Rule 301. Scope of Rules.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 301. Scope of Rules

(a) **Procedure Governed.** These rules govern the procedure in all county courts created and governed by Chapter 45 of the Colorado Session Laws of 1964. They shall be liberally construed to secure the just, speedy and inexpensive determination of every action.

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

Cite as (Casemaker) C.R.C.P. 301

History. (b) amended and adopted December 5, 1996, effective January 1, 1997.

Editor's Note:

Chapter 45 of the session laws of 1964 is now numbered as article 6 of title 13, C.R.S.

Case Notes:

ANNOTATION

Orders need not be signed to be valid. There is no provision in these rules requiring orders to be signed in order to be valid. Spar Consol. Mining & Dev. Co. v. Aasgaard, 33 Colo. App. 35, 516 P.2d 127, aff'd, 185 Colo. 157, 522 P.2d 726 (1974).

Rule 302. Form of Action.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 302. Form of Action

There shall be one form of action to be known as a "Simplified Civil Action".

Cite as (Casemaker) C.R.C.P. 302

Rule 303. Commencement of Action.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 303. Commencement of Action

(a) **How Commenced.** A simplified civil action is commenced: (1) by filing with the court a complaint consisting of a statement of claim setting forth briefly the facts and circumstances giving rise to the action in the manner and form provided in Rule 308 ; or (2) by service of a summons and complaint. The complaint must be filed within 14 days of the service of the summons and not less than 7 days in advance of the return date. If the complaint is not timely filed, the service of the summons shall be deemed ineffective and void without notice. In such case the court may, in its discretion, tax a reasonable sum in favor of the defendant to compensate the defendant for expense and inconvenience, including attorney's fees, to be paid by plaintiff or the plaintiff's attorney. The 14 day filing requirement may be expressly waived by a defendant and shall be deemed waived upon the filing of an answer or motion to the complaint without reserving the issue.

(b) **Issuance of Summons.** Upon the filing of a complaint as provided in section (a) of this rule and the payment of the docket fee, the clerk shall docket the case and assign it a number. Unless summons has prior thereto been issued and signed by an attorney, the clerk shall then sign and issue a summons under the seal of the court. Separate, additional, and amended summons may be issued by the clerk or an attorney of record against any defendant at any time, and when issued by an attorney, it must be filed with the court no later than 7 days in advance of the return date. All process shall be issued by the clerk except as otherwise provided by these rules.

(c) **Time of Jurisdiction.** The court shall have jurisdiction from (1) the filing of the complaint, or (2) the service of the summons and complaint; provided, however, if more than 14 days elapses after service upon any defendant before the filing of the complaint, jurisdiction as to that defendant shall not attach by virtue of the service.

Cite as (Casemaker) C.R.C.P. 303

History. (a) amended July 22, 1993, effective January 1, 1994; (b) amended November 18, 1993, effective January 1, 1994; (a) and (b) amended and effective June 28, 2007; (c) amended and effective April 10, 2008; entire rule 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).

Rule 304. Service of Process.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 304. Service of Process

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

(b) **Initial Process.** Except in cases of service by publication under Rule 304(f), the complaint and a blank copy of the answer form shall be served with the summons.

(c) **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.

(d) **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, the city manager, the 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 purposes of service of an initial summons and complaint, the copies shall be delivered to both the party and the attorney general within the times as set forth in rule 312(a). For all other purposes, the effective date of service shall be the latter date of delivery.

(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 (d) 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.

(e) **Substitute Service.** In the event that a party attempting service of process by personal service under section (d) is unable to accomplish service, and service by publication or mail is not otherwise permitted under section (f), 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 (d), that further attempts to obtain service under section (d) 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.

(f) **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 (f) 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 this 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 summons and a copy of the complaint, addressed to such person at such address, requesting a return receipt signed by 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 summons 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 fifteen days after the order the party shall mail a copy of the summons and complaint to each person whose address or last known address has been stated in the motion and file proof thereof. Service shall be completed on the day of the last publication. If no newspaper is published in the county, the court shall designate one in some adjoining county.

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

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

(2) Repealed.

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

(4) If served by publication, by the affidavit of publication, together with an affidavit as to the mailing of a copy of the summons, complaint and answer form where required.

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

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

(h) **Amendment.** At any time in its discretion and upon such terms as it deems just, the court may allow any summons 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 summons issued.

(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) **Refusal of Copy.** If a person to be served refuses to accept a copy of the summons and complaint, service shall be sufficient if the person serving the documents knows or has reason to identify the person who refuses to be served, identifies the documents being served as a summons and complaint, 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.

Cite as (Casemaker) C.R.C.P. 304

History. Entire rule amended July 22, 1993, effective January 1, 1994; entire rule amended and effective March 23, 2006; (g)(1) amended and effective February 7, 2008; (d)(1) and (d)(4) amended and effective June 21, 2012.

Rule 305. Service and Filing of Pleadings and other Papers.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 305. 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 related 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, filings 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 304.

(b) **Making Service.**

(1) Service under C.R.C.P. 305(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. 305(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 in the pleadings effects consent in writing for such delivery. Parties who have subscribed to E-Filing, pursuant to Chief Justice Directive 06-02 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. 305(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. 316 and discovery requests and responses shall not be filed until they are used in the proceeding or the court orders otherwise.

(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 Chief Justice Directive 06-02 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 practice.

(f) **Inmate Filing and Service.** Except where personal service is required, a pleading 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.

Cite as (Casemaker) C.R.C.P. 305

History. (a), (b), (d), and (e) amended July 22, 1993, effective January 1, 1994; entire rule repealed and readopted and effective June 28, 2007.

Rule 305.5. Electronic Filing and Serving.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 305.5. Electronic Filing and Serving

(a) **Definitions:**

(1) **Document:** A pleading, motion, writing or other paper filed or served under the E-System.

(2) **E-Filing/Service System:** The E-Filing/service system ("**E-System**") approved by the Colorado Supreme Court for filing and service of documents via the Internet through the Court-authorized E-System provider.

(3) **Electronic Filing:** Electronic filing ("**E-Filing**") is the transmission of documents to the clerk of the court, and from the court, via the E-System.

(4) **Electronic Service:** Electronic service ("**E-Service**") is the transmission of documents to any party in a case via the E-System. Parties who have subscribed to the E-System have agreed to receive service, other than service of a summons, via the E-System.

(5) **E-System Provider:** The E-Service/E-Filing system provider authorized by the Colorado Supreme Court.

(6) **Signatures:**

I. Electronic Signature: an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by the person with the intent to sign the E-filed or E-served document.

II. Scanned Signature: A graphic image of a handwritten signature.

(b) **Types of Cases Applicable:** E-Filing and E-Service may be used for all cases filed in county court as the service becomes available. The availability of the E-System will be determined by the Colorado Supreme Court and announced through its website: http:www.courts.state.co.us and through published directives. E-Filing and E-Service may be mandated pursuant to Section (o) of this Rule 305.5.

(c) **To Whom Applicable:**

(1) Attorneys licensed or certified to practice law in Colorado, or admitted pro hac vice under C.R.C.P. 205.3 or 205.5 may register to use the E-System. The E-System provider will provide an attorney permitted to appear pursuant to C.R.C.P. 205.3 or 205.5 with a special user account for purposes of E-Filing and E-Serving only in the case identified by a court order approving pro hac vice admission. The E-System provider will provide an attorney certified as pro bono coun-sel pursuant to C.R.C.P. 204.6 with a special user account for purposes of E-Filing and E-Serving in pro bono cases as contemplated by that rule. An attorney may enter an appearance pursuant to C.R.C.P. 121, Section 1-1, through E-Filing. Where E-Filing is mandated pursuant to Section (o) of this Rule 305.5, attorneys must register and use the E-System.

(2) Where the system and necessary equipment are in place to permit it, pro se parties and government entities and agencies may register to use the E-System.

(d) **Commencement of Action-Service of Summons:** Cases may be commenced under C.R.C.P. 303 through an E-Filing. Cases commenced under C.R.C.P. 303 through an E-Filing must be E-Filed to the court no later than seven (7) days before the set return date, if any. Service of a summons shall be made in accordance with C.R.C.P. 304

(e) **E-Filing, Date and Time of Filing:** Documents filed in cases on the E-System may be filed under C.R.C.P. 305 through an E-Filing. A document transmitted to the E-System provider by 11:59 p.m. Colorado time shall be deemed to have been filed with the clerk of the court on that date.

(f) **E-Service - When Required - Date and Time of Service:** Documents submitted to the court through E-Filing shall be served under C.R.C.P. 5 by E-Service. A document transmitted to the E-System Provider for service by 11:59 p.m. Colorado time shall be deemed to have been served on that date.

(g) **Filing Party To Maintain the Signed Copy, Paper Document Not To Be Filed, Duration of Maintaining of Document:** A printed or printable copy of an E-Filed or E-Served document with original, electronic, or scanned signatures shall be maintained by the filing party and made available for inspection by other parties or the court upon request, but shall not be filed with the court. When these rules require a party to maintain a document, the filer is required to maintain the document for a period of two years after the final resolution of the action, including the final resolution of all appeals.

(h) **Default Judgments and Original Documents:**

(1) If the action is on a promissory note or where an original document is by law required to be filed, that original document shall be scanned and submitted electronically with the e-filed motion for default. The original document shall be presented to the court in order that the court may make a notation of the judgment on the face of the document.

(2) Following compliance with sub-paragraph (1) of this paragraph (h) the document may then be returned to the filing party; retained by the court for a specified period of time to be determined by the court; or destroyed by the court.

(3) When the return of service is required for entry of default, the return of service may be scanned and E-Filed. In accordance with paragraph (i) of this Rule, signatures of attorneys, parties, witnesses, notaries and notary stamps may be electronically affixed or documents with signatures obtained on a paper form may be scanned into the system to satisfy signature requirements.

(i) **Documents Requiring E-Filed Signatures:** E-Filed and E-Served documents, signatures of attorneys, parties, witnesses, notaries and notary stamps may be electronically affixed or documents with signatures obtained on a paper form may be scanned into the system to satisfy signature requirements.

(j) **C.R.C.P. 311 Compliance:** Use of the E-System by an attorney constitutes compliance with the signature requirement of C.R.C.P. 311. An attorney using the E-System shall be subject to all other requirements of Rule 311.

(k) **Documents Under Seal:** A motion for leave to file documents under seal may be E-Filed. Documents to be filed under seal pursuant to an order of the court may be E-Filed at the discretion of the court; however, the filing party may object to this procedure.

(l) **Transmitting of Orders, Notices, and Other Court Entries:** Courts shall distribute orders, notices, and other court entries using the E-System in cases where E-Filings were received from any party.

(m) **Form of E-Filed Documents:** C.R.C.P. 310 shall apply to E-Filed documents. A document shall not be transmitted to the clerk of the court by any other means unless the court at any later time requests a printed copy.

(n) Repealed.

(o) **E-Filing May Be Mandated:** With the permission of the Chief Justice, a chief judge may mandate E-filing within a county or judicial district for specific case classes or types of cases. Where E-Filing is mandatory, the court may thereafter accept a document in paper form and the court shall scan the document and upload it to the E-Service provider. After notice to an attorney that all future documents are to be E-Filed, the court may charge a fee of $50 per document for the service of scanning and uploading a document filed in paper form. Where E-Filing and E-Service are mandatory, the Chief Judge or appropriate judicial officer may exclude pro se parties from mandatory E-Filing requirements.

(p) **Relief in the Event of Technical Difficulties:**

(1) Upon satisfactory proof that E-Filing or E-Service of a document was not completed because of: (1)an error in the transmission of the document to the E-System provider which was unknown to the sending party, (2)a failure of the E-System provider to process the E-Filing when received, or (3)other technical problems experienced by the filer or E-System provider, the court may enter an order permitting the document to be filed nunc pro tunc to the date it was first attempted to be sent electronically.

(2) Upon satisfactory proof that an E-Served document was not received by or unavailable to a party served, the court may enter an order extending the time for responding to that document.

(q) **Form of Electronic Documents**

(1) Electronic Document Format, Size, and Density: Electronic document format, size, and density shall be as specified by Chief Justice Directive # 11-01.

(2) **Multiple Documents:** Multiple documents (including proposed orders) may be filed in a single electronic filing transaction. Each document (including proposed orders) in that filing must bear a separate document title.

(3) **Proposed Orders:** Proposed orders shall be E-Filed in an editable format. Proposed orders that are E-Filed in a non-editable format shall be rejected by the Court Clerk's office and must be resubmitted.

Cite as (Casemaker) C.R.C.P. 305.5

History. Entire rule and committee comment added and effective September 10, 2009; (a)(6), (b), (d), (f), (g), (h)(3), (i), and (q)(1) amended and (n) repealed and effective June 21, 2012; (f) amended and effective May 9, 2013; (c)(1) amended and effective December 31, 2013; (c)(1) amended and adopted en banc effective September 9, 2015; COMMENTS amended effective January 12, 2017.

Note:

COMMENTS

2009

[1] The Court authorized service provider for the program is The Integrated Colorado Courts E-filing System (www.jbits.courts.state.co.us/icces/).

[2] "Editable Format" is one which is subject to modification by the court using standard means such as Word or WordPerfect format.

[3] C.R.C.P. 377 provides that courts are always open for business. This Rule 305.5 is intended to comport with that rule.

2017

[4] Effective November 1, 2016, the name of the court authorized service provider changed from the "Integrated Colorado Courts E-Filing System" to "Colorado Courts E-Filing" (www.jbits.courts.state.co.us/efiling/).

Rule 306. Time.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 306. Time

(a) **Computation.**

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

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

(b) **Enlargement.** When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may, at any time in its discretion (1) with or without motion or notice, order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 325 and 360(b), except to the extent and under the conditions stated in them.

