uniform Dissolution of Marriage Act is governed by the rules of civil procedure. In re Henne, 620 P.2d 62 (Colo. App. 1980).

Proceedings commenced under §37-92-302(1)(a) are not subject to service of process requirements of rule but rather are handled through the unique resume-notice provisions of §37-92-302(3). *Gardner v. State*, 200 Colo. 221, 614 P.2d 357 (1980).

Proceedings commenced under Torrens Land Registration Act are not subject to service of process requirements of this rule but rather are handled through the notice provisions of the Torrens Act. *Rael v. Taylor*, 876 P.2d 1210 (Colo. 1994).

III. Issuance of Summons and Other Process.

Law reviews. For article, "The Federal Rules from the Standpoint of the Colorado Code", see 17 Dicta 170 (1940).

Annotator's note. Since section (5) of this rule is similar to §35 of the former Code of Civil Procedure, which was supplanted by the rules of civil procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

The summons provided for by this rule is not a writ or process within the meaning of the constitution; there is no definition of "process", given by any accepted authority, which implies that any writ or method by which a suit is commenced is necessarily "process". A party is entitled to notice and to a hearing under the constitution before he can be affected, but it is nowhere declared or required that such notice shall be only a writ issuing out of a court. *Comet Consol. Mining Co. v. Frost*, 15 Colo. 310, 25 P. 506 (1890).

A summons may be signed by an attorney and need not be under seal of court. *Rand v. Pantagraph Co.*, 1 Colo. App. 270, 28 P. 661 (1891).

When a clerk has been appointed by a judge, so long as the appointment is not revoked, the clerk or his deputy alone has power to discharge the clerical duties of the office, and a summons issued and signed by the judge is void, notwithstanding the disqualification of the clerk to act on account of absence or sickness. *McNevins v. McNevins*, 28 Colo. 245, 64 P. 199 (1901).

A judge may elect to perform the duties of clerk of his court, and, when he does so elect, he is authorized to issue and sign all processes from his court. *McNevins v. McNevins*, 28 Colo. 245, 64 P. 199 (1901).

A summons not issued and signed either by the clerk or plaintiff's attorney is no summons. *Russell v. Craig*, 10 Colo. App. 428, 51 P. 1017 (1897).

The service of an unsigned summons does not effectively bring defendants within the jurisdiction of the court. *Brown v. Amen*, 147 Colo. 468, 364 P.2d 735 (1961).

An acceptance of service of a purported summons which was signed by neither the clerk nor plaintiff's attorney would be no acceptance of service of summons. *Russell v. Craig*, 10 Colo. App. 428, 51 P. 1017 (1897).

Entry of appearance by defendant to an action waives objections to summons or service thereof. *Russell v. Craig*, 10 Colo. App. 428, 51 P. 1017 (1897); *see Brown v. Amen*, 147 Colo. 468, 364 P.2d 735 (1961).

Summons issued upon a defective, but amendable, complaint is not void. A complaint which is defective, but amendable, cannot be regarded as entirely void, nor can a summons be so regarded merely because it is issued upon such a complaint. And it is of no importance that a copy of the original complaint was attached to the summons as served upon the respondents, because they are bound to take notice of the rule relating to amendments, and, if they choose to act on the assumption either that the plaintiff would not seek an amendment or that the court would not permit one, they do so at their peril. *Goodman v. City of Ft. Collins*, 164 F. 970 (8th Cir. 1908).

IV. Contents of Summons.

A. In General.

Law reviews. For article, "One Year Review of Civil Procedure and Appeals", see 36 Dicta 5 (1959).

Annotator's note. Since section (c) of this rule is similar to §36 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

The summons is a process by which parties are brought into court, so as to give a court jurisdiction over their persons. *Fletcher v. District Court*, 137 Colo. 143, 322 P.2d 96 (1958).

The purpose of a summons is to notify the defendant that an action has been brought against him, by whom, the place and court in which the same is brought, the relief demanded, and the time within which he must appear and answer in order to escape a judgment by default. *Burkhardt v. Haycox*, 19 Colo. 339, 35 P. 730 (1894).

The form of a summons is prescribed by law, and whatever that form may be, it must be observed at least substantially. *Fletcher v. District Court*, 137 Colo. 143, 322 P.2d 96 (1958).

The provisions of this rule concern the essential content of a summons. *Susman v. District Court*, 160 Colo. 475, 418 P.2d 181 (1966).

Provision of law is mandatory. Where the law expressly directs that process shall be in a specified form and issued in a particular manner, such a provision is mandatory, and a failure on the part of the proper official to comply with the law in that respect will render such process void. *Smith v. Aurich*, 6 Colo. 388 (1883).

A summons must contain all that is required by this rule whether deemed needful or not. *Fletcher v. District Court*, 137 Colo. 143, 322 P.2d 96 (1958).

A summons which does not meet the requirements of the law is a nullity. *Fletcher v. District Court*, 137 Colo. 143, 322 P.2d 96 (1958).

If the summons is void, there is no jurisdiction over the parties. *Fletcher v. District Court*, 137 Colo. 143, 322 P.2d 96 (1958).

The summons must be prejudicial to be void. It is manifest without argument that a defect in the summons which will be sufficient to constitute it void or erroneous must be of such a character as to mislead the defendant to his prejudice, and to prejudicially affect, or tend to so affect, some substantial right. *Rich v. Collins*, 12 Colo. App. 511, 56 P. 207 (1898).

There is a wide difference between a total failure and an inaccuracy or incompleteness of a required statement, especially so where the inaccuracy does not prejudicially affect a party nor tend in any manner to his injury. *Rich v. Collins*, 12 Colo. App. 511, 56 P. 207 (1898).

If all of the material objects are clearly accomplished by the process, although other language be used than that of the rule, it would be

unreasonable to say that the defendant might be heard to complain. *Kimball v. Castagnio*, 8 Colo. 525, 9 P. 488 (1885).

If copy served on defendant is sufficient, deficiencies in certified copy are immaterial. Where a certified copy of a summons obtained from the clerk of the court below, and purporting to have been served on defendant, is deficient, but the copy of the summons certified to the court in the transcript of the record as served on the defendant does not show such deficiency, an objection that the summons served in the action is deficient will not be considered. *Tabor v. Goss & Phillips Mfg. Co.*, 11 Colo. 419, 18 P. 537 (1888).

A reference to the complaint for particulars does not aid a defective summons. *Atchison, T. & S. F. R. R. v. Nichols*, 8 Colo. 188, 6 P. 512 (1884); *Fletcher v. District Court*, 137 Colo. 143, 322 P.2d 96 (1958).

B. Naming of Parties.

Rules make no exception to naming requirement. The rules of civil procedure make no exception in "in rem" actions, as distinguished from "in personam" actions, to the requirement that defendants be named if their names are known or be designated as "unknown" when such is the case. *Barker v. District Court*, 199 Colo. 416, 609 P.2d 628 (1980).

The words "et al." do not satisfy requirements that parties shall be named. *Smith v. Aurich*, 6 Colo. 388 (1882).

An abbreviation of person's name may suffice to identify party. *Rich v. Collins*, 12 Colo. App. 511, 56 P. 207 (1899).

The omission of defendant's middle initial in a summons is immaterial, since in legal contemplation such initial constitutes no part of a person's name. *Clark v. Nat'l Adjusters, Inc.*, 140 Colo. 593, 348 P.2d 370 (1959).

