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.

(Source: (b) amended and effective September 6, 1990; (b), (d), and (e) amended and effective January 1, 1993; entire rule amended and adopted May 17, 2001, effective July 1, 2001; (b), (d), and (e) amended and adopted October 20, 2005, effective January 1, 2006; (b)(1)(D) amended and effective June 21, 2012.)

Annotation

I. General Consideration.

Law reviews. 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 40 Den. L. Ctr. J. 66 (1963). For article, "2006 Amendments to the Civil Rules: Modernization, New Math, and Polishing", see 35 Colo. Law. 21 (May 2006).

Although this rule does not specifically refer to an "offer of settlement", it includes any "similar paper", which would include an "offer of settlement" pursuant to §13-17-202 . Serving an offer via facsimile, therefore, was proper under this rule. *Dillen v. HealthOne, L.L.C.*, 108 P.3d 297 (Colo. App. 2004).

Applied in *Bd. of Water Works v. Pueblo Water Works Employees Local 1045*, 196 Colo. 308, 586 P.2d 18 (1978); *Stubblefield v. District Court*, 198 Colo. 569, 603 P.2d 559 (1979); *Black ex rel. Bayless v. Cullar*, 665 P.2d 1029 (Colo. App. 1983).

II. Service: when Required.

A judgment of dismissal with prejudice entered without notice is void and subject to direct or collateral attack. *Thompson v. McCormick*, 138 Colo. 434, 335 P.2d 265 (1959); *Radinsky v. Kripke*, 143 Colo. 454, 354 P.2d 500 (1960).

It is the substance, not the form, of a request to the court which controls the necessity for proper notice. *Phillips v. Phillips*, 155 Colo. 538, 400 P.2d 450 (1964); *Cont'l Oil Co. v. Benham*, 163 Colo. 255, 430 P.2d 90 (1967).

Where the issues of fact tendered by a motion "ex parte" in effect and in substance constitute a new and additional claim for relief against defendants in default, they are therefore entitled to service of notice of filing such a motion which effectively and substantially is a pleading asserting a new and

additional claim in accordance with section (a) of this rule. *Cont'l Oil Co. v. Benham*, 163 Colo. 255, 430 P.2d 90 (1967).

Failure to serve any cross claim is not an inexcusable failure to comply with section (a) of this rule which relates to the service of pleadings and does not constitute inexcusable neglect where there is ample time prior to the date set for trial for the filing of any answer to the cross-complaint and counterclaim and where it is not apparent how the substantial rights of any litigant can in any manner be prejudiced by permitting such. *Gould & Preisner, Inc. v. District Court*, 149 Colo. 484, 369 P.2d 554 (1962).

This rule is without pertinence where one has made an appearance. Section (a) of this rule is without pertinence where C.R.C.P. 55(b)(2), as an express exception, requires the giving of notice of application for judgment to one who has appeared, even though he may be in default at the time. *Holman v. Holman*, 114 Colo. 437, 165 P.2d 1015 (1946).

Since defendant's right to plead in an action continues after the date beyond which plaintiff can set the cause for trial, he is, although in default in such an action, entitled to notice of amendment of complaint affecting the jurisdiction of the court, in order to plead as contemplated by C.R.C.P. 15(a), section (a) of this rule notwithstanding. *Myers v. Myers*, 110 Colo. 412, 135 P.2d 235 (1943).

Where parties waive time requirements for responsive pleadings but stipulation is silent on notice provisions, service requirements of this rule apply. *Bernhagen v. Burton*, 694 P.2d 880 (Colo. App. 1984).

Failure to serve prompt notice is harmless error and does not affect validity of order, where the party against whom a parental rights termination motion was filed had been aware for months that a termination was scheduled, and where service was made 22 days before the hearing. People in Interest of M.M., 726 P.2d 1108 (Colo. 1986).

III. Service: How Made.

Law reviews. For article, "One Year Review of Domestic Relations", see 37 Dicta 55 (1960). For comment on *Zika v. Eckel* appearing below, see 35 U. Colo. L. Rev. 283 (1963).

Under this rule a party whose appearance is of record should be served personally or through his counsel. *Zerobnick v. City & County of Denver*, 139 Colo. 139, 337 P.2d 11 (1959).