(c) **Unaffected by Expiration of Term.** Repealed.

(d) **Notice, Motion, Affidavits.** Repealed.

(e) **Additional Time on Service Under C.R.C.P. 305(b)(2)(B), (C), or (D).** Repealed.

Cite as (Casemaker) C.R.C.P. 306

History. (e) amended July 22, 1993, effective January 1, 1994; (a) amended and effective August 4, 1994; (a) and (e) amended and effective and (e) committee comment added and effective June 28, 2007; (a) amended and (c), (d), and (e) and (e) committee comment repealed 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) ; comment added and adopted June 21, 2012, effective July 1, 2012.

Note:

COMMENT

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

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

Cross References:

For statutes concerning holidays, see article 11 of title 24, C.R.S.

Rule 307. Pleadings and Motions.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 307. Pleadings and Motions

(a) **Pleadings.** There shall be a complaint and an answer which may or may not include a counterclaim. No other pleadings shall be allowed except by order of court.

(b) **Motions.** Repealed.

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

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

Cite as (Casemaker) C.R.C.P. 307

History. (b) repealed, effective April 5, 2010.

Rule 308. General Rules of Pleading.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 308. General Rules of Pleading

(a) **Claims for Relief.** Complaints shall be in the form and content of Appendix to Chapter 25, Form 2, C.R.C.P., and shall be signed by the plaintiff or the plaintiff's attorney.

(b) **Defenses; Form of Denials.** The answer shall be in the form and content of Appendix to Chapter 25, Form 3, C.R.C.P., and shall be signed by the defendant or the defendant's attorney.

Cite as (Casemaker) C.R.C.P. 308

History. Entire rule amended July 22, 1993, effective January 1, 1994.

Rule 309. Pleading Special Matters.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 309. Pleading Special Matters

(a) **Capacity.** It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is a party. The issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or

be sued in a representative capacity shall be raised by a short, concise, negative statement with supporting particulars in the answer.

(b) **Fraud, Mistake, Condition of the Mind.** All claims of fraud or mistake and the facts constituting such shall be concisely stated.

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

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

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

(f) **Special Damages.** When items of special damage are claimed, they shall be specifically stated.

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

Cite as (Casemaker) C.R.C.P. 309

Rule 310. Form of Summons, Pleadings and Other Documents.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 310. Form of Summons, Pleadings and Other Documents

(a) **Caption; Names of Parties.** The complaint and answer shall be in the form shown in

Appendix to Chapter 25, C.R.C.P. with a caption that conforms with C.R.C.P. 10. The complaint in an action brought pursuant to section 13-40-110 , C.R.S., shall also include a demand for possession setting forth all jurisdictional prerequisites necessary for the entry of judgment for possession. The complaint in an action brought pursuant to section 13-6-104(5) or (6), C.R.S., shall also be verified and include a demand for injunctive relief. The complaint in an action brought pursuant to section 13-6-105(1)(f), C.R.S., shall also be verified and include a demand for injunctive relief, and a copy of the covenant shall be attached as an exhibit. Affidavits, written orders and all other documents authorized to be filed shall contain the form of caption as specified in C.R.C.P. 10. In all cases the case or docket number shall appear on the document if known.

(b) **Exhibits.** An exhibit is a part of the document to which it is attached for all purposes.

(c) **Form of Summons.** The summons shall be in the form and content prescribed by the Appendix to Chapter 25, Forms 1, 1A (for actions brought pursuant to section 13-40-110 , C.R.S.), 1B (for actions brought pursuant to section 13-6-105(1)(f), C.R.S.), or 1C (for actions where service is permitted to be by publication), with a caption that conforms with C.R.C.P. 10. The summons shall contain the name, address, telephone number, and registration number of the plaintiff's attorney, if any, and if not, the full name, address and daytime telephone number of the plaintiff.

(d) **General Rule Regarding Paper Size and Quality.** Only documents which are clear and legible and are on permanent plain 8 1/2 by 11 inch paper shall be filed.

Cite as (Casemaker) C.R.C.P. 310

History. Entire rule amended July 22, 1993, effective January 1, 1994; (a) corrected and effective January 9, 1995; (a) and (c) amended June 1, 2000, effective July 1, 2000; (c) amended and effective July 10, 2000.

Rule 311. Signing of Pleadings.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 311. Signing of Pleadings

(a) **Obligations of parties and attorneys.** When a party is not represented by an attorney,

the party shall sign the pleadings. The pleadings shall contain the party's address, and if the party is not represented by an attorney, shall include the party's telephone number. If a party is represented by an attorney, the attorney shall sign the pleading and state on the initial pleading the attorney's registration number, and in addition thereto shall note the attorney's address and telephone number thereon. The signature of the attorney on a pleading shall have the same effect and subject the attorney to the same penalties as provided in C.R.C.P. 11. If the pleading is not signed, it may be stricken and the action may proceed as though the pleading had not been filed. If the current registration number of the attorney is not included with the signature, the clerk of the court shall request from the attorney the registration number. If the attorney is unable to furnish the clerk with a registration number, that fact shall be reported to the clerk of the Supreme Court, but the clerk shall, nevertheless, accept the filing.

(b) **Limited representation.** An attorney may undertake to provide limited representation in accordance with Colo.RPC 1.2 to a pro se party involved in a court proceeding. Pleadings or papers filed by the pro se party that were prepared with the drafting assistance of the attorney shall include the attorney's name, address, telephone number and registration number. The attorney shall advise the pro se party that such pleading or other paper must contain this statement. In helping to draft the pleading or paper filed by the pro se party, the attorney certifies that to the best of the attorney's knowledge, information and belief, this pleading or paper is (1) well-grounded in fact based upon a reasonable inquiry of the pro se party by the attorney, (2) is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (3) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. The attorney in providing such drafting assistance may rely on the pro se party's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney shall make an independent reasonable inquiry into the facts. Assistance by an attorney to a pro se party in filling out pre-printed and electronically published forms that are issued through the judicial branch for use in court are not subject to the certification and attorney name disclosure requirements of this Rule 311(b).

Limited representation of a pro se party under this Rule 311(b) shall not constitute an entry of appearance by the attorney for purposes of C.R.C.P. 121, section 1-1 or C.R.C.P. 305, and does not authorize or require the service of papers upon the attorney. Representation of the pro se party by the attorney at any proceeding before a judge, magistrate, or other judicial officer on behalf of the pro se party constitutes an entry of an appearance pursuant to C.R.C.P. 121, section 1-1. The attorney's violation of this Rule 311(b) may subject the attorney to the sanctions provided in C.R.C.P. 311(a).

Cite as (Casemaker) C.R.C.P. 311

History. Entire rule amended July 22, 1993, effective January 1, 1994; entire rule amended and adopted June 17, 1999, effective July 1, 1999.

Case Notes:

ANNOTATION

Law reviews. For article, "Discrete Task Representation a/k/a Unbundled Legal Services", see 29 Colo. Law. 5 (January 2000).

Rule 312. Defenses and Objections - When and How Presented - by Pleading or Motion - Motion for Judgment on Pleadings.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 312. Defenses and Objections - When and How Presented - by Pleading or Motion - Motion for Judgment on Pleadings

(a) **Responsive Pleadings; When Presented.** The defendant shall file an answer including any counterclaim or cross-claim on or before the appearance date as fixed in the summons. Except as otherwise provided in this rule, the appearance date shall not be more than 63 days from the date of the issuance of the summons and the summons must have been served at least 14 days before the appearance date. When circumstances require that the plaintiff proceed under Rule 304(e), the above limitation shall not apply and the appearance date shall not be less than 14 days after the completion of service by publication or mail.

(b) **Motions.** Motions raising defenses shall be made in accordance with Rule 307. If made by the defendant on or before the appearance date the motions shall be ruled upon before an answer is required to be filed. If the court rules upon such motions on the appearance date, the defendant may be required to file the answer immediately. The answer shall otherwise be filed within 14 days of the order. The court may permit the plaintiff to amend the complaint or supply additional facts and may permit additional time within which the answer shall be filed.

(c) **Waiver of Defenses.** A party waives all defenses and objections which are not raised either by motion or in his answer except that the defense of lack of jurisdiction of the

subject matter may be made at any time.

(d) **Motion for Judgment on the Pleadings.** At any time after the last pleading is filed, but within such time as not to delay the trial, any party may move for judgment on the pleadings. A party shall not submit matters outside the pleadings in support of the motion.

Cite as (Casemaker) C.R.C.P. 312

History. Entire section amended July 22, 1993, effective January 1, 1994; (a) amended and adopted effective April 23, 1998; (a) amended and effective June 28, 2007; (a) and (b) 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).

Case Notes:

ANNOTATION

Applied in Abts v. Bd. of Educ., 622 P.2d 518 (Colo. 1980).

Rule 313. Counterclaim and Cross Claim.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 313. Counterclaim and Cross Claim

(a) **Compulsory Counterclaims**. If at the time the action is commenced the defendant possesses a counterclaim against the plaintiff that is within the jurisdiction of the county court, exclusive of interest and costs, arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim, does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction, and is not the subject of another pending action, the defendant shall file such counterclaim in the answer or thereafter be barred from suit on the counterclaim. The defendant may also elect to file a counterclaim not arising out of the transaction or occurrence.

(b) **Alternate.** If at the time the action is commenced the defendant possesses a counterclaim against the plaintiff that is not within the jurisdiction of the county court, exclusive of interest and costs, the defendant may:

(1) File the counterclaim in the pending county court action, but, unless the defendant follows the procedure set forth in section (2) below, any judgment in the defendant's favor shall be limited to the jurisdictional limit of the county court, exclusive of interest and costs, and suit for the excess due the defendant over that sum will be barred thereafter; or

(2) File the counterclaim together with the answer in the pending county court action and request in the answer that the action be transferred to the district court. Upon filing the answer and counterclaim, the defendant shall tender the district court filing fee for a complaint. Upon compliance by the defendant with the requirements of this section, all county court proceedings shall be discontinued and the clerk of the county court shall certify all records in the case and forward the docket fee to the district court. In the event the counterclaim which caused the removal is subsequently dismissed, the case may be remanded to the county court for further proceedings.

(c) **Counterclaim Maturing or Acquired after Pleading.** A claim which either matured or was acquired by the defendant after the answer was filed may, with the permission of the court, be presented as a counterclaim by supplemental pleading. If the counterclaim exceeds the jurisdiction of the county court, upon request of the defendant to transfer the case to district court and the tendering of the district court filing fee for a complaint, all county court proceedings shall be discontinued and the clerk of the county court shall certify all records in the case and forward the docket fee to the district court. If it is determined that the defendant's request for transfer was made for the purpose of delaying the trial of the plaintiff's claim, the district court shall award the plaintiff any costs, including reasonable attorney fees, occasioned by the delay.

(d) **Omitted or Amended Counterclaim.** When a defendant fails to file a counterclaim or request that the case be transferred to the district court through oversight, inadvertence, or excusable neglect, or when justice requires, the counterclaim may be pled by amendment, subject to Rule 315. If this omitted or amended counterclaim exceeds the jurisdiction of the county court, upon request of the defendant to transfer the case to district court and the tendering of the district court filing fee for a complaint, all county court proceedings shall be discontinued and the clerk of the county court shall certify all records in the case and forward the docket fee to the district court. If it is determined that the defendant's request for transfer was made for the purpose of delaying the trial of the plaintiff's claim, the district court shall award the plaintiff any costs, including reasonable attorney's fees, occasioned by the delay.

(e) **Cross Claim against Co-party.** An answer may state a cross claim against a codefendant arising out of the same transaction or occurrence that is the subject matter of the original action or relating to any property that is the subject matter of the original action. Such cross claim may include a claim that a party against whom it is asserted is or

may be liable to the cross claimant for all or part of a claim asserted in the action against the cross claimant. A claim which either matured or was acquired by the defendant after filing the answer may, with the permission of the court, be presented as a cross claim by supplemental pleading. Any cross claim shall be limited to the jurisdictional limit of the county court, but the cross claimant shall have the right to dismiss the cross claim without prejudice at any time prior to trial, except that a dismissal operates as an adjudication upon the merits when requested by the cross claimant who has once dismissed in any court an action based on or including the same claim.

(f) **Joinder of Additional Parties.** Persons other than those made parties to the original action may be made parties to a counterclaim or cross claim in accordance with the provisions of Rules 319 and 320.

(g) **Claims against Assignor or Assignee.** Except as otherwise provided by law as to negotiable instruments, any claim, counterclaim, or cross claim which could be asserted against an assignor at the time of or before notice of an assignment, may be asserted against an assignee of the assignor, to the extent that such claim, counterclaim, or cross claim does not exceed recovery upon the claim of the assignee.

Cite as (Casemaker) C.R.C.P. 313

History. (a), the introductory portion to (b), and (b)(2) amended and effective July 1, 1993; entire rule amended July 22, 1993, effective January 1, 1994; (b)(2) amended and effective February 8, 2013.

Case Notes:

ANNOTATION

Court not to predetermine damages for jurisdictional question. Since damages are a matter of proof at the trial, a trial court may not determine in advance of filing whether the jurisdictional amount can be established. Medina v. District Court, 177 Colo. 185, 493 P.2d 367 (1972).

The three provisions of paragraph (b) are mutually exclusive alternatives for pursuing counterclaims in county court. As a result, when defendant filed its counterclaim in county court its potential recovery was limited to $5,000. Intern. Satellite Com. v. Kelly Servs., 749 P.2d 468 (Colo. App. 1987).