Naming of defendants insufficient. The designations, "owner" and "operator", in the caption of the case, without naming them, when those persons were known to the district attorney, are not in compliance with the requirements of the rules of civil procedure that a party defendant shall be named unless his name is unknown. *Barker v. District Court*, 199 Colo. 416, 609 P.2d 628 (1980).

C. Nature of Action.

Early provision required summons to state "the cause and general nature of the action". *Barndollar v. Patton*, 5 Colo. 46 (1879) (decided under repealed Civil Code 1887, §34).

By a subsequent proviso it became no longer necessary. *Burkhardt v. Haycox*, 19 Colo. 339, 35 P. 730 (1894); *Rich v. Collins*, 12 Colo. App. 511, 56 P. 207 (1899).

Even under the early provision, statement of nature of action was not necessary if copy of complaint was served. *Swem v. Newell*, 19 Colo. 397, 35 P. 734 (1894).

D. Relief Demanded.

Summons which fails to comply with the provision of this rule, which provides that it shall briefly state the sum of money or other relief demanded in the action, is fatally defective, and a motion to quash should be sustained. *Farris v. Walter*, 2 Colo. App. 450, 31 P. 231 (1892).

A summons in a suit for contribution which states that the action is brought to recover judgment for such amount as should be found to be due from each defendant is not vulnerable to a motion to quash on the ground that it does not state the amount of money demanded. *Taylor v. Hake*, 92 Colo. 330, 20 P.2d 546 (1933).

Prayer for relief can be aided by statements in complaint where copy thereof is served with summons. *Sage Inv. Co. v. Haley*, 59 Colo. 504, 149 P. 437 (1915).

Under early proviso, reference to this pleading in no way aided a defective description in summons. *Atchison, T. & S. F. R. R. v. Nichols*, 8 Colo. 188, 6 P. 512 (1884) (decided under repealed Civil Code 1887, §34).

This rule does not require that a copy of the complaint must be served with the summons. *Smith v. Aurich*, 6 Colo. 388 (1882); *Seeley v. Taylor*, 17 Colo. 70, 28 P. 461 (1891), 28 P. 723 (1892).

Summons in an action based on tort for false representations should show that the action is to recover damages for obtaining money from plaintiff by false and fraudulent representations or by deceit. *Erisman v. McCarty*, 77 Colo. 289, 236 P. 777 (1925).

Action shown to be on contract. A summons stating that the action is for the recovery of money and interest thereon as well as attorney fees, according to the terms of each, shows that the action is on contract. *Erisman v. McCarty*, 77 Colo. 289, 236 P. 777 (1925).

The phrase, "in consequence of certain acts and doings of said defendants", is too indefinite to be capable of itself of imparting any information whatever, as to what the defendant is called upon to answer, nor can an

expression so void of advice be aided by reference to the complaint. *Smith v. Aurich*, 6 Colo. 388 (1882).

The relief demanded does not limit the plaintiff in respect to the remedy which he may have; the court will disregard the prayer and rely upon the facts alleged and proved as the basis of its remedial action. *Nevin v. Lulu & White Silver Mining Co.*, 10 Colo. 357, 15 P. 611 (1887); *Powell v. Nat'l Bank*, 19 Colo. App. 57, 74 P. 536 (1903).

Principle that clerk must look to summons alone for amount may apply only to entry of judgment. Where there is no imperative reason insofar as service and notice and the entry of default are concerned why the summons should state the sum of money demanded, the contention that the clerk must look to the summons alone for the amount demanded can be applied only to the lawful power of the clerk to enter the judgment, and when the clerk does not enter the judgment, but only enters the default, this contention fails for lack of application. *Griffing v. Smith*, 26 Colo. App. 220, 142 P. 202 (1914).

Applied in *Ardison v. Villa*, 248 F.2d 226 (10th Cir. 1957).

V. By Whom Served.

Law reviews. For article, "Constitutional Law", see 32 Dicta 397 (1955). For article, "International Service of Process Under the Hague Convention and Colorado Law", see 41 Colo. Law. 79 (November 2012).

Annotator's note. Since section (d) of this rule is similar to §39 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

The words "or by any person not a party to the action" are intended to mean any other person competent to make the service, which, of necessity, excludes the attorneys in the case, they being incompetent. *Nelson v. Chittenden*, 53 Colo. 30, 123 P. 656 (1912).

The service of a summons by a plaintiff in the cause is void, and a judgment entered in the absence of the defendant and upon such service is a nullity. *Toenniges v. Drake*, 7 Colo. 471, 4 P. 790 (1884).

Service of process by an employee of counsel who is not counsel or associate counsel is proper service and does not violate the provisions of this rule requiring service to be made by any person not a party to the action. People in Interest of T.G., 849 P.2d 843 (Colo. App. 1992)

Server is not required to go outside county in which action is pending. The sheriff, or person not a party to the action, to whom the summons in a civil action is delivered for service is not in his search for the defendant required to go outside the county in which the action brought is pending. The return thereon by such officer or person that defendant cannot after diligent search be found therein constitutes a proper and sufficient basis for publication of summons. *Gamewell v. Strumpler*, 84 Colo. 459, 271 P. 180 (1928).

The sheriff loses his official character when he passes out of his own county, so that in serving a summons in another county he acts merely as an individual, and such service must be shown by his affidavit. His mere return, unsworn, is no evidence of the service, and judgment rendered upon such return of service, not otherwise shown, is void. *Munson v. Pawnee Cattle Co.*, 53 Colo. 337, 126 P. 275 (1912).

Service as authorized by international agreement is not the exclusive means of serving a defendant located in a foreign country under section (d). This provision only applies to service that occurs in a foreign country and does not prohibit another form of service within the United States if otherwise authorized. Substituted service is a valid alternative to service abroad. Willhite v. Rodriguez-Cera, 2012 CO 29, 274 P.3d 1233.

VI. Personal Service in State.

A. In General.

Law reviews. For article, "One Year Review of Civil Procedure and Appeals", see 36 Dicta 5 (1959). For article, "One Year Review of Civil Procedure and Appeals", see 40 Den. L. Ctr. J. 66 (1963). For note, "Service of Process in Colorado: A Proposed Revision of Rule Four", see 41 U. Colo. L. Rev. 569 (1969).

Annotator's note. Since section (e) of this rule is similar to §40 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

This rule requires that a "copy" of the summons be served, not a duplicate original. *Hocks v. Farmers Union Co-op. Gas & Oil Co.*, 116 Colo. 282, 180 P.2d 860 (1947).

The rule is satisfied where a transcript of the original summons, bearing the names of the clerk and counsel for the plaintiff in typewriting is served; actual signatures were not necessary. *Hocks v. Farmers Union Co-op. Gas & Oil Co.*, 116 Colo. 282, 180 P.2d 860 (1947).

Voluntary appearance of a party is equivalent to personal service of process. *Munson v. Luxford*, 95 Colo. 12, 34 P.2d 91 (1935).

In motions to quash the service of process, the plaintiffs in such actions have the burden, after challenge, of establishing by competent evidence all facts essential to jurisdiction. *Harvel v. District Court*, 166 Colo. 520, 444 P.2d 629 (1968).

Clear and convincing proof by defendant is required. If the return on a summons is in proper form and shows service in accordance with the rule, the burden is upon defendant to overthrow the return by clear and convincing proof. *Gibbs v. Ison*, 76 Colo. 240, 230 P. 784 (1924).