Proper service on attorney binds client. During the course of a proceeding, service of papers on the attorney of record, where service upon the attorney

is proper, binds the client until the attorney is discharged or substituted out of the case in a manner provided by law. *Pearson v. Pearson*, 141 Colo. 336, 347 P.2d 779 (1959).

Service by mail upon the attorney of record in an administrative hearing is sufficient. *North Glenn Sub. Co. v. District Court*, 187 Colo. 409, 532 P.2d 332 (1975).

Service must be at address in pleading. The requirement that an attorney is required to specify his office address when he enters an appearance, together with the requirements of this rule, makes it apparent that service must be upon an attorney at the address listed in the pleading. *People v. Buscarello*, 706 P.2d 805 (Colo. App. 1985).

It is not sufficient to mail notice to a different office of the district attorney than that specified in the pleadings. *People v. Buscarello*, 706 P.2d 805 (Colo. App. 1985).

Where a second amended complaint did not assert any claims for relief against defendants which were not included in the first amended complaint, and the second amended complaint was served upon the defendant's attorney of record who had appeared for them on their motion to quash service of process after service of the first amended complaint, the trial court did not err in entering default judgments against them, inasmuch as it was unnecessary to serve the second amended complaint personally, since section (b)(1) of this rule provides that service upon a party represented by an attorney shall be made upon the attorney. *McHenry F. S., Inc. v. Clausen*, 30 Colo. App. 253, 491 P.2d 592 (1971).

Notice to one's attorney to take a deposition is in all respects sufficient and complete. *Reserve Life Ins. Co. v. District Court*, 126 Colo. 217, 247 P.2d 903 (1952).

Party is not entitled to subpoena or mileage allowance. When a party is noticed to appear for the taking of his deposition, he is not entitled to a subpoena nor to a per diem allowance or mileage. *Reserve Life Ins. Co. v. District Court*, 126 Colo. 217, 247 P.2d 903 (1952).

Attorneys who have once entered an appearance for a litigant and are thereafter discharged are not agents of a litigant for service of notice, even though they were required to remain attorneys of record when the trial court refuses to permit the withdrawal of their appearance, for the court cannot create or continue the relationship of attorney and client by denying the request of discharged lawyers to withdraw their appearance. *Phillips v. Phillips*, 155 Colo. 538, 400 P.2d 450 (1964).

Service of trial notice on counsel who has been discharged months previously is ineffectual for any purpose. *Thompson v. McCormick*, 138 Colo. 434, 335 P.2d 265 (1959).

The court may order service upon a party himself, even though he is represented by an attorney, in cases where the court deems such service necessary. *Zika v. Eckel*, 150 Colo. 302, 372 P.2d 165 (1962).

Where absence and neglect of attorney for defendant is well known to all parties, it is incumbent upon the court to direct service of notice of trial setting upon defendant personally. *Zika v. Eckel*, 150 Colo. 302, 372 P.2d 165 (1962).

Applied in In re Cooper, 113 P.3d 1263 (Colo. App. 2005).

IV. Filing with Court.

Filing is a ministerial task which a judge may undertake. *Stroh v. Johnson*, 194 Colo. 411, 572 P.2d 840 (1978).

The fact that a judge is not currently assigned to a particular case does not impair his power, as an officer of the court, to accept papers for the purpose of filing them in that court. *Stroh v. Johnson*, 194 Colo. 411, 572 P.2d 840 (1978).

Where the judge fails to strictly adhere to this rule, defendant cannot take advantage of such if plaintiff's counsel acted in accordance with section (e) of this rule when the judge permitted the motion to be filed with him. *Sprott v. Roberts*, 154 Colo. 252, 390 P.2d 465 (1964).

If correctional facility where plaintiff was incarcerated had no system for legal mail, plaintiff's complaint was timely filed and must be reinstated because it was deposited with the facility's internal mail system on or before the filing deadline, even though the trial court received the complaint after the deadline. If the correctional facility did have a legal mail system and plaintiff failed to deposit the complaint with the system on or before the filing deadline, then the trial court correctly dismissed the complaint as untimely. *Wallin v. Cosner*, 210 P.3d 479 (Colo. App. 2009).

For service of process, see C.R.C.P. 4; for parties, see C.R.C.P. 17 to 25.