Even though defendant's counterclaim did not mature until after the action was begun, it is still subject to the other provisions of this rule. Intern. Satellite Com. v. Kelly Servs., 749 P.2d 468 (Colo. App. 1987).

Tenant's unlawful eviction action in district court was properly dismissed where tenant failed to mention landlord's unlawful detainer action in county court, failed to comply with the procedural requirements for asserting an unlawful eviction claim, and was unable to refile the same answer and counterclaim in district court that he had filed in

county court. Platte River Drive J. Venture v. Vasquez, 560 P.2d 599 (Colo. App. 1993).

Applied in Blackwell v. Del Bosco, 35 Colo. App. 399, 536 P.2d 838 (1975); Hurricane v. Kanover, Ltd., 651 P.2d 1218 (Colo. 1982).

Rule 314. No Colorado Rule.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 314. No Colorado Rule

Cite as (Casemaker) C.R.C.P. 314

Rule 315. Amended Pleadings.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 315. Amended Pleadings

Amendments. Amendment to pleadings shall not be permitted except by order of court.

Cite as (Casemaker) C.R.C.P. 315

Rule 316. Pretrial Procedure - Disclosure and Conference.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 316. Pretrial Procedure - Disclosure and Conference

(a) **Disclosure Statement.**

(1) At any time after the answer is filed but no later than 21 days before trial, a party may request from an opposing party a list of witnesses who may be called at trial, and copies of documents and pictures, and a description of physical evidence which may be used at trial. Such request shall be made by serving pursuant to C.R.C.P. 305 a blank disclosure statement, which shall be in the form and content of Appendix to Chapter 25, Form 9, on the opposing party and shall be accompanied by the requesting party's properly completed Form 9 and its attachments. The opposing party shall serve pursuant to C.R.C.P. 305 a completed Form 9 with attachments on the requesting party within 21 days after service but not less than 7 days before trial. The court may shorten or extend that time. A party may not supplement the disclosure statement except for good cause.

(2) The court may order the parties to exchange and file Form 9 disclosure statements at any time before trial.

(3) Any party failing to respond in good faith to a Form 9 request or court order under this subsection (a) shall be subject to imposition of appropriate sanctions at the time of trial.

(b) **Pretrial Conferences.** Prior to trial, the court may in its discretion and upon reasonable notice order a pretrial conference. Conferences by telephone are encouraged. Following a pretrial conference, the court may issue an order which may include limitations on the issues to be raised and the witnesses and exhibits to be allowed at trial, entry of judgment, or dismissal, if appropriate. Failure to appear at a pretrial conference may result in appropriate sanctions, including an award of attorney's fees and expenses incurred by the appearing party.

(c) **Pretrial Discovery.** If a pretrial conference is held, any party may request that discovery be permitted to assist in the preparation for trial. The request shall be made only during the conference. The discovery may include depositions, requests for admission, interrogatories, physical or mental examinations, or requests for production or inspection. If the court enters a discovery order, it shall set forth the extent and terms of the discovery

as well as the time for compliance. If the court fails to specify any term, then the provisions of C.R.C.P. 30, 32, 33, 34, 35, and 36 shall be followed as to the missing term.

(d) **Resolution of Disputes.** All issues regarding discovery shall be resolved during the conference. No party shall be entitled to seek protective orders following the conference. Unless otherwise ordered by the court, a dispute over compliance with the discovery order shall be resolved at the time of trial, and the court may impose appropriate sanctions, including attorney's fees and costs, against the non-complying party.

(e) **Juror Notebooks.** The court may order the use of juror notebooks. If notebooks are to be used, counsel for each party shall confer about items to be included in juror notebooks and at the pretrial conference or other date set by the court make a joint submission to the court of items to be included in the juror notebook.

Cite as (Casemaker) C.R.C.P. 316

History. Entire rule added May 30, 1991, effective September 1, 1991. (e) added and adopted June 25, 1998, effective January 1, 1999; (a)(1) and (a)(3) amended and effective June 28, 2007; (a)(1) 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).

Note:

COMMITTEE COMMENT

Subsection (a) provides for the disclosure of a list of witnesses and copies of exhibits through the use of a form Disclosure Statement in simple cases. This rule also sets forth the procedure for pretrial conferences. A simplified form of discovery has been developed for the exceptional case warranting the expense of discovery due to the increased jurisdictional limit of the county court and is available only when there is a pretrial conference. The procedure is designed to provide discovery which is tailored to the particular needs of the parties. In order to avoid disputes arising from discovery, all matters should be resolved by the court at the time of the conference.

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Rule 317. Parties Plaintiff and Defendant.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 317. Parties Plaintiff and Defendant

(a) **Real Party in Interest.** Every action shall be prosecuted in the name of the real party in interest; but a fiduciary as defined in section 15-1-301 , C.R.S., a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in such party's own name without joining the party for whose benefit the action is brought, and when a statute so provides, an action for the use or benefit of another shall be brought in the name of the people of the state of Colorado.

(b) **Capacity to Sue or Be Sued.** A partnership or other unincorporated association may sue or be sued in its common name for the purpose of enforcing for or against it a substantive right. A father and mother or the sole surviving parent may maintain an action for the injury or death of a child; where both maintain the action, each shall have an equal interest in the judgment; where one has deserted or refuses to sue, the other may maintain the action. A guardian may maintain an action for the injury or death of the guardian's ward.

(c) **Minors or Incapacitated Persons.** Whenever a minor or incapacitated person has a representative, such as a fiduciary as defined in section 15-1-301 , C.R.S., the fiduciary may sue or defend on behalf of the minor or incapacitated person. If a minor or incapacitated person does not have a duly appointed fiduciary, or such fiduciary fails to act, the minor or incapacitated person may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for a minor or incapacitated person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the minor or incapacitated person, provided, that in an action in rem it shall not be necessary to appoint a guardian ad litem for any unknown person who might be a minor or incapacitated person.

Cite as (Casemaker) C.R.C.P. 317

History. Entire rule amended July 22, 1993, effective January 1, 1994.

Rule 318. Joinder of Claims and Remedies.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 318. Joinder of Claims and Remedies

(a) **Joinder of Claims.** The plaintiff in his complaint or in a reply setting forth a counterclaim and the defendant in an answer setting forth a counterclaim may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party.

(b) **Joinder of Remedies: Fraudulent Conveyances.** Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. For example, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to him, without first having obtained a judgment establishing the claim for money.

Cite as (Casemaker) C.R.C.P. 318

Rule 319. Necessary Joinder of Parties.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 319. Necessary Joinder of Parties

Persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, or the person's consent cannot be obtained, that person may be made a defendant, or in proper cases, an involuntary plaintiff.

Cite as (Casemaker) C.R.C.P. 319

History. Entire rule amended July 22, 1993, effective January 1, 1994.

Rule 320. Permissive Joinder of Parties.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 320. Permissive Joinder of Parties

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

(b) **Separate Trials.** The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against that party, and may order separate trials or make other orders to prevent delay or prejudice.

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

Cite as (Casemaker) C.R.C.P. 320

History. (b) amended July 22, 1993, effective January 1, 1994.

Rule 321. Misjoinder and Nonjoinder of Parties.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 321. Misjoinder and Nonjoinder of Parties

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

Cite as (Casemaker) C.R.C.P. 321

Rule 322 and 323. .

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 322 and 323.

(There are no present Colorado Rules 322 and 323.)

Cite as (Casemaker) C.R.C.P. 322 and 323

Rule 324. Intervention.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 324. Intervention

Upon good cause shown, the court may permit intervention on such terms as it deems just.

Cite as (Casemaker) C.R.C.P. 324

Rule 325. Substitution of Parties.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 325. Substitution of Parties

(a) **Death.**

(1) If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party and, together with the notice of hearing, shall be served on the parties as provided in Rule 305 and upon persons not parties in the manner provided in Rule 304 for the service of process, and may be served in any county. Suggestion of death upon the record is made by service of a statement of the fact of death as provided herein for the service of the motion and by filing of proof thereof. If the motion for substitution is not made within 91 days (13 weeks) after such service, the action shall be dismissed as to the deceased party.

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

(b) **Incapacity.** If a party becomes incapacitated, the court upon motion served as provided in section (a) of this Rule may allow the action to be continued by or against the party's representative.

(c) **Transfer of Interest.** In case of any transfer of interest, the action may be continued by or

against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party. Service of the motion shall be made as provided in subsection (a)(1) of this Rule.

(d) **Public Officers; Death or Separation from Office.**

(1) When a public officer is a party to an action and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and the successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer sues or is sued in the officer's official capacity, the officer may be described as a party by the official title rather than by name; but the court may require the official's name to be added.

Cite as (Casemaker) C.R.C.P. 325

History. (b) and (d) amended July 22, 1993, effective January 1, 1994; (a)(1) 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).

Rule 326. Depositions to Preserve Testimony.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 326. Depositions to Preserve Testimony

(a) After jurisdiction has been obtained over the defendant or over the property which is the subject of the action, a deposition by written interrogatories of a witness, including a party, may be ordered taken by the court upon motion pursuant to Rule 307 but only upon a showing (1) that the witness is or will be absent from the state at the time of trial or is or will be more than one hundred miles from the place of trial at the time of trial; or (2) that the witness will be unable to attend or testify because of age, sickness, infirmity, or

imprisonment.

(b) If the court shall order such a deposition to be taken it shall be done in accordance with, and thereafter subject to, the provisions of Rule 331. Upon entry of such order, the deposition may be taken by oral examination upon agreement of the parties.

(c) The court, in lieu of a deposition to preserve testimony, may, where circumstances warrant, allow the witness to testify at the trial by telephone.

Cite as (Casemaker) C.R.C.P. 326

History. Entire rule amended July 22, 1993, effective January 1, 1994.

Case Notes:

ANNOTATION

Law reviews. For article, "Limited Discovery in Colorado's County Courts", see 18 Colo. Law. 1959 (1989).

Rule 327 to 330. .

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 327 to 330.

(There are no present Colorado Rules 327 to 330.)

Cite as (Casemaker) C.R.C.P. 327 to 330

Rule 331. Conducting Depositions to Preserve Testimony.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 331. Conducting Depositions to Preserve Testimony

(a) **Serving Interrogatories; Notice.** If the court shall order the taking of a deposition of any person, the party desiring to take the deposition shall serve upon every other party not in default at least 7 days prior to the scheduled deposition copies of the written interrogatories, including the name and address of the person who is to answer them and the name, descriptive title, and address of the officer who will administer the interrogatories and transcribe the responses. Within 7 days thereafter a party so served may serve cross-interrogatories upon the party proposing to take the deposition. No redirect or recross interrogatories shall be permitted.

(b) A copy of all interrogatories served shall be delivered by the party taking the deposition to the officer designated in the order who shall put the witness on oath and who shall personally, or by someone acting under the officer's direction and in the officer's presence, record the answers of the witness verbatim. When the answers are fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by the witness, unless such examination and reading are waived by the witness and the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under Rule 332(d) hereof the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

(c) **Certification and Filing by Officer, Copies; Notice of Filing.**

(1) The officer shall certify on the interrogatories and answers thereto that the witness was duly sworn and that the deposition is a true record of the answers given by the witness. The deposition shall then be securely sealed in an envelope endorsed with the title of the action and marked "deposition of (here insert name of witness)", and it shall be promptly delivered or sent by registered or certified mail to the attorney for the party taking the deposition and give written notice of the delivery or mailing to all other parties.

(2) Upon the payment of reasonable charges therefor, the officer shall furnish a copy of the deposition to any party or to the deponent.

(3) [Deleted]

(d) **Orders for the Protection of Parties and Deponents.** After the service of interrogatories and prior to the taking of the testimony of the deponent, the court in which the action is pending, on motion promptly made by a party or a deponent, upon notice and good cause shown, may make any order which is appropriate and just or an order that the deposition shall not be taken before the officer designated in the order.

Cite as (Casemaker) C.R.C.P. 331

History. (a), (b), and (c) amended July 22, 1993, effective January 1, 1994; (a) amended and effective June 28, 2007; (a) 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).

Rule 332. Effect of Errors and Irregularities.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 332. Effect of Errors and Irregularities

(a) **As to Notice.** All errors and irregularities in the notice for taking a deposition under Rule 331 are waived unless written objection is promptly served upon the party after notice.

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

(c) **As to Taking of Deposition.** Objections to the form of written interrogatories submitted under Rule 331 are waived unless served in writing upon the party propounding them within **three days** of receipt of said interrogatories.

(d) Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, indorsed, transmitted, filed, or otherwise

dealt with by the officer under these rules are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or, with due diligence might have been, ascertained.

Cite as (Casemaker) C.R.C.P. 332

History. (d) amended July 22, 1993, effective January 1, 1994; (c) 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).

Rule 333 to 337. .

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 333 to 337.

(There are no present Colorado Rules 333 to 337.)

Cite as (Casemaker) C.R.C.P. 333 to 337

Rule 338. Right to Trial by Jury.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 338. Right to Trial by Jury

(a) **Exercise of Right.** Upon the filing of a demand and the simultaneous payment of the requisite jury fee by any party in actions wherein a trial by jury is provided by constitution

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

(b) **Demand.** A demand for trial by jury must be made on or before the appearance date. The demand may be made orally at the time of appearance or endorsed on the face of the complaint or answer. The demanding party shall pay the requisite jury fee at the time the demand is made and shall serve the demand on all other parties.

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

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

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

Cite as (Casemaker) C.R.C.P. 338

History. Entire rule repealed and reenacted July 12, 1990, effective September 1, 1990; (c) and (d) amended and effective June 28, 2007; (c) and (d) 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).