Mere failure to obtain proper service does not warrant dismissal of the cause of action. *Fletcher v. District Court*, 137 Colo. 143, 322 P.2d 96 (1958).

A cause of action filed may remain so indefinitely pending service of process upon the parties. *Fletcher v. District Court*, 137 Colo. 143, 322 P.2d 96 (1958).

Counsel impliedly authorized to accept service of process. Where an attorney is hired to commence a lawsuit, he is authorized to accept service of process in a closely related judicial proceeding. *Southerlin v. Automotive Elec. Corp.*, 773 P.2d 599 (Colo. App. 1988).

B. Upon Natural Persons.

Law reviews. For article, "In Re: The Mourners", see 6 Dicta 7 (April 1929).

A registered agent may be served in the same manner as a "natural person" under this rule. Goodman Assocs., *LLC v. WP Mtn. Props., LLC*, 222 P.3d 310 (Colo. 2010).

Service of process on defendant's registered agent was proper where delivered to agent's assistant at defendant's workplace. Agent's failure to receive process because of his own carelessness and neglect does not invalidate its proper service. *Goodman Assocs., LLC v. WP Mtn. Props., LLC*, 222 P.3d 310 (Colo. 2010).

This rule requires that the copy of the summons and complaint be "delivered" to the proper person. *Martin v. District Court*, 150 Colo. 577, 375 P.2d 105 (1962).

Clearly, by its own terms, the rule does not require that this "delivery" be accompanied by a reading aloud of the documents so served, or by explaining what they are, or by verbally advising the person sought to be

served as to what he or she should do with the papers. *Martin v. District Court*, 150 Colo. 577, 375 P.2d 105 (1962); *Goodman Assocs., LLC v. WP Mtn. Props., LLC*, 222 P.3d 310 (Colo. 2010).

The term "usual place of abode" has generally been construed to mean the place where that person is actually living at the time service is attempted. *Neher v. District Court*, 161 Colo. 445, 422 P.2d 627 (1967); *Security State Bank v. Weingardt*, 42 Colo. App. 219, 597 P.2d 1045 (1979).

It is not synonymous with "domicile". *Neher v. District Court*, 161 Colo. 445, 422 P.2d 627 (1967); *Security State Bank v. Weingardt*, 42 Colo. App. 219, 597 P.2d 1045 (1979).

Upon one's induction into the armed forces, his parent's home ceases to be his place of abode, and it does not matter in this regard that some of his clothing and personal belongings remain there or that he intends to return to his mother's home, wherever it may be, as soon as his military service is terminated. While filial love binds him to his parents wherever they may be, and their home is his for lack of another, it is no longer his "actual place of abode" within the intendment of the rule. *Neher v. District Court*, 161 Colo. 445, 422 P.2d 627 (1967).

The term "family" includes husband's adult daughter who was visiting him at the time of service. In re Eisenhuth, 976 P.2d 896 (Colo. App. 1999).

Service of summons upon an infant over the age of 14 years, but not upon the guardian, no guardian "ad litem" being appointed, but the record reciting that the infant defendant appeared by his next friend as well as by attorney was sufficient service and the appearance was authorized. *Filmore v. Russell*, 6 Colo. 171 (1881).

C. Upon Unincorporated Associations.

Annotator's note. Since section (e)(4) of this rule is similar to that section of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

The general rule at common law was that where the obligation was joint only, all the joint obligors must be made parties defendant and must be sued jointly. *Sargeant v. Grimes*, 70 F.2d 121 (10th Cir.), cert. denied, 293 U.S. 568, 55 S. Ct. 79, 79 L. Ed. 667 (1934).

The purpose of this rule is to change the common-law rule and provide a procedure whereby a partnership could be sued upon a partnership obligation, service made upon one or more but not all of the partners, and a

judgment rendered binding the partnership and its property as well as the individual property of the partners served as partners. *Sargeant v. Grimes*, 70 F.2d 121 (10th Cir.), cert. denied, 293 U.S. 568, 55 S. Ct. 79, 79 L. Ed. 667 (1934).

This rule only provides a method of suing a partnership in addition to the remedy already existing. *Peabody v. Oleson*, 15 Colo. App. 346, 62 P. 234 (1900).

This rule is cumulative merely and does not affect the right to sue all the members of a firm by their several individual names and obtain a joint judgment against them as partners. *Peabody v. Oleson*, 15 Colo. App. 346, 62 P. 234 (1900).

It makes the service of summons upon one partner sufficient to bring the partnership into court and bind its property by the judgment. *Peabody v. Oleson*, 15 Colo. App. 346, 62 P. 234 (1900).

Service of summons includes serving member of family over 18 at residence. Service of summons upon a member of a partnership by leaving a copy of the summons and complaint at his usual place of residence with a member of his family over 15 (now 18) years of age is sufficient service on a partnership under this rule. *Barnes v. Colo. Springs & C. C. D. Ry.*, 42 Colo. 461, 94 P. 570 (1908).

No personal judgment can be obtained against the partners not served; as to them, the judgment rendered can bind only their interests in the partnership property. The judgment should be against the partnership, and in a proper manner, the individual property of the member or members served might be reached for the purpose of satisfying it. *Peabody v. Oleson*, 15 Colo. App. 346, 62 P. 234 (1900); *Ellsberry v. Block*, 28 Colo. 477, 65 P. 629 (1901); *Blythe v. Cordingly*, 20 Colo. App. 508, 80 P. 495 (1905).

A judgment against a partnership binds the joint property of the associates and the separate property of members duly served with process. *Denver Nat'l Bank v. Grimes*, 97 Colo. 158, 47 P.2d 862 (1935).

Where in an action upon a partnership debt only one of two partners was served with summons and a judgment was entered against the individual partner served, but no judgment was entered against the partnership and the other partner was afterwards brought in by "scire facias" and a judgment was entered against said partner as for an individual debt, then, in the absence of a judgment against the firm, it was error to render judgment against the other partner for the individual debt. *Ellsberry v. Block*, 28 Colo. 477, 65 P. 629 (1901).

A judgment on copartnership promissory notes merged the notes into the judgment, although only one of the partners was served with summons or appeared in the action, and suit could not thereafter be maintained on the notes against the partners not served. *Blythe v. Cordingly*, 20 Colo. App. 508, 80 P. 495 (1905).

Any member being served with summons has notice that he may appear in the case and set up any defense to the partnership liability or to his liability as a partner. *Denver Nat'l Bank v. Grimes*, 97 Colo. 158, 47 P.2d 862 (1935); *Sargeant v. Grimes*, 70 F.2d 121 (10th Cir.), cert. denied, 293 U.S. 568, 55 S. Ct. 79, 79 L. Ed. 667 (1934).

Court has jurisdiction of a partner who is served for purposes of proceeding to final judgment against him. A judgment having been entered against a partnership and execution thereon having been returned unsatisfied under the provisions of this rule, the court has and continues to have jurisdiction of a partner who had been served with summons for the purpose of proceeding to final judgment against him. *Denver Nat'l Bank v. Grimes*, 97 Colo. 158, 47 P.2d 862 (1935).

Service upon a partner in a partnership that, in turn, is a partner in a second partnership does not provide notice to the second partnership with sufficient notice of suit against it. *Bush v. Winker*, 892 P.2d 328 (Colo. App. 1994), aff'd, 907 P.2d 79 (Colo. 1995).

Mere knowledge of the general partner of a partnership, which, in turn, is a partner in a second partnership, that a legal proceeding is pending is not a substitute for service upon the proper entity. *Bush v. Winker*, 892 P.2d 328 (Colo. App. 1994), aff'd, 907 P.2d 79 (Colo. 1995).

An amendment adding name of another partner is not a change of the cause of action. Where an action is brought against a partnership under the proper partnership name and against one partner who is served with summons, an amendment setting forth the name of another partner and making him a party to the action is not a change of the cause of action by changing the parties to the contract sued on where the partnership named in the amendment and the matter sued on are the same as those named in the original. *Adamson v. Bergen*, 15 Colo. App. 396, 62 P. 629 (1900).

An action may be maintained against a subordinate or branch organization or association upon a mutual benefit insurance policy where the policy is the obligation of the subordinate or branch association, although the association is under the control of, and the certificate is under the seal of, a supreme lodge. On such a policy an action is properly brought against them under its

associate name. *Endowment Rank of K. P. v. Powell*, 25 Colo. 154, 53 P. 285 (1898).

Ruling denying motion to quash service is appealable order. Where the defendant appears specially and moves to quash the service of summons upon the ground that the service under section (e)(4) of this rule is ineffective and void, then, when the trial court overrules this motion, this ruling denying the defendants' motion to quash the service of summons is an appealable order. *Wells Aircraft Parts Co. v. Allan J. Kayser Co.*, 118 Colo. 197, 194 P.2d 326 (1947).

D. Upon Corporations.

Determining corporate presence within the state is resolved by: (1)Leaving the matter in the sound discretion of a trial court; (2)distinguishing between those cases where merely the internal affairs of a corporation are involved and those cases where the corporation has had transactions with third persons; and (3)considering the equities of the case. *Hibbard, Spencer, Bartlett & Co. v. District Court*, 138 Colo. 270, 332 P.2d 208 (1958).

The question of what constitutes doing business is a fact to be determined as any other fact. *Hibbard, Spencer, Bartlett & Co. v. District Court*, 138 Colo. 270, 332 P.2d 208 (1958).

The contracting of a debt is a sufficient doing of business within this state to render a corporation amenable to the courts of this state if jurisdiction could be obtained by service of process as provided in this rule. *Colo. Iron-Works v. Sierra Grande Mining Co.*, 15 Colo. 499, 25 P. 325 (1890).

The Colorado supreme court has not condemned the manner of service of process under this rule as being unfair or as failing to give notice. *Focht v. Southwestern Skyways, Inc.*, 220 F. Supp. 441 (D. Colo. 1963), aff'd, 336 F.2d 603 (10th Cir. 1964).

To bind a corporation, the service of process must be upon the identical agent provided by the rule. *Great W. Mining Co. v. Woodmas of Alston Mining Co.*, 12 Colo. 46, 20 P. 771 (1888).

Subsection (e)(1) requires either personal service or substituted service at the party's usual place of business, with the party's stenographer, bookkeeper, or chief clerk. People in Interest of S.C., 802 P.2d 1101 (Colo. App. 1989).

Service upon the vice-president of a corporation is sufficient even though the return does not show that the president could not be found in the county. *Comet Consol. Mining Co. v. Frost*, 15 Colo. 310, 25 P. 506 (1890).

Determination of whether a person is a general agent of a corporation for service of process requires an analysis of that person's duties, responsibilities, and authority. *Denman v. Great Western Ry. Co.*, 811 P.2d 415 (Colo. App. 1990).

Delivery of suit papers to corporation's registered agent may be accomplished in the same manner as service on a "natural person" under subsection (e)(1). Thus, delivery of such papers to a registered agent's "stenographer, bookkeeper, or chief clerk" constitutes delivery to that agent. *Merrill Chadwick Co. v. October Oil Co.*, 725 P.2d 17 (Colo. App. 1986); *Swanson v. Precision Sales & Serv.*, 832 P.2d 1109 (Colo. App. 1992).

Secretary's corporate employer which was the sole shareholder of defendant corporation and whose president was the defendant corporation's registered agent held to be registered agent's "stenographer" under rule authorizing service of process on natural person's stenographer. *Swanson v. Precision Sales & Serv.*, 832 P.2d 1109 (Colo. App. 1992).

Service held proper where secretary was performing service directly for registered agent at the same address that he had listed as defendant's corporation's registered office since it was reasonable to conclude that the secretary would have given registered agent notice of service. *Swanson v. Precision Sales & Serv.*, 832 P.2d 1109 (Colo. App. 1992).

Service of process on defendant was proper where two copies of summons were served on an agent representing both defendants in the case and the summons did not specifically indicate which of the two defendants was being served. A party assumes the risk that errors in transmittal of service of process by its registered agent, who also receives service of process for numerous other entities, will bind the principal. *Brown Grain & Livestock, Inc. v. Union Pac. Res. Co.*, 878 F.2d 157 (Colo. App. 1994).

Nonresident officer not on business may be served in state. Under this rule service is legally sufficient when made on an officer of a corporation whose residence is in another state and who is at the time of service temporarily in this state on business not connected with the corporation; the fact that such officer invited such service would be pertinent in determining the validity thereof. *Venner v. Denver Union Water Co.*, 40 Colo. 212, 90 P. 623 (1907).

Service may properly be made upon agent of receivers who have displaced ordinary officers. The receivers of a foreign corporation, who by their appointment as such displace the ordinary officers of a corporation, are to be treated as foreign receivers, and if the return of the sheriff shows a service that would have been sufficient upon the corporation under its ordinary management, it must be equally sufficient if made upon an agent of the

receivers when the affairs of the corporation are under the management of the latter. *Ganebin v. Phelan*, 5 Colo. 83 (1879).

Under this rule, service is proper upon the agent of a foreign corporation if made within the state. *White-Rodgers Co. v. District Court*, 160 Colo. 491, 418 P.2d 527 (1966).

Corporation was properly served when the individual registered agent was properly served and thus the trial court had in personam jurisdiction. *Merrill Chadwick Co. v. October Oil Co.*, 725 P.2d 17 (Colo. App. 1986).

Service shall be made upon agent in county where action is brought. In a suit against a foreign corporation, service must be made upon it by delivering a copy of the summons to its agent found within the county where the action is brought. *Venner v. Denver Union Water Co.*, 15 Colo. App. 495, 63 P. 1061 (1900).

It is only in such agent not found within the county that substituted service is valid. *Venner v. Denver Union Water Co.*, 15 Colo. App. 495, 63 P. 1061 (1900).

Service upon stockholder is a nullity unless agent is not found. Service upon a stockholder, unless there is a failure to find the agent, is a nullity. *Venner v. Denver Union Water Co.*, 15 Colo. App. 495, 63 P. 1061 (1900).

A person engaged in settling an insurance loss in state is an agent. Where a foreign insurance corporation employs an adjusting company to settle a loss sustained in Colorado and an employee of the latter company is given the insurance company's files and drafts for payment of any sum agreed upon in settlement of the claim and invested with full power to make the adjustment, then, in these circumstances, such an employee of the adjustment company is the agent of the insurance company, and service of process on him is service on the latter company. *Union Mut. Life Co. v. District Court*, 97 Colo. 108, 47 P.2d 401 (1935).