Rule 339. Trial by Jury or by the Court.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 339. Trial by Jury or by the Court

(a) **By Jury.** When trial by jury has been demanded and the requisite jury fee has been paid pursuant to Rule 338, the action shall be designated upon the register of actions as a jury action. The trial shall be by jury of all issues so demanded, unless (1) all parties who have demanded a trial by jury and paid the requisite jury fee and all parties who have failed to waive the right to trial by jury and paid the requisite jury fee have, in writing, waived their rights to trial by jury, or (2) the court upon motion or on its own initiative finds that a right to trial by jury of some or all of those issues does not exist, or (3) all parties demanding trial by jury fail to appear at trial.

(b) **By the Court.** Issues not demanded for trial by jury as provided in Rule 338 shall be tried by the court.

(c) **No Advisory Jury or Jury Without a Jury Demand.** An issue not designated in a demand as an issue triable by jury shall not be tried by an advisory jury or by any jury.

Cite as (Casemaker) C.R.C.P. 339

History. Entire rule repealed and reenacted July 12, 1990, effective September 1, 1990.

Case Notes:

ANNOTATION

Litigant is denied right to jury trial by repeated continuances. By structuring the court system to require a civil litigant to undergo repeated continuances if a jury trial is requested, a civil litigant is denied the right to a jury trial. Halliburton v. County Court ex rel. City & County of Denver, 672 P.2d 1006 (Colo. 1983).

Applied in Husar v. Larimer County Court, 629 P.2d 1104 (Colo. App. 1981).

Rule 340. Assignment of Cases for Trial.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 340. Assignment of Cases for Trial

Trial courts shall provide by rule for the placing of actions upon the trial calendar in such manner as they deem expedient.

Cite as (Casemaker) C.R.C.P. 340

Rule 341. Dismissal of Actions.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 341. Dismissal of Actions

(a) (1) Subject to the provisions of these rules, an action may be dismissed by the plaintiff upon payment of costs without order of court (i) by filing notice of dismissal at any time before filing or service by the adverse party of an answer, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court an action based on or including the same claim.

(2) **By Order of Court.** Except as provided in subsection (a)(1) of this Rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper. If a counterclaim has been pleaded by a defendant prior to the service upon him of the plaintiff's motion to dismiss, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the court. Unless otherwise specified in the order, a dismissal under this paragraph is without prejudice.

(b) **Involuntary Dismissal.**

(1) **By Defendant.** For failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or any claim. After the completion of the plaintiff's evidence, the defendant, without waiving the right to offer evidence in the event that the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. In an action tried by the court without a jury the court as trier of the facts may then determine them and render a judgment against the plaintiff or may decline to render any judgment until the close of all the evidence. Unless the court in its order for dismissal otherwise specifies, a dismissal under this subdivision and any dismissal not provided for in this Rule, other than a dismissal for lack of jurisdiction or failure to file a complaint under Rule 303, operates as an adjudication upon the merits.

(2) **By the Court.** Actions not prosecuted or brought to trial with due diligence may, upon notice, be dismissed without prejudice unless otherwise specified by the court upon 28 days' notice in writing to all appearing parties or their counsel of record, unless a party shows cause in writing within said 28 days why the case should not be dismissed.

(c) **Dismissal of Counterclaim or Cross Claim.** The provisions of this Rule apply to the dismissal of a counterclaim or cross claim, except as provided in Rule 313(e).

Cite as (Casemaker) C.R.C.P. 341

History. (b) and (c) amended July 22, 1993, effective January 1, 1994; (b)(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).

Case Notes:

ANNOTATION

This rule provides for a plaintiff's voluntary dismissal of his action without prejudice if the notice of dismissal is filed before the adverse party files or serves his answer. The provisions of the rule also apply to the dismissal of a counterclaim. Where a reply to a counterclaim was filed after the notice of dismissal was sought, there is no reason why the counterclaim should not be dismissed as a matter of course. Empiregas, Inc., of Pueblo v. County Court, 715 P.2d 937 (Colo. App. 1985).

Rule 342. Consolidation; Separate Trials.

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 342. Consolidation; Separate Trials

(a) **Consolidation.** When actions involving a common question of law or fact are pending before the court, it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(b) **Separate Trials.** The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim or issue.

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

Cite as (Casemaker) C.R.C.P. 342

Rule 343. Evidence.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 343. Evidence

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

(b) to (d) Repealed.

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

(f) and **(g)** Repealed.

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

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

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

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

(2) **Response.** If any party objects to absentee testimony, said party shall file a written response within 7 days following service of the motion unless the opening of the proceeding occurs first, in which case the objection shall be made orally in open court at the commencement of the proceeding or as soon as practicable thereafter. If no response is filed or objection is made, the motion may be deemed confessed.

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

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

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

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

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

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

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

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

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

(I) The efforts of the requesting parties to obtain the presence of the witness. If the court orders absentee testimony to be taken, the court may issue such orders as it deems appropriate to protect the integrity of the proceedings.

Cite as (Casemaker) C.R.C.P. 343

History. (a) amended, (b) to (d), (f), and (g) repealed, and (h) added March 17, 1994, effective July 1, 1994; (a) corrected and effective January 9, 1995; (h) repealed and readopted and effective June 28, 2007; (h)(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).

Rule 344. Proof of Official Record.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 344. Proof of Official Record

(a) **Authentication of Copy.** An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof, or by a copy attested by the officer having the legal custody of the record, or by the deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of the office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation consul general, consul, vice-consul, or consular agent or by any officer in the foreign service of the United States stationed in the

foreign state or country in which the record is kept, and authenticated by the seal of the office.

(b) **Proof of Lack of Record.** A written statement signed by an officer having the custody of an official record or by the deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of the office, accompanied by a certificate as above provided, is admissible as evidence that the records of the office contain no such record or entry.

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

(d) **Certified Copies of Records Read in Evidence.** All copies of any record, or document, or paper, in the custody of a public officer of this state, or of the United States, certified by the officer having custody thereof, or verified by the oath of such officer to be a full, true and correct copy of the original in the officer's custody, may be read in evidence in an action or proceeding in the courts of this state, in like manner and with like effects as the original could be if produced.

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

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

History. (a) to (d) amended July 22, 1993, effective January 1, 1994; (a) corrected and effective January 9, 1995.

Rule 345. Subpoena.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 345. Subpoena

(a) **For Attendance of Witnesses; Form; Issuance.** Subpoenas may be issued under Rule 345 only to compel attendance of witnesses, with or without documentary evidence, at a deposition, hearing or trial. Every subpoena shall state the name of the court, and the title of the action, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified.

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

(c) **Service.** Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering the fees for one day's attendance and mileage allowed by law. Service is also valid if the person named in the subpoena has signed a written admission or waiver of personal service. When the subpoena is issued on behalf of the state of Colorado, or an officer or agency thereof, fees and mileage need not be tendered. Proof of service shall be made as in Rule 304(g). Unless otherwise ordered by the court for good cause shown, such subpoena shall be served no later than 48 hours before the time for appearance set out in said subpoena.

(d) **Subpoena for Taking Depositions on Written Interrogatories; Place of Examination.**

(1) Presentation of a notice to take a deposition by written interrogatories as provided in Rule 331, constitutes a sufficient authorization for the issuance by the judge or clerk of any court of record in the county where the deposition is to be taken, or by the notary public or other officer authorized to take the deposition, of subpoenas

for the persons named or described therein.

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

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

Cite as (Casemaker) C.R.C.P. 345

History. (a), (c), (d)(2), and (e) amended July 22, 1993, effective January 1, 1994; (c) amended and effective April 10, 2008.

Rule 346. Exceptions Unnecessary.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 346. Exceptions Unnecessary

Formal exceptions to rulings or orders of the court are unnecessary; but for all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the ruling or order of the court is made or sought, makes known to the court the action which the party desires the court to take or states the objection to the action of the court and the grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice that party.

Cite as (Casemaker) C.R.C.P. 346

History. Entire rule amended July 22, 1993, effective January 1, 1994.

Rule 347. Jurors.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 347. Jurors

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

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

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

(I) The grounds for challenge for cause;

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

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

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

(V) General legal principles applicable to the case, including burdens of proof, definitions of preponderance and other pertinent evidentiary standards and

other matters that jurors will be required to consider and apply in deciding the issues.

(3) The judge shall ask prospective jurors questions concerning their qualifications to serve as jurors. The parties or their counsel shall be permitted to ask the prospective jurors additional questions. In the discretion of the judge, juror questionnaires, posterboards and other methods may be used. In order to minimize delay, the judge may reasonably limit the time available to the parties or their counsel for juror examination. The court may limit or terminate repetitious, irrelevant, unreasonably lengthy, abusive, or otherwise improper examination.

(4) Jurors shall not be required to disclose personal locating information, such as address or place of business in open court and such information shall not be maintained in files open to the public. The trial judge shall assure that parties and counsel have access to appropriate and necessary locating information.

(5) Once the jury is impaneled, the judge shall explain the general principles of law applicable to civil cases, the procedural guidelines regarding conduct by jurors during the trial, case specific legal principles and definitions of technical or special terms expected to be used during the presentation of the case.

(b) **Alternate Jurors.** No alternate jurors shall be called or impaneled to sit on juries in the county court.

(c) **Challenge to Array.** A challenge to the array of jurors may not be made by either party.

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

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

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

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

(3) Standing in the relation of guardian, ward, employer, employee, principal, or agent to any party, or being a member of the family of any party, or a partner in business with any party or being security on any bond or obligation for any party.

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

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

municipal corporation.

(6) Having formed or expressed an unqualified opinion or belief as to the merits of the action.

(7) The existence of a state of mind in the juror evincing enmity against or bias to either party.

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

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

(h) **Peremptory Challenges.** Each side shall be entitled to one peremptory challenge, and if there be more than one party to a side they must join in such challenge. One additional peremptory challenge shall be allowed to each party appearing under Rule 324 if the trial court in its discretion determines that the ends of justice so require.

(i) **Oath of Jurors.** As soon as the jury is completed, an oath or affirmation shall be administered to the jurors in substance:
That you and each of you will well and truly try the matter at issue between _____, the plaintiff, and _____, the defendant, and a true verdict render, according to the evidence.

(j) **When Juror Disqualified.** If before verdict a juror becomes unable or disqualified to perform the juror's duty the parties may agree to proceed with the other jurors or agree that a new juror be sworn and the trial begun anew. If the parties do not so agree the court shall discharge the jury and the case shall be tried anew.

(k) **Examination of Premises by Jury.** The court may not order or permit the jury to see or examine any property or place.

(l) **Deliberation of Jury.** After hearing the charge the jury may either decide in court or retire for deliberation. If it retires, except as hereinafter provided in this section, it shall be kept together in a separate room or other convenient place under the charge of one or more officers until it agrees upon a verdict or is discharged. While the jury is deliberating the officer shall, to the utmost of the officer's ability, keep the jury together, separate from other persons. The officer shall not communicate or allow any communication to be made

to any juror unless by order of the court except to ask it if it has agreed upon a verdict, and shall not, before the verdict is rendered, communicate with any person the state of its deliberations or the verdict agreed upon. The court in its discretion in any individual case may modify the procedure under this Rule by permitting a jury which is deliberating to separate during the luncheon or dinner hour or separate for the night under appropriate cautionary instructions, with directions that they meet again at a time certain to resume deliberations again under the charge of the appropriate officer.

(m) **Items Taken to Deliberation.** Upon retiring, the jurors shall take the jury instructions, their juror notebooks and notes they personally made, if any, and to the extent feasible, those exhibits that have been admitted as evidence.

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

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

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

(q) **Declaration of Verdict.** When the jury has agreed upon its verdict it shall be conducted into court by the officer in charge. The names of the jurors shall be called, and the jurors shall be asked by the court or clerk if they have agreed upon a verdict, and if the answer be in the affirmative, they shall hand the same to the clerk. The clerk shall enter in the record the names of the jurors. Upon a request of any party the jury may be polled.

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

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

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

(u) **Juror Questions.** Jurors shall be allowed to submit written questions to the court for the court to ask of witnesses during trial, in compliance with procedures established by the trial court. The trial court shall have the discretion to prohibit or limit questioning in a particular trial for good cause.

Cite as (Casemaker) C.R.C.P. 347

History. (e)(3), (j), (l), (m), and (q) amended July 22, 1993, effective January 1, 1994. (a) repealed and readopted, (m) amended, and (t) added June 25, 1998, effective January 1, 1999; (u) added and adopted March 13, 2003, effective July 1, 2003.

Cross References:

For jury selection and service, see the "Colorado Uniform Jury Selection and Service Act", article 71 of title 13, C.R.S.

Rule 348. Number of Jurors.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 348. Number of Jurors

The jury shall consist of the number provided by statute.

Cite as (Casemaker) C.R.C.P. 348

Cross References:

For the number of jurors, see § 13-71-103 , C.R.S.

Rule 349. No Colorado Rule.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 349. No Colorado Rule

Cite as (Casemaker) C.R.C.P. 349

Rule 350. Motion for a Directed Verdict.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 350. Motion for a Directed Verdict

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

Cite as (Casemaker) C.R.C.P. 350

History. Entire rule amended July 22, 1993, effective January 1, 1994.

Rule 351. Instructions to Jury.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 351. Instructions to Jury

(a) Any party may submit proposed jury instructions by filing with the court two sets of proposed jury instructions and verdict forms. Both sets may be photocopies, but one copy of each instruction shall contain a brief statement of the legal authority on which the proposed instruction is based. The party submitting such instructions and forms shall, simultaneously with the filing of the jury instructions and forms, serve copies on all other appearing parties or their counsel of record.