In an action against a corporation upon a claim for services by an agent assigned by such agent to plaintiff, service of summons upon the agent who assigned the claim is not a sufficient service on the corporation. *White House Mt. Gold Mining Co. v. Powell*, 30 Colo. 397, 70 P. 679 (1902).

Service may be had upon stockholder. It is only in the event that no agent is found in the county that service may be had upon a stockholder. *Venner v. Denver Union Water Co.*, 15 Colo. App. 495, 63 P. 1061 (1900).

VII. Personal Service Outside the State.

A. In General.

Law reviews. For article, "Some Footnotes to the 1945 Statutes", see 22 Dicta 130 (1945). For article, "Constitutional Law", see 32 Dicta 397 (1955). For article, "Another Decade of Colorado Conflicts", see 33 Rocky Mt. L. Rev. 139 (1961). For article, "Colorado's Short-Arm Jurisdiction", see 37 U. Colo. L. Rev. 309 (1965). For article, "Rule-Making in Colorado: An Unheralded Crisis in Procedural Reform", see 38 U. Colo. L. Rev. 137 (1966).

B. Natural Persons.

Law reviews. For article, "Conflict of Laws, Constitutional Law, Elections", see 30 Dicta 449 (1953). For article, "Civil Remedies and Civil Procedure", see 30 Dicta 465 (1953).

This rule relating to personal service outside the state is confined to the question of who is, or who is not, a resident of the state of Colorado. *Kellner v. District Court*, 127 Colo. 320, 256 P.2d 887 (1953).

Burden of proof is on plaintiff. When the question of Colorado residence is raised and a denial thereof is prima facie made, the burden of establishing, or proving, that defendants are in fact residents of Colorado is on plaintiffs. *Kellner v. District Court*, 127 Colo. 320, 256 P.2d 887 (1953).

"Residence" and "domicile" are commonly taken as being synonymous, notwithstanding that in precise usage they are not convertible terms. *Rust v. Meredith Publishing Co.*, 122 F. Supp. 879 (D. Colo. 1954).

"Place of abode" is not necessarily synonymous with "domicile". The term "usual place of abode" has generally been construed to mean the place where that person is actually living at the time service is attempted; it is not necessarily synonymous with "domicile". *Neher v. District Court*, 161 Colo. 445, 422 P.2d 627 (1967).

Residence is determined by intention of parties supported by acts. Domicile, or residence as used in this rule, in a legal sense, is determined by the intention of the parties. But while intention seems to be the controlling element, it is not always conclusive unless the intention is fortified by some act or acts in support thereof. *Kellner v. District Court*, 127 Colo. 320, 256 P.2d 887 (1953).

The issue of domicile is a compound question of fact and intention. *Kellner v. District Court*, 127 Colo. 320, 256 P.2d 887 (1953).

A change of voting place surely is compelling evidence of the intention of making a change of residence. *Kellner v. District Court*, 127 Colo. 320, 256 P.2d 887 (1953).

Residence may commence in another state before a definite county or precinct is fixed for a permanent residence. *Kellner v. District Court*, 127 Colo. 320, 256 P.2d 887 (1953).

C. Other Than Natural Persons.

A corporation organized under the laws of one state is a resident of that state under whose laws it was created and cannot be a resident of any other state. *Rust v. Meredith Publishing Co.*, 122 F. Supp. 879 (D. Colo. 1954).

Even if a corporation has permission to carry on a business in another state upon compliance with the laws of the other state, such permission and compliance does not make it a resident of such other state. *Rust v. Meredith Publishing Co.*, 122 F. Supp. 879 (D. Colo. 1954).

D. Status or In Rem.

Under this rule, service is good if it can be said that the action is one affecting a specific "status" or is a proceeding "in rem". *Owen v. Owen*, 127 Colo. 359, 257 P.2d 581 (1953).

Colorado recognizes the concept "in rem" or "quasi in rem" jurisdiction acquired through attachment or garnishment of the defendant's property within the state by providing for service of process on owners of specific property without regard to residence or domicile. A judgment which is rendered in such a case operates solely upon the res attached. *George v. Lewis*, 204 F. Supp. 380 (D. Colo. 1962).

Service outside state for divorce is valid. Personal service outside the state when made upon a defendant in an action for divorce is valid, since an action for divorce unquestionably is an action "in rem". *Owen v. Owen*, 127 Colo. 359, 257 P.2d 581 (1953).

The rule is not applicable to proceedings for annulment in that matrimonial "status" is not the subject. *Owen v. Owen*, 127 Colo. 359, 257 P.2d 581 (1953).

VIII. Other Service.

A. In General.

Law reviews. For article, "Again-How Many Times?", see 21 Dicta 62 (1944).

Annotator's note. Since section (g) of this rule is similar to §45 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

Where no judgment "in personam" is sought by plaintiffs against a nonresident defendant, the service of summons by publication is proper. *Hoff v. Armbruster*, 125 Colo. 324, 244 P.2d 1069 (1952).

In cases affecting specific property or in other proceedings in rem, section (g) specifically authorizes service by publication upon a nonresident. In re Ramsey, 34 Colo. App. 338, 526 P.2d 319 (1974).

Proceedings by wife to charge husband's property with alimony is a proceeding "in rem". Where the plaintiff seeks to charge her husband's property with her alimony, and to set aside conveyances made in fraud of her rights, the suit is a proceeding "in rem" within the meaning of this rule. *Hanscom v. Hanscom*, 6 Colo. App. 97, 39 P. 885 (1895).

A creditor's bill is a proceeding in rem, within the meaning of this rule. *Shuck v. Quackenbush*, 75 Colo. 592, 227 P. 1041 (1924).

Actions "in the nature of actions in rem" may be supported by constructive service as fully as those truly "in rem". *Kern v. Wilson*, 91 Colo. 355, 14 P.2d 1014 (1932).

Service by publication of summons in actions "in rem" is not limited to cases involving real estate, but may apply to those involving personal property as well. *Hoff v. Armbruster*, 125 Colo. 324, 244 P.2d 1069 (1952).

Where plaintiff fails to initiate a traditional in rem action or a quasi in rem action in a negligence suit, service by publication was improper. *ReMine ex rel. Liley v. District Court*, 709 P.2d 1379 (Colo. 1985).

Substituted service is not available outside the state. Unlike residents, nonresidents must be served personally under the plain language of subsection (f)(1). *United Bank of Boulder, N.A. v. Buchanan*, 836 P.2d 473 (Colo. App. 1992).

Substituted service under section (f) is a valid alternative to service abroad. While this provision requires documents to be mailed abroad, the international agreement on personal service in the foreign country does not apply because the transmittal of documents abroad is not required to effectuate service under this provision. Willhite v. Rodriguez-Cera, 2012 CO 29, 274 P.3d 1233.

B. By Mail.

The mandatory requirements of this rule include a verified motion by either the plaintiff or counsel in his behalf for an order for service by mail, a hearing "ex parte", and entry of an order of court directing the clerk to send a copy of process by mail to known out-of-state defendants. *Jones v. Colescott*, 134 Colo. 552, 307 P.2d 464 (1957).

Where a plaintiff does not follow this rule and omits not one but many mandatory steps set out therein, it is error to permit a judgment to stand. *Jones v. Colescott*, 134 Colo. 552, 307 P.2d 464 (1957).