(b) The parties shall make all objections to the instructions before they are given to the jury. Only the objections specified shall be considered on motion for post-trial relief or on appeal or certiorari. Before closing argument, the court shall read its instructions to the jury but shall not comment upon the evidence. The court's instructions may be taken by the jury when it retires. All instructions offered or given shall be filed with the clerk and, with the indorsement thereon indicating the action of the court, shall be taken as a part of the record of the cause.

Cite as (Casemaker) C.R.C.P. 351

History. Entire rule amended July 22, 1993, effective January 1, 1994.

Rule 351.1. Colorado Jury Instructions.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 351.1. Colorado Jury Instructions

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

(2) In cases in which there are no CJI instructions on the subject, or in which the factual situation or changes in the law warrant a departure from the CJI instructions, the court

shall instruct the jury as to the prevailing law applicable to the evidence in a manner which is clear, unambiguous, impartial and free from argument, using CJI instructions as models as to the form so far as possible.

Cite as (Casemaker) C.R.C.P. 351.1

Rule 352. Judgment by the Court.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 352. Judgment by the Court

Entry of Judgment. In all actions tried upon the facts without a jury the court shall, at the conclusion of the case, forthwith orally announce its decision, including findings of fact and conclusions of law, and direct the entry of the appropriate judgment. No written findings shall be required. The court may, under exceptional circumstances, take a case under advisement.

Cite as (Casemaker) C.R.C.P. 352

History. Entire rule amended July 22, 1993, effective January 1, 1994.

Rule 353. No Colorado Rule.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 353. No Colorado Rule

Rule 354. Judgments; Costs.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 354. Judgments; Costs

(a) **Definition; Form.** "Judgment" as used in these rules includes a decree and any order to or from which an appeal lies.

(b) **Judgment Upon Multiple Claims.** Whether as a claim, counterclaim or cross claim, the court may not direct the entry of a final judgment upon less than all of the claims presented.

(c) **Demand for Judgment.** A judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment. Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings.

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

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

(f) **After Death, How Payable.** If a party dies after a verdict or decision upon any issue of fact, and before judgment, the court may, nevertheless, render judgment thereon. Such judgment shall not be a lien on the real property of the deceased party, but shall be paid as a claim against his estate.

(g) **Against Unknown Defendants.** The judgment in an action in rem shall apply to and

conclude the unknown defendants whose interests are described in the complaint.

(h) **Revival of Judgments.** A judgment may be revived against any one or more judgment debtors whether they are jointly or severally liable under the judgment. To revive a judgment a motion shall be filed alleging the date of the judgment and the amount thereof which remains unsatisfied. Thereupon the clerk shall issue a notice requiring the judgment debtor to show cause within 14 days after service thereof why the judgment should not be revived. The notice shall be served on the judgment debtor in conformity with Rule 304. If the judgment debtor answers, any issue so presented may be tried and determined by the court. A revived judgment must be entered within twenty years after the entry of the judgment which it revives, and may be enforced and made a lien in the same manner and for like period as an original judgment. A judgment entered on or after July 1, 1981 must be revived within six years after the entry of the judgment which it revives, and may be enforced and made a lien in the same manner and for like period as an original judgment. If a judgment is revived before the expiration of any lien created by the original judgment, the filing of the transcript of the entry of revivor in the register of actions with the clerk and recorder of the appropriate county before the expiration of such lien shall continue that lien for the same period from the entry of the revived judgment as is provided for original judgments. Revived judgments may themselves be revived in the manner herein provided.

Cite as (Casemaker) C.R.C.P. 354

History. (h) amended and effective April 5, 2010; (d) and (h) 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).

Rule 355. Default.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 355. Default

(a) **Entry at Time of Appearance.** Upon the date and at the time set for appearance, if the defendant has filed no answer or fails to appear and if the plaintiff proves by appropriate return that the summons was served at least 14 days before the appearance date, the judge may enter judgment for the plaintiff for the amount due, including interest, costs and other items provided by statute or the agreement. However, before judgment is entered,

the court shall be satisfied that the venue of the action is proper Under Rule 398(c).

(b) **At Time of Trial.** Failure to appear on any date set for trial shall be grounds for entering a default and judgment thereon against the non-appearing party. For good cause shown, the court may set aside an entry of default and the judgment entered thereon in accordance with Rule 360.

Cite as (Casemaker) C.R.C.P. 355

History. (a) amended and effective June 28, 2007; (a) 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).

Case Notes:

ANNOTATION

Applied in Bachman v. County Court, 43 Colo. App. 175, 602 P.2d 899 (1979).

Rule 356 and 357. .

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 356 and 357.

(There are no present Colorado Rules 356 and 357.)

Cite as (Casemaker) C.R.C.P. 356 and 357

Rule 358. Entry and Satisfaction of Judgment.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 358. Entry and Satisfaction of Judgment

(a) **Entry.** Judgment upon the verdict of a jury or upon trial by the court in all actions shall be entered forthwith by the judge or the clerk at the discretion of the judge. A notation of the judgment shall be made in the register of actions as provided in Rule 379(a) and such notation of the judgment shall constitute the entry of judgment. The judgment shall not be effective for the purpose of placing a lien upon property unless so recorded in the register of actions. Money judgments shall also be entered in the judgment record as provided for in Rule 379(c). Whenever the court signs a judgment and a party is not present when it is signed, a copy of the signed judgment shall be immediately mailed by the court, pursuant to Rule 305, to each absent party who has previously appeared.

(b) **Satisfaction.** Satisfaction in whole or in part of a money judgment may be entered in the judgment record (Rule 379(c)) upon an execution returned satisfied in whole or in part, or upon the filing of a satisfaction with the clerk, signed by the judgment creditor's attorney of record unless a revocation of that authority be previously filed, or by the signing of such satisfaction, by the judgment creditor, attested by the clerk or notary public, or by the signing of the judgment record (Rule 379(c)) by one herein authorized to execute satisfaction. Whenever a judgment shall be so satisfied in fact otherwise than upon execution, it shall be the duty of the judgment creditor or the judgment creditor's attorney to give such satisfaction, and upon motion the court may compel it or may order the entry of such satisfaction to be made without it. With respect to judgments entered on or after July 1, 1981 the clerk shall, after six years from the entry of final judgment, satisfy the judgment and shall enter a full satisfaction in the judgment record (Rule 379(c)) unless the judgment is revived pursuant to Rule 354(h).

Cite as (Casemaker) C.R.C.P. 358

History. (b) amended July 2, 1986, effective January 1, 1987; entire rule amended July 22, 1993, effective January 1, 1994; (b) amended and adopted February 27, 1997, effective July 1, 1997.

Rule 359. New Trials; Amendment of Judgments.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 359. New Trials; Amendment of Judgments

(a) **No Motion for New Trial Necessary.** Motion for new trial shall not be a condition of appeal from the county to district court.

(b) **Time for Motion.** A motion for new trial (which must be in writing) may be made within 14 days of entry of judgment and if so made the time for appeal shall be extended until 14 days after disposition of the motion. Only matters raised in said motion shall be considered on appeal.

(c) **Grounds.** A new trial may be granted to all or any of the parties, and on all or a part of the issues, after trial by jury or by the court. On a motion for a new trial in an action tried without a jury, the court may upon the judgment, if one has been entered, take additional testimony and direct the entry of a new judgment. Subject to the provisions of Rule 361, a new trial may be granted for any of the following causes:

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

(2) Misconduct of the jury.

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

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

(5) Excessive or inadequate damages.

(6) Insufficiency of the evidence.

(7) Error in law.

When application is made under subsection 1, 2, 3, or 4 of section (c) of this Rule it shall be supported by affidavit filed with the motion. When application is made under any of the subsections (1) to (7) of section (c) of this Rule there shall be filed with the motion a short memorandum brief including authorities, if any, upon which the applicant relies in support of the motion.

(d) **Time for Filing and Serving Affidavits.** When a motion for a new trial is based upon affidavits they shall be filed with the motion. The opposing party has ten calendar days after service thereof within which to file opposing affidavits, which period maybe extended for an additional period not exceeding twenty days either by the court for good cause

shown or by the parties by written stipulation. The court may permit reply affidavits.

(e) **On Initiative of Court.** Not later than fifteen days after entry of judgment, the court on its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party, and in the order shall specify the grounds therefor.

(f) **Motion to Alter or Amend a Judgment.** A motion to alter or amend the judgment shall be filed not later than 21 days after entry of the judgment.

(g) **Effect of Granting Motion.** The granting of a motion for a new trial shall not be an appealable order, but a party by participating in the new trial shall not be deemed to have waived any objections to the granting of the motion, and the validity of the order granting the motion may be raised on appeal to the district court and in the petition in the Supreme Court for writ of certiorari.

Cite as (Casemaker) C.R.C.P. 359

History. (d) amended and effective June 28, 2007; (b) and (f) 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) ; (b) amended January 29, 2016, effective April 1, 2016.

Case Notes:

ANNOTATION

Applied in Bachman v. County Court, 43 Colo. App. 175, 602 P.2d 899 (1979).

Rule 360. Relief from Judgment or Order.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 360. Relief from Judgment or Order

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

the case is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) **Mistake; Inadvertence; Surprise; Excusable Neglect; Fraud; etc.** On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (3) the judgment is void; (4) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1) and (2), not more than six months after the judgment, order, or proceeding complained of was entered or taken. A motion under this section (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court: (1) To entertain an independent action to relieve a party from a judgment, order, or proceeding; or (2) to set aside a judgment for fraud upon the court; or (3) when, for any cause, the summons in an action has not been personally served within or without the state on the defendant, to allow, on such terms as may be just, such defendant, or the defendant's legal representatives, at any time within six months after the rendition of any judgment in such action, to answer to the merits of the original action.

Cite as (Casemaker) C.R.C.P. 360

History. Entire rule amended July 22, 1993, effective January 1, 1994; (b) corrected and effective January 2, 1996.

Case Notes:

ANNOTATION

This rule applies to default judgments. Bachman v. County Court, 43 Colo. App. 175, 602 P.2d 899 (1979).

Applied in Pollard v. Walsh, 194 Colo. 566, 575 P.2d 411 (1978).

Rule 361. Harmless Error.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 361. Harmless Error

No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Cite as (Casemaker) C.R.C.P. 361

Rule 362. Stay of Proceedings to Enforce a Judgment.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 362. Stay of Proceedings to Enforce a Judgment

(a) **No Automatic Stay.** If, upon the rendition of a judgment, payment is not made forthwith, an execution may issue immediately and proceedings may be taken for its enforcement unless the defendant requests a stay of execution and the court grants such request. Proceedings to enforce execution and other process after judgment and the fees therefor shall be as provided by law or these rules.

(b) **Stay on Motion for New Trial or for Judgment.** In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 359, or of a motion for relief from a judgment or order made pursuant to Rule 360, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 350, or pending the filing and determination of an appeal to the district court.

Cite as (Casemaker) C.R.C.P. 362

Rule 363. Disability of a Judge.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 363. Disability of a Judge

If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a verdict is returned or finding of fact and conclusions of law are filed, then any other judge lawfully sitting in or assigned to the court in which the action was tried may perform those duties; but if such other judge is satisfied that the judge cannot perform those duties having not presided at the trial or for any other reason, a new trial may be ordered.

Cite as (Casemaker) C.R.C.P. 363

History. Entire rule amended July 22, 1993, effective January 1, 1994.

Rule 364. No Colorado Rule.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 364. No Colorado Rule

Rule 365. Injunctions, Restraining Orders and Orders for Emergency Protection.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 365. Injunctions, Restraining Orders and Orders for Emergency Protection

(a) **Civil Protection Orders.** No civil protection order, restraining order, or injunction under Title 13, Article 14, shall be issued by the court, except as provided therein.

(b) **Repealed.**

(c) **Restrictive Covenants on Residential Real Property.**

(1) Upon the filing of a duly verified complaint alleging that the defendant has violated a restrictive covenant on residential real property, the court shall issue a summons, which shall include notice to the defendant that it will hear the plaintiff's request for a preliminary injunction on the appearance date. A temporary restraining order may be granted without written or oral notice to the adverse party or the party's attorney only if: (a) It clearly appears from specific facts shown by affidavit or by the verified complaint or by testimony that immediate and irreparable injury, loss, or damage will result to the plaintiff before the adverse party or the party's attorney can be heard in opposition, and (b) the plaintiff or the plaintiff's attorney certifies to the court in writing or on the record the efforts, if any, which have been made to give notice and the reasons supporting a claim that notice should not be required. The restraining order shall be served upon the defendant, together with the summons and complaint, and shall be effective until the appearance date.

(2) On the appearance date, the court shall examine the record and the evidence and, if upon such record and evidence the court shall be of the opinion that the defendant has violated the restrictive covenant, the court shall issue a preliminary injunction which shall remain in effect until the trial of the action. If merely restraining the doing of an act or acts will not effectuate the relief to which the plaintiff is entitled, the injunction may be made mandatory. The court may, upon agreement of the parties, order that the trial of the action be advanced and consolidated with the preliminary injunction hearing.

(3) Any restraining order or injunction issued under this section (c) shall inform the defendant that a violation thereof will constitute contempt of court and subject the defendant to such punishment as may be provided by law.

Cite as (Casemaker) C.R.C.P. 365

History. Entire rule amended July 22, 1993, effective January 1, 1994; Amended and Adopted by the Court, En Banc, April 27, 2017, effective immediately.

Case Notes:

ANNOTATION

County court has no jurisdiction to enter restraining order limiting visitation with a child when a custody proceeding is pending in another state. G.B. v. Arapahoe County Ct., 890 P.2d 1153 (Colo. 1995).

Rule 366. No Colorado Rule.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 366. No Colorado Rule

Cite as (Casemaker) C.R.C.P. 366

Rule 367. Deposit in Court.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 367. Deposit in Court

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

(b) **By Trustee.** When it is admitted by the pleadings or examination of a party that the party has possession or control of any money or other things capable of delivery which, being the subject of litigation, is held by that party as trustee for another party, or which belongs or is due to another party, upon motion, the court may order the same to be deposited in court or delivered to such party, upon such conditions as may be just, subject to the further direction of the court.

Cite as (Casemaker) C.R.C.P. 367

History. (b) amended July 22, 1993, effective January 1, 1994.

Rule 368. Offer of Judgment.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 368. Offer of Judgment

Cite as (Casemaker) C.R.C.P. 368

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

Rule 369. Execution and Proceedings Subsequent to Judgment.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 369. Execution and Proceedings Subsequent to Judgment

(a) **In General.** Except as provided in Rule 403 herein, process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise.

(b) **Execution for Costs.** Whenever costs are finally awarded to a party by an order of any court, such party may have an execution therefor in like manner as upon a judgment. Whenever costs are awarded to a party by an appellate court, such party may have an execution for the same upon filing a remittance with the clerk of the court below, and it shall be the duty of such clerk, whenever the remittitur is filed, to issue the execution on application therefor.

(c) **Debtor of Judgment; Debtor May Pay Sheriff.** After issuance of an execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of the debt, or so much as may be necessary to satisfy the execution, and the sheriff's receipt shall be sufficient discharge for the amount so paid.

(d) **Order for Debtor to Answer.** At any time when execution may issue on a judgment, the judgment creditor shall be entitled to an order requiring the judgment debtor to answer such interrogatories concerning his property as shall be approved by the court. The interrogatories when so approved shall be mailed by the clerk to the judgment debtor, who shall answer the said interrogatories and mail or file them with the court within 14 days after receipt thereof by the judgment debtor. The interrogatories, upon approval, may also be served upon the judgment debtor in accordance with Rule 304.

(e) **Order for Interrogatories to Debtor of Judgment Debtor.** At any time when execution may issue on a judgment, upon proof to the satisfaction of the court, by affidavit or otherwise, that any person or corporation has property of the judgment debtor or is indebted to the judgment creditor in an amount exceeding fifty dollars not exempt from execution, the court may order such person to answer such interrogatories as the court may approve touching upon the matters set forth in the affidavit of the judgment creditor.

(f) **Order for Property to be Applied on Judgment; Contempt.** The court may order any property of the judgment debtor not exempt from execution in the hands of such debtor or any other person, or due to the judgment debtor, to be applied towards the satisfaction of the judgment. If any person, party or witness disobeys an order of the court properly made in proceedings under this Rule, he shall be punished by the court for contempt. Nothing in

this Rule shall be construed to prevent an action in the nature of a creditor's bill.

(g) **Pattern Interrogatories - Use Automatically Approved.** The pattern interrogatories set forth in Appendix to Chapter 25, Form Numbers 7 and 7A are approved, and as part of the judgment order, may be mailed by the clerk or served by the judgment creditor in accordance with rule 304 without any further order of court. Any proposed non-pattern interrogatory must be specifically approved by the court.

Cite as (Casemaker) C.R.C.P. 369

History. (c) and (e) amended and effective and (g) added and effective June 28, 2007; (d) 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).

Rule 370. Judgment for Specific Acts; Personal Property.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 370. Judgment for Specific Acts; Personal Property

If a judgment directs a party to execute a transfer of documents or to perform any other specific act and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done has like effect as if done by the party on application of the party entitled to performance, the clerk shall issue a writ of attachment against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt.

If personal property is within the state, the court in lieu of directing a transfer thereof may enter a judgment divesting the title of any party and vesting it in others and such judgment has the effect of a transfer executed in due form of law. When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled to a writ of execution upon application to the clerk.

Cite as (Casemaker) C.R.C.P. 370

Case Notes:

ANNOTATION

This rule properly may be read with the understanding that county courts have jurisdiction to issue decrees of specific performance. Snyder v. Sullivan, 705 P.2d 510 (Colo. 1985).

Rule 371. Procedure in Behalf of and Against Persons Not Parties.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 371. Procedure in Behalf of and Against Persons Not Parties

An order made in favor of a person who is not a party to the action may be enforced by the same procedure as if the person were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, the person is liable to the same procedure for enforcing obedience to the order as any party.

Cite as (Casemaker) C.R.C.P. 371

History. Entire rule amended July 22, 1993, effective January 1, 1994.

Rule 372 to 376. .

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 372 to 376.

(There are no present Colorado Rules 372 to 376.)

Cite as (Casemaker) C.R.C.P. 372 to 376

Rule 377. Courts and Clerks.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 377. Courts and Clerks

(a) **Courts Always Open.** Courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning process, and the conducting of court business.

(b) **Clerk's Office and Orders by Clerk.** The clerk's office with the clerk or deputy in attendance shall be open at such hours and on such days as may be provided by law, and by local rule not in conflict with law. All motions and all applications in the clerk's office for issuing process, for entering defaults and judgments by default, and for other proceedings which do not require allowance or order of the court are grantable as a matter of course by the clerk; but the clerk's action may be suspended or altered or rescinded by the court or judge upon cause shown.

(c) **Orders in Any County.** Any ex parte order in any pending action may be entered by the court, or by any judge thereof.

Cite as (Casemaker) C.R.C.P. 377

History. (a) and (b) amended July 22, 1993, effective January 1, 1994.

Rule 378. No Colorado Rule.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 378. No Colorado Rule

Cite as (Casemaker) C.R.C.P. 378

Rule 379. Records.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 379. Records

(a) **Register of Actions (Civil Docket).** The clerk shall keep a record known as the register of actions and shall enter therein those items set forth below. The register of actions may be in any of the following forms or styles:

(1) A page, sheet, or printed form in a book, case jacket, or separate file, or the cover of the case jacket.

(2) A microfilm roll, film jacket, or microfiche card.

(3) Computer magnetic tape or magnetic disc storage, where the register of actions items appear on the terminal screen, or on a paper print-out of the screen display.

(4) Any other form or style prescribed by supreme court directive.

A register of actions shall be prepared for each case or matter filed. The file number of each case or matter shall be noted on every page, jacket cover, film or computer record whereon the first and all subsequent entries of actions are made. All papers filed with the clerk, all process issued and returns made thereon, all costs, appearances, orders, verdicts, and judgments shall be noted chronologically

in the register of actions. These notations shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The notation of an order or judgment shall show the date the notation is made. The notation of the judgment in the register of actions shall constitute the entry of judgment. When trial by jury has been demanded or ordered, the clerk shall enter the word jury on the page, jacket cover, film or computer record assigned to that case.

(b) **Indices; Calendars.** The clerk shall keep suitable indices of all records as directed by the court. The clerk shall also keep, as directed by the court, calendars of all hearings and all cases ready for trial, which shall distinguish trials to a jury from trials to the court. Indices and calendars may be in any of the following forms or styles:

(1) A page or sheet in a book or separate file.

(2) A mechanical or hand operated index machine or card file.

(3) Computer magnetic tape or magnetic disc storage, where the information appears on the terminal screen, or on a print-out of the screen display.

(4) Microfilm copies of 1, 2, and 3 above.

(5) Any other form or style prescribed by supreme court directive.

(c) **Judgment Record.** The clerk shall keep a judgment record in which a notation shall be made of every money judgment. The judgment record may be in any of the following forms or styles:

(1) A page, sheet, or printed form in a book, case jacket or separate file, or the cover of the case jacket.

(2) Computer magnetic tape or magnetic disc storage, where the judgment and subsequent transactions appear on the terminal screen, or on a paper print-out of the screen display.

(3) A microfilm copy or variation of 1 and 2 above.

(4) Any other form or style prescribed by supreme court directive.

(d) **Retention and Disposition of Records.** The clerk shall retain and dispose of all court records in accordance with instructions provided in the manual entitled, Colorado Judicial Department, Records Management.

Rule 380. Reporter; Stenographic Report or Transcript as Evidence.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 380. Reporter; Stenographic Report or Transcript as Evidence

(a) A record of the proceedings and evidence at trials in the county court shall be maintained by electronic devices except as such record may be unnecessary in certain proceedings pursuant to specific provisions of law.

(b) Whenever the testimony of a witness at a trial or hearing which was recorded by electronic devices or by stenographic means is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported or transcribed the testimony, or by the judge.

(c) **Reporter's Notes, Electronic or Mechanical Recording; Custody, Use, Ownership, Retention.** All electronic or mechanical recordings shall be the property of the state. The recordings shall be retained by the court for no less than six months after the creation of the recordings, or such other period as may be prescribed by supreme court directive or by instructions in the manual entitled, Colorado Judicial Department Record Retention Manual. During the period of retention, recordings shall be made available to the person the court may designate. During the trial or the taking of other matters on the record, the recordings shall be considered the property of the state, even though in the custody of the reporter, judge, or clerk.

Cite as (Casemaker) C.R.C.P. 380

History. Entire rule amended June 9, 1988, effective January 1, 1989; amended February 14, 2019, effective February 14, 2019.

Editor's Note:

The June 9, 1988, amendment to this rule resulted in the renumbering of the paragraphs contained therein.

Rule 381. Applicability in General.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 381. Applicability in General

Special Statutory Proceedings. These rules do not govern procedure and practice in any special statutory proceeding insofar as they are inconsistent or in conflict with the procedure and practice provided by the applicable statute. Where the applicable statute provides for procedure under a former Code of Civil Procedure, such procedure shall be in accordance with these rules.

Cite as (Casemaker) C.R.C.P. 381

Rule 382. Jurisdiction Unaffected.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 382. Jurisdiction Unaffected

These rules shall not be construed to extend or limit the jurisdiction of any court.

Cite as (Casemaker) C.R.C.P. 382

Rule 383. Rules by Trial Courts.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 383. Rules by Trial Courts

All county court local rules, including local county court procedures and standing orders having the effect of county court local rules, enacted before February 1, 1992, are hereby repealed. Each county court, by a majority of its judges, may from time to time propose county court local rules and amendments of the county court local rules. A proposed local rule or amendment shall not be inconsistent with the Colorado Rules of County Court Civil Procedure or with any directive of the Supreme Court regarding the conduct of formal judicial proceedings in county courts. A proposed local rule or amendment shall not be effective until it is approved by the Supreme Court. To obtain approval, three copies of any proposed local rule or amendment shall be submitted to the Supreme Court through the office of the State Court Administrator. Reasonable uniformity of county court local rules is required. Numbering and format of any county court local rule shall be as prescribed by the Supreme Court. Numbering and format requirements are on file at the office of the State Court Administrator. The Supreme Court's approval of a county court local rule or local procedure shall not preclude review of that rule or procedure under the law or circumstances of a particular case. Nothing in this rule is intended to affect the authority of a county court to adopt internal administrative procedures not relating to the conduct of formal judicial proceedings as prescribed by the Colorado Rules of County Court Civil Procedure.

Cite as (Casemaker) C.R.C.P. 383

History. Entire rule amended January 9, 1992, effective February 1, 1992.

Case Notes:

ANNOTATION

Law reviews. For article, "Limited Discovery in Colorado's County Courts", see 18 Colo. Law. 1959 (1989).

Rule 384. Forms [Repealed].

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 384. Forms [Repealed]

Cite as (Casemaker) C.R.C.P. 384

History. Repealed July 22, 1993, effective January 1, 1994.

Rule 385. Title [Repealed].

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 385. Title [Repealed]

Cite as (Casemaker) C.R.C.P. 385

History. Repealed December 5, 1996, effective January 1, 1997.

Rule 386 to 396. .

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 386 to 396.

(There are no present Colorado Rules 386 to 396.)

Cite as (Casemaker) C.R.C.P. 386 to 396

Rule 397. Change of Judge.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 397. Change of Judge

A judge shall be disqualified in an action in which the judge is interested or prejudiced, or has been of counsel for any party, or is or has been a material witness, or is so related or connected with any party or attorney as to render it improper to sit on the trial or other proceeding therein. The disqualification may be made on the judge's own initiative, or any party may move for such disqualification and any motion by a party for disqualification shall be supported by affidavit. Upon the filing by a party of such a motion, all other proceedings in the case shall be suspended until a ruling is made thereon. Upon disqualification, the judge shall notify forthwith the presiding judge of the court, who shall assign another judge of the court to hear the action. If no other judge of the court is available, the judge shall notify forthwith the chief judge of the district, who shall assign another judge in the district to hear the action. If no other judge in the district is available or qualified, the chief judge shall notify forthwith the state court administrator, who shall obtain from the Chief Justice the assignment of a replacement judge.

Cite as (Casemaker) C.R.C.P. 397

History. Entire rule amended July 22, 1993, effective January 1, 1994.

Case Notes:

ANNOTATION

Law reviews. For article, "Disqualification of Judges", see 13 Colo. Law. 54 (1984).

Rule 398. Place of Trial.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 398. Place of Trial

(a) **Venue of Real Property.** All actions affecting real property shall be tried in the county in which the subject of the action, or a substantial part thereof, is situated.

(b) **Venue for Recovery of Penalty, etc.** Actions upon the following claims shall be tried in the county where the claim, or some part thereof, arose:

(1) For the recovery of a penalty or forfeiture imposed by statute, except that when it is imposed for an offense committed on a lake, river, or other stream of water, situated in two or more counties, the action may be brought in any county bordering on such lake, river or stream and opposite the place where the offense was committed.

(2) Against a public officer or person specially appointed to execute his duties, for an act done by him in virtue of his office, or against a person who by his command, or in his aid, does anything touching the duties of such officer, or for a failure to perform any act or duty which he is by law required to perform.