If summons is properly addressed but not received, it will be presumed that postage was not prepaid. Where it is shown that a copy of the summons in a cause brought against a nonresident defendant was properly addressed and mailed to the defendant whose place of residence was well known, where he had resided for years, and where he was accustomed to receive his mail-matter regularly, but that the same was not received by him, it will be presumed, in the absence of proof to the contrary, that the sender omitted to prepay the postage. *Morton v. Morton*, 16 Colo. 358, 27 P. 718 (1891).

IX. Publication.

A. In General.

Law reviews. For article, "A Tax Title Quieted", see 6 Dicta 9 (Nov. 1928). For article, "How Many Times?", see 19 Dicta 231 (1942). For article, "Again-How Many Times?", see 21 Dicta 62 (1944). For article, "Motion for Publication of Summons in Quiet Title Proceedings", see 26 Dicta 182 (1949).

Annotator's note. Since section (h) of this rule is similar to §45 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

The law requires that personal service shall be had whenever it is obtainable. *Coppinger v. Coppinger*, 130 Colo. 175, 274 P.2d 328 (1954); *Weber v. Williams*, 137 Colo. 269, 324 P.2d 365 (1958).

When some evidence indicates the whereabouts of the absent party, any form of substituted service must have a reasonable chance of giving that party actual notice of the proceeding. *Synan v. Haya*, 15 P.3d 1117 (Colo. App. 2000).

Publication must be for one of enumerated cases. To render a publication of summons effective for any purpose, it must be made in one of the enumerated cases. *Hanscom v. Hanscom*, 6 Colo. App. 97, 39 P. 885 (1895).

The ground for such service must exist, that is, that the defendant cannot be personally served within the state. *Hanshue v. Charles B. Marvin Inv. Co.*, 67 Colo. 189, 184 P. 289 (1919).

In cases affecting specific property or in other proceedings in rem, sections (g) and (h) specifically authorize service by publication upon a nonresident. In re Ramsey, 34 Colo. App. 338, 526 P.2d 319 (1974).

Service by publication in the state where property is located is not always constitutionally adequate in quasi in rem actions. *Synan v. Haya*, 15 P.3d 1117 (Colo. App. 2000).

Section (h) controls number of publications for child custody jurisdiction act. Since §14-13-106(1)(d) does not specify the number of times that publication is required to effect notice under the Uniform Child Custody Jurisdiction Act, section (h) of this rule controls. In re Blair, 42 Colo. App. 270, 592 P.2d 1354 (1979).

Service by publication is last resort. In case service may not be had either personally or by mailing or other substituted service, then service by publication is permissible as a final and last resort. *Coppinger v. Coppinger*, 130 Colo. 175, 274 P.2d 328 (1954); *Weber v. Williams*, 137 Colo. 269, 324 P.2d 365 (1958).

Constructive service by publication is a right given by this rule. *O'Rear v. Lazarus*, 8 Colo. 608, 9 P. 621 (1885); *Beckett v. Cuenin*, 15 Colo. 281, 25 P. 167 (1890); *Trowbridge v. Allen*, 48 Colo. 419, 110 P. 193 (1910); *Empire Ranch & Cattle Co. v. Coldren*, 51 Colo. 115, 117 P. 1005 (1911); *Jotter v. Marvin*, 67 Colo. 548, 189 P. 19 (1919).

Every material requirement in relation to service by publication must be strictly complied with to give the court jurisdiction. *O'Rear v. Lazarus*, 8 Colo. 608, 9 P. 621 (1885); *Beckett v. Cuenin*, 15 Colo. 281, 25 P. 167 (1890); *Davis v. John Mouat Lumber Co.*, 2 Colo. App. 381, 31 P. 187 (1892); *Trowbridge v. Allen*, 48 Colo. 419, 110 P. 193 (1910); *Empire Ranch & Cattle Co. v. Coldren*, 51 Colo. 115, 117 P. 1005 (1911); *Jotter v. Marvin*, 67 Colo. 548, 189 P. 19 (1919); *Robinson v. Clauson*, 142 Colo. 434, 351 P.2d 257 (1960); *Hancock v. Boulder County Pub. Trustee*, 920 P.2d 854 (Colo. 1995).

Constructive service is in derogation of the common law, making it imperative that there must be a strict compliance with every requirement of this rule; failure in this respect is fatal. *Coppinger v. Coppinger*, 130 Colo. 175, 274 P.2d 328 (1954); *Weber v. Williams*, 137 Colo. 269, 324 P.2d 365 (1958).

Compliance with every condition of this rule must affirmatively appear from the record. *Coppinger v. Coppinger*, 130 Colo. 175, 274 P.2d 328 (1954); *Weber v. Williams*, 137 Colo. 269, 324 P.2d 365 (1958).

But order for publication needs not precede the beginning of publication. Where plaintiff expressly advised the court of all relevant facts and circumstances, including the fact that she had already begun publication, no prejudice resulted and neither the service nor the judgment was invalid. *Hancock v. Boulder County Pub. Trustee*, 920 P.2d 854 (Colo. App. 1995).

Nothing excuses omissions or insufficient statements. *Beckett v. Cuenin*, 15 Colo. 281, 25 P. 167 (1890); *Sylph Mining & Milling Co. v. Williams*, 4 Colo. App. 345, 36 P. 80 (1894); *Trowbridge v. Allen*, 48 Colo. 419, 110 P. 193 (1910); *Empire Ranch & Cattle Co. v. Coldren*, 51 Colo. 115, 117 P. 1005 (1911); *Robinson v. Clauson*, 142 Colo. 434, 351 P.2d 257 (1960).

Courts are jealous of abuses in the application thereof. While experience demonstrates that this mode of giving a court jurisdiction of the person is necessary in many instances, yet courts are jealous of abuses in the application thereof; hence, they tolerate the omission of no material step required by law in connection therewith. *Israel v. Arthur*, 7 Colo. 5, 1 P. 438 (1883).

Where a plaintiff does not follow this rule and omits not one but many mandatory steps set out therein, it is error to permit a judgment to stand. *Jones v. Colescott*, 134 Colo. 552, 307 P.2d 464 (1957).

This necessity to strictly follow the rule has long been established. *O'Rear v. Lazarus*, 8 Colo. 608, 9 P. 621 (1885); *Davis v. John Mouat Lumber Co.*, 2 Colo. App. 381, 31 P. 187 (1892).

If rule is not complied with, the service may be collaterally attacked. In obtaining constructive service of process by publication, a compliance with the method pointed out by this rule must be observed, and if the record being offered in evidence shows affirmatively that its provisions relating to service by publication were not complied with, it may be attacked in a collateral proceeding. *Trowbridge v. Allen*, 48 Colo. 419, 110 P. 193 (1910).

The recital in a judgment that service was complied with does not change this rule. *Trowbridge v. Allen*, 48 Colo. 419, 110 P. 193 (1910).

The motion and affidavit upon which the order for constructive service is entered takes precedence over recitals in a judgment. *Coppinger v. Coppinger*, 130 Colo. 175, 274 P.2d 328 (1954); *Weber v. Williams*, 137 Colo. 269, 324 P.2d 365 (1958).

The authorities are in conflict as to whether the constructive service may be presumed regular where record is silent. *Israel v. Arthur*, 7 Colo. 5, 1 P. 438 (1883).

Rule seems to be that record must show. Where reliance is placed wholly upon service by publication, the rule seems to be that the record must affirmatively show all the essential jurisdictional facts. This rule is not entirely undisputed, but it is sanctioned by the weight of authority and is founded upon excellent reason. *O'Rear v. Lazarus*, 8 Colo. 608, 9 P. 621 (1885).