(c) **Venue for Tort and Contract and Other Actions.**

(1) Except as provided in sections (a) and (b) and subsections (c)(2) through (5) of this Rule, an action shall be tried in the county in which the defendants, or any of them, may reside at the commencement of the action, or in the county where the plaintiff resides when service is made on the defendant in such county; or if the defendant is a nonresident of this state, the same may be tried in any county in which the defendant may be found in this state, or in the county designated in the complaint, and if any defendant is about to depart from the state, such action may be tried in any county where plaintiff resides, or where defendant may be found and service had.

(2) Except as provided in subsection (3) of this section an action on book account or for goods sold and delivered may also be tried in the county where the plaintiff resides or where the goods were sold; an action upon contract may also be tried in the county where the same was to be performed.

(3)

(A) For the purposes of this Rule, a consumer contract is any sale, lease or loan in which (i) the buyer, lessee or debtor is a person other than an organization; (ii) the goods are purchased or leased, the services are obtained, or the debt is incurred, primarily for a personal, family, or household purpose; and (iii) the initial amount due under the contract, the total amount initially payable under the lease, or the initial principal does not exceed twenty-five thousand dollars.

(B) An action on a consumer contract shall be tried (i) in the county in which the contract was signed or entered into by any defendant; or (ii) in the county in which any defendant resided at the time the contract was entered into; or (iii) in the county in which any defendant resides at the time the action is commenced. If the defendant is a nonresident of this state, the same may be tried in any county in which the defendant may be found in this state, or in the county designated in the complaint, and if any defendant is about to depart from the state, such action may be tried in any county where plaintiff resides, or where defendant may be found and service had.

(C) In any action on a consumer contract, if the plaintiff fails to state facts in the complaint or by affidavit showing that the action has been commenced in the proper county as described in this Rule, or if it appears from the stated facts the venue is improper, the court may, upon its own motion or upon motion of any party, dismiss any such action without prejudice; however, if appropriate facts appear in the record, the court shall transfer the action to an appropriate county. Any provision or authorization in any consumer contract purporting to waive any rights under subsection (3) of section (c) of this Rule is void.

(D) Any debt collector covered by the provisions of the Federal "Fair Debt Collection Practices Act" shall comply with the provisions of said Act set forth in 15 U.S.C. 1692(i) concerning legal actions by debt collectors, notwithstanding any provision of this Rule.

(4) An action upon a contract for services may also be tried in the county in which the services were to be performed.

(5) An action for tort may also be tried in the county where the tort was committed.

(d) **Motion to Change Venue.**

(1) Except for actions under subsection (c) (3) of this Rule, a motion for change of venue under the provisions of (a) through (c) hereof or on the grounds that the county designated in the complaint is not the proper county shall be made on the date fixed in the summons for appearance or answer. The motion shall be heard at

that time and if overruled or granted the answer shall be filed immediately unless the court shall fix a different time. Unless filed as prescribed herein the right to have venue changed on said grounds is waived.

(2) A motion for change of venue on the grounds (A) that the convenience of witnesses and the ends of justice would be promoted by the change or (B) that a party fears that he will not receive a fair trial in the county in which the action is pending because the adverse party has an undue influence over the minds of the inhabitants thereof or that they are prejudiced against him so that he cannot expect a fair trial, or (C) that the venue of the action is improper under subsection (c) (3) of this Rule, may be made either on the date fixed in the summons for appearance or at any time before ten days prior to the date fixed for trial. The court may by order permit the filing of affidavits and a written counter motion and affidavits. Unless such motions are filed as prescribed herein the right to have venue changed on said grounds is waived.

(3) Except as otherwise provided in an order allowing a motion to change venue, earlier ex parte and other orders affecting an action, or the parties thereto, shall remain in effect, subject to change or modification by order of the court to which the action is removed.

(e) **Transfer Where Concurrent Jurisdiction.** All actions or proceedings in which district and county courts have concurrent jurisdiction, may, by stipulation of the parties and order of court, be transferred by either court to such other court of the same county. Upon transfer, the court to which such cause is removed shall have and exercise the same jurisdiction as if originally commenced therein.

(f) **Place Changed if Parties Agree.** When all parties assent, or when all parties who have entered their appearance assent and the remaining nonappearing parties are in default, the place of trial of an action in a county court may be changed to any other county court in the county.

(g) **Parties Must Agree on Change.** Where there are two or more plaintiffs or defendants, the place of trial shall not be changed unless the motion is made by or with the consent of all of the plaintiffs or defendants, as the case may be.

(h) **Only One Change. No Waiver.** In case the place of trail is changed the party securing the same shall not be permitted to apply for another change upon the same ground. A party does not waive his right to change of judge or place of trial if his objection thereto is made in apt time.

Case Notes:

ANNOTATION

When improper venue does not impair court's jurisdiction. In a civil case where the defendant does not interpose a timely motion to change the place of trial, improper venue does not impair a court's jurisdiction. Under such circumstances, a county court does not act properly in changing venue at its own instance, contrary to the agreement of the parties and over the express objection of one of them. Halliburton v. County Court ex rel. City & County of Denver, 672 P.2d 1006 (Colo. 1983).

Rule 399 and 400. .

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 399 and 400.

(There are no present Colorado Rules 399 and 400.)

Cite as (Casemaker) C.R.C.P. 399 and 400

Rule 401. Arrest and Exemplary Damages.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 401. Arrest and Exemplary Damages

Cite as (Casemaker) C.R.C.P. 401

History. Repealed May 29, 1986, effective January 1, 1987.

Rule 402. Attachments.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 402. Attachments

(a) **Before Judgment.** Any party, at the time of filing a claim, in an action on contract, express or implied, or in an action to recover damages for any tort committed against the person or property of a resident of this state, or at any time afterward before judgment, may have nonexempt property of the party against whom the claim is asserted (hereinafter defendant), attached by an ex parte order of court in the manner and on the grounds prescribed in this Rule, unless the defendant shall give good and sufficient security as required by section (f) of this Rule. No ex parte attachments before judgment shall be permitted other than those specified in this Rule.

(b) **Affidavit.** No writ of attachment shall issue unless the party asserting the claim (hereinafter plaintiff), the plaintiff's agent or attorney, or some credible person for the plaintiff, shall file in the court in which the action is brought an affidavit setting forth that the defendant is indebted to the plaintiff, or that the defendant is liable in damages to the plaintiff for a tort committed against the person or property of a resident of this state, stating the nature and amount of such indebtedness or claim for damages and setting forth facts showing one or more of the causes of attachment of section (c) of this Rule.

(c) **Causes.** No writ of attachment shall issue unless it be shown by affidavit or testimony in specific factual detail, within the personal knowledge of an affiant or witness, that there is a reasonable probability that any of the following causes exist:

(1) The defendant is a foreign corporation without a certificate of authority to do business in this state.

(2) The defendant has for more than four months been absent from the state, or the whereabouts of the defendant are unknown, or the defendant is a nonresident of this state, and all reasonable efforts to obtain in personam jurisdiction over the

defendant have failed. Plaintiff must show what efforts have been made to obtain jurisdiction over the defendant.

(3) The defendant hides, or defies an officer, so that process of law cannot be served upon the defendant.

(4) The defendant is presently about to remove any property or effects, or a material part thereof, from this state with intent to defraud, delay, or hinder one or more of the defendant's creditors, or to render execution unavailing if judgment is obtained.

(5) The defendant has fraudulently conveyed, transferred, or assigned any property or effects, or a material part thereof, so as to hinder or delay one or more of the defendant's creditors, or to render execution unavailing if judgment is obtained.

(6) The defendant has fraudulently concealed, removed, or disposed of any property or effects, or a material part thereof, so as to hinder or delay one or more of the defendant's creditors, or to render execution unavailing if judgment is obtained.

(7) The defendant is presently about to fraudulently convey, transfer, or assign any property or effects, or a material part thereof, so as to hinder or delay one or more of the defendant's creditors, or to render execution unavailing if judgment is obtained.

(8) The defendant is presently about to fraudulently conceal, remove, or dispose of any property or effects, or a material part thereof, so as to hinder or delay one or more of the defendant's creditors, or to render execution unavailing if judgment is obtained.

(9) The defendant has departed or is presently about to depart from this state, with the intention of having any property or effects, or a material part thereof, removed from the state.

(d) **Plaintiff to Give Bond.** Before the issuance of a writ of attachment the plaintiff shall furnish a bond or written undertaking, sufficient to the court, in an amount set by the court in its discretion, not exceeding double the amount claimed, to the effect that if the defendant recover judgment, or if the court shall finally decide that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages defendant may sustain by reason of the wrongful suing out of the attachment. The defendant may require the sureties to satisfy the court that each is worth the amount for which the person has become surety over and above the person's just debts and liabilities, in property located in this state and not by law exempt from execution.

(e) **Court Issues Writ of Attachment.** After the affidavit and bond are filed as aforesaid and testimony had as the court may require, the court may issue a writ of attachment, directed

to the sheriff of a specified county, commanding the sheriff to attach the lands, tenements, goods, chattels, rights, credits, moneys, and effects of said defendant, of every kind, or so much thereof as will be sufficient to satisfy the claim sworn to, regardless of whose hands or possession in which the same may be found.

(f) **Contents of Writ and Notice.** The writ shall direct the sheriff to serve a copy of the writ on the defendant if found in the county, and to attach and keep safely all the property of the defendant within the county, not exempt from execution, or so much thereof as may be sufficient to satisfy the plaintiff's claim, the amount of which shall be stated in conformity with the affidavit. The writ shall also inform the defendant of the right to traverse and to have a hearing to contest the attachment. If the defendant's property is or may be located in more than one county, additional or alias writs may be issued contemporaneously. If the defendant deposits the amount of money claimed by the plaintiff or gives and furnishes security by an undertaking, approved by the sheriff, of a corporate surety company or of at least two sureties in an amount sufficient to satisfy such claim, the sheriff shall take such money or undertaking in lieu of the property. Alias writs may issue at any time to the sheriffs of different counties.

(g) **Service; How Made.** The writ of attachment shall be served in like manner and under the same conditions as are provided in these rules for the service of process. Service shall be deemed completed upon the expiration of the same period as is provided for service of process.

(h) **Execution of Writ.** The sheriff to whom the writ is directed and delivered shall execute the same without delay as follows:

(1) Real property standing upon the records of the county in the name of the defendant shall be attached by filing a copy of the writ, together with a description of the property attached, with the recorder of the county.

(2) Real property, or any interest therein belonging to the defendant, and held by any person, or standing upon the records of the county in the name of any other person but belonging to the defendant, shall be attached by leaving with such person or the person's agent, if either be found in the county, a copy of the writ and a notice that such real property (giving a description thereof), and any interest therein belonging to the defendant, are attached pursuant to such writ, and filing a copy of such writ and notice with the recorder of the county.

(3) Personal property shall be attached by taking it into custody.

(i) **Return of Writ.** The sheriff shall return the writ of attachment within 21 days after its receipt, with a certificate of his proceedings endorsed thereon, or attached thereto, making a full inventory of the property attached as a part of his return upon the writ.

(j) **Execution of Writ on Sunday or Legal Holiday.** If an affidavit or testimony is received

stating that it is necessary to execute the writ of attachment on Sunday or on a legal holiday, to secure property sufficient to satisfy the judgment to be obtained, and if the court is so satisfied, the court shall endorse on the writ an order to the officer directing the writ to be executed on such day.

(k) **No Final Judgment Until 35 Days After Levy.**

(1) **Creditors.** No final judgment shall be rendered in a cause wherein an attachment writ has been issued and a levy made thereunder, until the expiration of 35 days after such levy has been made; and any creditor of the defendant making and filing within said 35-day period an affidavit and undertaking, as hereinbefore required of the plaintiff, together with the complaint setting forth the claim against the defendant, shall be made a party plaintiff and have like remedies against the defendant to secure the claim, as the law gives to the original plaintiff.

(2) **Judgment Creditors.** Any other creditor whose claim has been reduced to judgment in this state may upon motion filed within said 35 days be made a party and have like remedies against the attached property. Such judgment creditor shall not be required to make or file an affidavit, undertaking or complaint, or have summons issue, provided, that any such judgment creditor may be required to prove to the satisfaction of the court that the judgment is bona fide and not in fraud of the rights of other creditors.

(l) **Dismissal by One Creditor Does Not Affect Others.** After any additional creditor has been made a party to the action, as hereinbefore provided, a dismissal by the first or any subsequent attaching creditor of the cause of action, or proceedings in attachments, shall not operate as a dismissal of the attachment proceedings as to any other attaching creditor; but the remaining creditors may proceed to final judgment therein the same as though no such dismissal has been made.

(m) **Final Judgment Prorated; When Creditors Preferred.** The final judgment in said action shall be a several judgment, wherein each creditor named as plaintiff shall have and recover of the defendant the amount of the claim or demand, as found by the court to be due, together with costs incurred; and the money realized from the attachment proceedings, after paying all costs taxed in the attachment action, shall be paid to the participating creditors in proportion to the amounts of their several judgments; and any surplus moneys, if any, shall be paid to the defendant by order of the court, upon proof thereof. Provided, when the property is attached while the defendant is removing the same or after the same has been removed from the county, and the same is overtaken and returned, or while same is secreted by the defendant, or put out of the defendant's hands, for the purpose of defrauding the defendant's creditors, the court may allow the creditor or creditors through whose diligence the same shall have been secured a priority over other attachments or judgment creditors.

(n) **When Suit Transferred to District Court.**

(1) **Indivisible Property Over $15,000.00.** Whenever in any attachment proceedings in the county court it is determined by the court that the ownership of indivisible property of the value of more than $15,000.00 is in issue, the county court shall suspend all proceedings in the entire action and certify the same, including a transcript of any judgment which may have been rendered, and transmit all papers therein to the district court of the same county, and the entire actions shall thereupon proceed as if originally instituted in the said district court, and any judgment so certified shall be entered in the judgment docket of the district court and when so entered shall have the same force and effect as if rendered originally by such district court; provided, however, that the judgment of the district court may be reviewed by the Supreme Court on writ of certiorari.