If record is not silent no presumption can be indulged in. Where the record is not silent on this subject and where it affirmatively appears therein that the court did not have jurisdiction of the person, no such presumption can be indulged in. *Clayton v. Clayton*, 4 Colo. 410 (1878); *Israel v. Arthur*, 7 Colo. 5, 1 P. 438 (1883).

Errors in the service of summons by publication may be waived by the appearance and answer of defendant to the merits. *New York & B. M. Co. v. Gill*, 7 Colo. 100, 2 P. 5 (1883).

Applied in *George v. Lewis*, 228 F. Supp. 725 (D. Colo. 1964).

B. On Verified Motion.

Under this rule a verified motion must state the facts authorizing the service and show the efforts, if any, that have been made to make personal service within the state, and it must name the known defendants who are outside the state and their last known addresses, or that the addresses are unknown. *Jones v. Colescott*, 134 Colo. 552, 307 P.2d 464 (1957).

In the motion and affidavit, the applicant must be forthright and explicit in setting forth all of the pertinent facts in order that the court may have before it the complete picture to enable correct evaluation and determination whether service by publication is justified or required under the circumstances. *Coppinger v. Coppinger*, 130 Colo. 175, 274 P.2d 328 (1954); *Weber v. Williams*, 137 Colo. 269, 324 P.2d 365 (1958); *Hancock v. Boulder County Pub. Trustee*, 920 P.2d 854 (Colo. App. 1995).

The validity of constructive service is dependent upon the good faith of the plaintiff and the accuracy of the statements contained in his verified motion upon which the order for publication is based. *Coppinger v. Coppinger*, 130 Colo. 175, 274 P.2d 328 (1954); *Weber v. Williams*, 137 Colo. 269, 324 P.2d 365 (1958); *Hancock v. Boulder County Pub. Trustee*, 920 P.2d 854 (Colo. App. 1995).

If plaintiff in any way misrepresents the facts, either actively or merely by failure to reveal them, then it follows as a matter of course that an order directing constructive service of process by publication is invalid. *Coppinger v. Coppinger*, 130 Colo. 175, 274 P.2d 328 (1954); *Weber v. Williams*, 137 Colo. 269, 324 P.2d 365 (1958).

Anything short of the full disclosure of all known pertinent facts is a fraud upon the court and renders void any decree thereafter entered. *Coppinger v. Coppinger*, 130 Colo. 175, 274 P.2d 328 (1954); *Weber v. Williams*, 137 Colo. 269, 324 P.2d 365 (1958).

To simply go through the form of legalism without a fair disclosure of existing known facts is of no avail. *Coppinger v. Coppinger*, 130 Colo. 175, 274 P.2d 328 (1954); *Weber v. Williams*, 137 Colo. 269, 324 P.2d 365 (1958).

Where the plaintiff knows the address of, and how to reach, the defendant in another jurisdiction so as to permit personal service of summons upon him, but instead resorts to publication in a newspaper defendant would be unlikely to see, such conduct is repugnant to equity and constitutes fraud nullifying a decree which is obtained by reason of it. *Coppinger v. Coppinger*, 130 Colo. 175, 274 P.2d 328 (1954).

Where it appears from the affidavit for publication that the affiant, after due diligence, is unable to learn the whereabouts, residence, or post-office address of a defendant, coupled with further statements that he either resides out of the state, or has departed therefrom without the intention of returning, or is concealing himself to avoid the service of process, it logically follows that the defendant is either a nonresident of the state, has departed from the state without the intention of returning, or is concealing himself to avoid the service of process. *Hanshue v. Marvin Inv. Co.*, 67 Colo. 189, 184 P. 289 (1919).

To obtain an order for service by publication an affidavit to that end must show, among other things, that the defendant resides out of the state, or that he has departed from the state without intention of returning, or that he is concealing himself to avoid service of process; it must also give his post-

office address if known, or if unknown show that fact. *Robinson v. Clauson*, 142 Colo. 434, 351 P.2d 257 (1960).

Verified motion for service by publication held sufficient. *Hancock v. Boulder County Pub. Trustee*, 920 P.2d 854 (Colo. App. 1995).

Where a verified motion filed for publication of a summons contains no statement that defendant is a nonresident of the state, that he has departed the state without intention of returning, or that he is concealing himself to avoid service of process, and it is recited in the motion that defendant's whereabouts are unknown, but there is no statement that he could not "be served by personal service in the state", then, in the absence of this mandatory requirement, the motion is fatally defective, and the court is without jurisdiction to proceed. *Sine v. Stout*, 119 Colo. 254, 203 P.2d 495 (1949).

Constructive service of summons founded upon an affidavit which fails to comply with this rule is without effect. *Empire Ranch & Cattle Co. v. Gibson*, 22 Colo. App. 617, 126 P. 1103 (1912).

Such an affidavit is essential. An affidavit by a person authorized by law to make the same and containing the statements required by this rule is an essential prerequisite to give the court jurisdiction to proceed. *Trowbridge v. Allen*, 48 Colo. 419, 110 P. 193 (1910); *Empire Ranch & Cattle Co. v. Coldren*, 51 Colo. 115, 117 P. 1005 (1911); *Millage v. Richards*, 52 Colo. 512, 122 P. 788 (1912).

Since this rule requires an affidavit to matters involving legal opinion and conclusions of law and fact, it contemplates that such an affidavit will be made upon the only basis on which such opinions and conclusions can be reached. *Jotter v. Marvin*, 67 Colo. 548, 189 P. 19 (1920).

Affiant's knowledge of matters stated in his affidavit must of necessity frequently rest upon information derived from others, and where this is so it is generally sufficient to aver upon information and belief that such matters are true; in such cases belief is to be considered an absolute term, and perjury may be assigned on such affidavit, if false. *Jotter v. Marvin*, 67 Colo. 548, 189 P. 19 (1920).

The chief test of the sufficiency of the affidavit is whether it is so clear and certain that an indictment for perjury may be sustained on it if false. *Jotter v. Marvin*, 67 Colo. 548, 189 P. 19 (1920).

Where the averment made applies to many defendants, both individual and corporate, taken together with the failure to give the post-office addresses of

any of the defendants or to state that they are unknown, strongly suggests an effort to conceal all, rather than to furnish any, information by which notice of the suit would possibly reach any of the defendants. *Gibson v. Wagner*, 25 Colo. App. 129, 136 P. 93 (1913).

To state that the residence is unknown is not in strict compliance with this rule which requires an affidavit for publication of summons to state that the post-office address is unknown. *Robinson v. Clauson*, 142 Colo. 434, 351 P.2d 257 (1960).

Where an affidavit for the publication of the summons states that certain defendants named, "either reside out of the state or have departed therefrom, or concealed themselves to avoid process, and that their post-office address is unknown to affiant" is a compliance with this rule. *Hanshue v. Marvin Inv. Co.*, 67 Colo. 189, 184 P. 289 (1919).

Where the affidavit sets forth that the officers of a company "reside out of the state", the affidavit is sufficient. *Jotter v. Marvin Inv. Co.*, 67 Colo. 555, 189 P. 22 (1920).

C. The Order.

The object of the publication of summons is to give notice to the defendant of a suit pending and of its purpose. *Webster v. Heginbotham*, 23 Colo. App. 229, 129 P. 569 (1913), aff'd, 58 Colo. 351, 145 P. 1165 (1915).

Where the judgment is found upon substituted service of summons the defendant's name must be correctly given in the notice, although the doctrine of "idem sonans" applies to records, such as judgments. *Robinson v. Clauson*, 142 Colo. 434, 351 P.2d 257 (1960).

The failure of the publication notice to contain the forename or Christian name of the party is ordinarily held to prevent a court from obtaining jurisdiction over him. *Robinson v. Clauson*, 142 Colo. 434, 351 P.2d 257 (1960).

Initial letters only are sufficient. Where the papers do not give the full Christian names of all the parties, but give the initial letters thereof only, this is sufficient. *Webster v. Heginbotham*, 23 Colo. App. 229, 129 P. 569 (1913), aff'd, 58 Colo. 351, 145 P. 1165 (1915).

It must be evident to every person that a published notice, using the name by which the defendant is commonly known in the community, will as readily attract his attention as if his real name were used, particularly where the initials are the same, and that the use of the name as commonly known will much more readily and probably attract the attention of his

acquaintances and friends by whom information might be communicated to him than if the publication had been by his real name by which he was not commonly known. *Webster v. Heginbotham*, 23 Colo. App. 229, 129 P. 569 (1913), aff'd, 58 Colo. 351, 145 P. 1165 (1915).

Evidence of identity must be made. Upon mere publication of the summons in which one is named as defendant, those claiming under a similar name are not affected unless there is evidence of the identity in fact of former name with the latter one. *Bloomer v. Cristler*, 22 Colo. App. 238, 123 P. 966 (1912).

D. Period of Time.

A delay of five months between the return of the original summons by the sheriff and the making of the order of publication does not invalidate the order of publication nor render the service void. *Richardson v. Wortman*, 34 Colo. 374, 83 P. 381 (1905).

Publication must be for four weeks. *Jones v. Colescott*, 134 Colo. 552, 307 P.2d 464 (1957).

The clerk must within 15 days after the order of publication mail a copy of the process to each of the persons whose addresses are known. *Jones v. Colescott*, 134 Colo. 552, 307 P.2d 464 (1957).

Service is complete on last day of publication. By presumption of law a defendant who is served with summons by publication is charged with knowledge that service will be complete on the day of the last publication. *Netland v. Baughman*, 114 Colo. 148, 162 P.2d 601 (1945).

Default judgment entered prior to time allowed is error. After constructive service by publication, a judgment by default entered before the expiration of the time allowed to plead or answer is premature, and in a direct proceeding to review a judgment shown to have been so entered prematurely, a reversal for error must be granted. *Netland v. Baughman*, 114 Colo. 148, 162 P.2d 601 (1945).

X. Manner of Proof.

Annotator's note. Since section (i) of this rule is similar to §49 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

The return serves no purpose except to show to the court that there has been service and to make a record thereof, so that the court's jurisdiction will

appear forever. *Sawdey v. Pagosa Lumber Co.*, 78 Colo. 185, 240 P. 334 (1925).

It is the service of summons that confers jurisdiction over the person of a defendant, not the return. *Sawdey v. Pagosa Lumber Co.*, 78 Colo. 185, 240 P. 334 (1925).

The return of service is not aided by presumption. *Venner v. Denver Union Water Co.*, 15 Colo. App. 495, 63 P. 1061 (1900).

A sheriff's return of service is prima facie evidence of the facts recited therein. *Gibbs v. Ison*, 76 Colo. 240, 230 P. 784 (1924); Neher v. District Court, 161 Colo. 445, 422 P.2d 627 (1967).

The prima facie evidence represented by a return of service must be overcome by clear and convincing proof. *Stegall v. Stegall*, 756 P.2d 384 (Colo. App. 1987).

Showing may be sufficient to overcome prima facie showing. Where there is a showing, even though not as detailed as may be desirable, which nonetheless is sufficient as a matter of law to overcome the prima facie showing made by a sheriff's return, the service must therefore be set aside. *Neher v. District Court*, 161 Colo. 445, 422 P.2d 627 (1967).

An insufficient return should be amended. It is the duty of a person serving a summons to amend his return, by leave of court, as soon as he knows that it is erroneous or insufficient. *Sawdey v. Pagosa Lumber Co.*, 78 Colo. 185, 240 P. 334 (1925).

An erroneous return does not detract from a valid service. *Clark v. Nat'l Adjusters, Inc.*, 140 Colo. 593, 348 P.2d 370 (1959).

Service of summons by acknowledgment is sufficient and gives the court full jurisdiction. *Wilson v. Carroll*, 80 Colo. 234, 250 P. 555 (1926).

It is the voluntary return that constitutes valid service. It is not alone the delivery of the summons to defendant, but the voluntary return thereof to plaintiff with her written acknowledgment thereon which constitutes valid and sufficient service. *Seeley v. Taylor*, 17 Colo. 70, 28 P. 461 (1891), 28 P. 723 (1892).

It may be voluntary though accompanied by bitter reproaches. That the writings on the summons constituting an acceptance of service are accompanied by bitter reproaches and severe denunciations of plaintiff by defendant does not change the fact that he received copies of the summons and voluntarily acknowledged and returned the same to plaintiff with full

knowledge of the nature and purpose of the action which the plaintiff had brought against him. *Seeley v. Taylor*, 17 Colo. 70, 28 P. 461 (1891), 28 P. 723 (1892).

Even if defendant says in one part of the indorsement that he did not know the meaning of the summons, it is still good where his whole language taken together clearly shows that he did know and that he returned them to plaintiff that he might secure whatever earthly law might do for him. *Seeley v. Taylor*, 17 Colo. 70, 28 P. 461 (1891), 28 P. 723 (1892).

Where no appeal is taken from a trial judge's order in which he ruled adversely on a preliminary motion questioning under this rule jurisdiction, the right has been waived. *Wells Aircraft Parts Co. v. Allan J. Kayser Co.*, 118 Colo. 197, 194 P.2d 326 (1947).

In termination of parental rights case, omission of the process server's verified signature is insufficient to cause prejudice to father's case where father acknowledged he received the notices and petitions. Allowing an amendment to cure the defect serves the best interests of the children. In re Petition of Taylor, 134 P.3d 579 (Colo. App. 2006).

XI. Amendment.

A summons is subject to amendment by the court. *Erdman v. Hardesty*, 14 Colo. App. 395, 60 P. 360 (1900) (decided under §41 of the former Code of Civil Procedure, which was replaced by the Rules of Civil Procedure in 1941).

Originals not to be treated as sacrosanct. As with most pleadings and writings in the nature of pleadings, the purpose of justice is best served not by treating originals as sacrosanct, but rather by permitting the parties to ensure that the issues, as ultimately framed, represent the parties' true positions. *Brown v. Schumann*, 40 Colo. App. 336, 575 P.2d 443 (1978).

For service of process upon any person subject to the jurisdiction of the courts of Colorado, see §13-1-125, C.R.S.; for publication of legal notices, see part 1 of article 70 of title 24, C.R.S.; for performance of the duties of the sheriff by the coroner when the former is a party to the action, see §30-10-605, C.R.S.; for parties, see C.R.C.P. 17 to 25; for subpoenas, see C.R.C.P. 45; for attachments, see C.R.C.P. 102; for garnishments, see C.R.C.P. 103; for replevin, see C.R.C.P. 104.