(2) **Intervenor or Attachment Creditor.** Whenever the original suit in which a writ of attachment shall be issued and served shall be begun in the county court of any county in this state, and the claim of an attaching creditor therein, as hereinbefore provided, shall exceed the sum of $15,000.00 exclusive of costs, it shall be the duty of such court to forthwith certify such case and transmit all papers issued or filed therein the district court of such county, and thereafter the case shall proceed in the same manner as if it had been originally begun in such district court.

(o) **Traverse of Affidavit.**

(1) The defendant may, at any time before trial, by affidavit, traverse and put in issue the matters alleged in the affidavit, testimony, or other evidence upon which the attachment is based and if the plaintiff shall establish the reasonable probability that any one of the causes alleged in the affidavit exists, said attachment shall be sustained; otherwise the same shall be dissolved. A hearing on the defendant's traverse shall be held within 7 days from the filing of the traverse and upon no less than two business days' notice to the plaintiff. If the debt for which the action is brought is not due and for that reason the attachment is not sustained, the action shall be dismissed; but if the debt is due, but the attachment nevertheless is not sustained, the action may proceed to judgment after the attachment is dissolved, as in other actions where no attachment is issued.

(2) A plaintiff who fails to prevail at the hearing provided by this section is liable to the defendant for any damages sustained as a result of the issuance of process, costs, and reasonable attorney's fees. A claim for damages under this subsection may be brought as part of the existing action, and the defendant shall be permitted to amend the answer and any counterclaim for this purpose.

(p) **Amendment of Affidavit.** If at the hearing of issues formed by the traverse it shall appear that the evidence introduced does not prove the cause or causes alleged in the affidavits,

but the evidence does tend to prove another cause of attachment in existence at the time of the issuance of the writ, then on motion the affidavits may be amended to conform to proof the same as pleadings are allowed to be amended in cases of variance.

(q) **Intervention; Damages.** Any third person claiming any of the property attached, or any lien thereon or interest therein, may intervene under the provisions of Rule 324, and in case of a judgment in that person's favor may also recover such damages as have been suffered by reason of the attachment of the property.

(r) **Perishable Property May Be Sold.** Where property taken by writ of execution or attachment, or seized under order of court, is in danger of serious and immediate decay or waste, or likely to depreciate rapidly in value pending the determination of the issues, or, where the keeping of it will be attended with great expense, any party to the action may apply to the court, upon due notice, for a sale thereof, and, thereupon the court may, in its discretion, order the property sold in the manner provided for in said order and the proceeds of said sale shall, thereupon, be deposited with the clerk to abide the further order of the court.

(s) **Application of Proceeds; Satisfaction of Judgment.** If judgment is recovered by the plaintiff or any intervenor, on order of court, all funds previously deposited with the clerk, or in the hands of the sheriff, shall be first applied thereto. If any balance remain due, execution shall issue and be delivered to the sheriff who shall sell so much of the attached property as may be sufficient to satisfy the judgment. Sales shall be conducted as in cases of sales on execution. If there is a personal judgment and after such sale the same is not satisfied in full, the sheriff shall thereupon collect the balance as upon an execution in other cases.

(t) **Balance Due; Surplus.** Whenever the judgment shall have been paid, the sheriff, upon demand, shall deliver over to the defendant the attached property remaining in the sheriff's hands, and any proceeds of the property attached unapplied on the judgment.

(u) **Procedure When Judgment Is For Defendant.** If the defendant recovers judgment against the plaintiff, any undertaking received in the action, all the proceeds of sales, all money collected by the sheriff, and all the property attached remaining in the sheriff's hands shall be delivered to the defendant, the writ of attachment shall be discharged, and the property released therefrom.

(v) **Defendant May Release Property; Bond.** The defendant may at any time before judgment have released any money in the hands of the clerk or any property in the hands of the sheriff, by virtue of any writ of attachment, by executing the undertaking provided in section (w) of this Rule. All the proceeds of sales all money collected by the sheriff, and all the property attached remaining in the sheriff's hands shall thereupon be released from the attachment and delivered to the defendant upon the delivery and approval of the undertaking.

(w) **Conditions of Bond; Liability of Sheriff.** Before releasing the attached property to the defendant, the sheriff shall require and approve an undertaking executed by the defendant to the plaintiff either of a corporate surety company or with at least two sureties in such sum as may be fixed by the sheriff in not less than the value of the property, to the effect that in case the plaintiff recover judgment in the action, and the attachment is not dissolved, defendant will, on demand, redeliver such attached property so released to the proper officer, to be applied to the payment of the judgment, and that in default thereof the defendant and sureties will pay to the plaintiff the full value of the property so released. If a sheriff shall release any property held under any writ of attachment without taking a sufficient bond, the sheriff and the sheriff's sureties shall be liable to the plaintiff for the damages sustained thereby.

(x) **Application to Discharge Attachment.** The defendant may also, at any time before trial, move that the attachment be discharged, on the ground that the writ was improperly issued, for any reason appearing upon the face of the papers and proceedings in the action. If on such application it shall satisfactorily appear that the writ of attachment was improperly issued, it shall be discharged.

(y) **New Bond; When Ordered; Failure to Furnish.** If at any time where an attachment has been issued it shall appear to the court that the undertaking is insufficient, the court shall order another undertaking, and if the plaintiff fails to comply with such order within 21 days after the same shall be made, all or any writs of attachment issued therein shall be quashed. The additional undertaking shall be executed in the same manner as the original, and the sureties therein shall be jointly and severally liable with those in the original undertaking.

(z) **New Trial; Appeal and Writs of Certiorari.** Motions for new trial may be made in the same time and manner, and shall be allowed in attachment proceedings, as in other actions. Appeals from the county court to the district court and writs of certiorari may be taken and prosecuted from any final judgment or order in such proceedings as in other civil cases. Any order by which an attachment is released or sustained is a final judgment.

Cite as (Casemaker) C.R.C.P. 402

History. (n)(1) and (n)(2) amended and effective July 1, 1993; (a), (b), (c)(4) to (c)(9), (d), (e), (f), (h)(2), (i), (k), (l), (m), (o)(2), (q), (t), (v), and (w) amended July 22, 1993, effective January 1, 1994; (n)(1) and (n)(2) amended and adopted October 10, 2002, effective January 1, 2003; (i), (k), (o)(1), and (y) 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).

Rule 403. Garnishment.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 403. Garnishment

NOTE: County Court Rule 403 is identical to C.R.C.P. 103 except for cross references within the County Court Rule to other County Court Rules. Forms used with the County Court are identical to those used with C.R.C.P. 103, and because County Court Rule 403 cites to and incorporates C.R.C.P. Forms 26 through 34, they need not be duplicated in the County Court Forms Section.

This rule sets forth the exclusive process for garnishment. There shall be five (5) types of writs: (1) Writ of Continuing Garnishment, (2) Writ of Garnishment with Notice of Exemption and Pending Levy, (3) Writ of Garnishment for Support, (4) Writ of Garnishment -- Judgment Debtor Other Than Natural Person, and (5) Writ of Garnishment in Aid of Writ of Attachment.

SECTION 1. WRIT OF CONTINUING GARNISHMENT (ON EARNINGS OF A NATURAL PERSON)

(a) **Definitions.**

(1) "Continuing garnishment" means the exclusive procedure for withholding the earnings of a judgment debtor for successive pay periods for payment of a judgment debt other than a judgment for support as provided in subsection (c) of this rule.

(2) "Earnings" shall be defined in Section 13-54.5-101(2), C.R.S., as applicable.

(b) **Form of Writ of Continuing Garnishment and Related Forms.** A writ of continuing garnishment shall be in the form and content of Appendix to Chapters 1 to 17, Form 26, C.R.C.P. It shall also include at least four (4) "Calculation of Amount of Exempt Earnings" forms to be in the form and content of Appendix to Chapters 1 to 17, Form 27, C.R.C.P. Objection to the calculation of exempt earnings shall be in the form and content of Appendix to Chapters 1 to 17, Form 28, C.R.C.P.

(c) **When Writ of Continuing Garnishment Issues.** After entry of judgment when a writ of execution can issue, a writ of continuing garnishment against earnings shall be issued by the clerk of the court upon request. Under a writ of continuing garnishment, a judgment creditor may garnish earnings except to the extent such earnings are exempt under law. Issuance of a writ of execution shall not be required.

(d) **Service of Writ of Continuing Garnishment.** A judgment creditor shall serve two (2) copies of the writ of continuing garnishment, together with a blank copy of C.R.C.P. Form 28, "Objection to the Calculation of the Amount of Exempt Earnings" (Appendix to Chapters 1 to 17, Form 28, C.R.C.P.), upon the garnishee, one copy of which the garnishee shall deliver to the judgment debtor as provided in subsection (h)(1) of this rule. Service of the writ shall be in accordance with C.R.C.P. 304, and the person who serves the writ shall note the date and time of such service on the return service. In any civil action, a judgment creditor shall serve no more than one writ of continuing garnishment upon any one garnishee for the same judgment debtor during the Effective Garnishment Period. This restriction shall not preclude the issuance of a subsequent writ within the Effective Garnishment Period.

(e) **Jurisdiction.** Service of a writ of continuing garnishment upon the garnishee shall give the court jurisdiction over the garnishee and any earnings of the judgment debtor within the control of the garnishee.

(f) **Effective Garnishment Period.**

(1) A writ of continuing garnishment shall be a lien and continuing levy against the nonexempt earnings of the judgment debtor until such time as earnings are no longer due, the underlying judgment is vacated, modified or satisfied in full, the writ is dismissed, or for 91 days (13 weeks) following service of the writ, if the judgment was entered prior to August 8, 2001, and 182 days (26 weeks) following service of the writ if the judgment was entered on or after August 8, 2001, except when such writ is suspended pursuant to subsection (j) of this rule.

(2) When a writ of continuing garnishment is served upon a garnishee during the Effective Garnishment Period of a prior writ, it shall be effective for the Effective Garnishment Period following the Effective Garnishment Period of any prior writ.

(3) If a writ of garnishment for support pursuant to C.R.S. 14-14-105 is served during the effective period of a writ of continuing garnishment, the Effective Garnishment Period shall be tolled and all priorities preserved until the termination of the writ of garnishment for support.

(g) **Exemptions.** A garnishee shall not be required to deduct, set up or plead any exemption for or on behalf of a judgment debtor excepting as set forth in the writ.

(h) **Delivery of Copy to Judgment Debtor.**

(1) The garnishee shall deliver a copy of the writ of continuing garnishment, together with the calculation of the amount of exempt earnings and the blank copy of C.R.C.P. Form 28, "Objection to the Calculation of the Amount of exempt Earnings" (Appendix to Chapters 1 to 17, Form 28, C.R.C.P.), to the judgment debtor at the time the judgment debtor receives earnings for the first pay period

affected by such writ.

(2) For all subsequent pay periods affected by the writ, the garnishee shall deliver a copy of the calculation of the amount of exempt earnings to the judgment debtor at the time the judgment debtor receives earnings for that pay period.

(i) **Objection to Calculation of Amount of Exempt Earnings.** A judgment debtor may object to the calculation of exempt earnings. A judgment debtor's objection to calculation of exempt earnings shall be in accordance with Section 6 of this rule.

(j) **Suspension.** A writ of continuing garnishment may be suspended for a specified period of time by the judgment creditor upon agreement with the judgment debtor, which agreement shall be in writing and filed by the judgment creditor with the clerk of the court in which judgment was entered and a copy shall be delivered by the judgment creditor to the garnishee. No suspension shall extend the running of the Effective Garnishment Period nor affect priorities.

(k) **Answer and Tender of Payment by Garnishee.**

(1) The garnishee shall file the answer to the writ of continuing garnishment with the clerk of the court and send a copy to the judgment creditor no less than 7 nor more than 14 days following the time the judgment debtor receives earnings for the first pay period affected by such writ, or 42 days following the date such writ was served pursuant to section (1)(d) of this rule, whichever is less. However, if the judgment creditor is represented by an attorney, or is a collection agency licensed pursuant to section 12-14-101 , et seq., C.R.S., the garnishee may be directed to pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the attorney or the licensed collection agency.

(2) The garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the clerk of the court which issued such writ no less than 7 nor more than 14 days following the time the judgment debtor receives earnings affected by such writ. However, if the answer and subsequent calculations are only mailed to an attorney or licensed collection agency under subsection (k)(1), the payment shall accompany the answer.

(3) Any writ of continuing garnishment served upon the garnishee while any previous writ is still in effect shall be answered by the garnishee with a statement that the garnishee has been previously served with one or more writs of continuing garnishment and/or writs of garnishment for support and specify the date on which such previously served writs are expected to terminate.

(l) Disbursement of Garnished Earnings.

(1) If no objection is filed by the judgment debtor within 7 days, the garnishee shall

send the nonexempt earnings to the attorney, collection agency licensed pursuant to section 12-14-101 , et seq., C.R.S., or court designated on the writ of continuing garnishment (C.R.C.P. Form 26, page 1, paragraph e). The judgment creditor shall refund to the judgment debtor any disbursement in excess of the amount necessary to satisfy the judgment.

(2) If a written objection to the calculation of exempt earnings is filed with the clerk of the court, the garnishee shall send the garnished nonexempt earnings to the clerk of the court. The garnished nonexempt earnings shall be placed in the registry of the court pending further order of the court.

(m) Request for accounting of garnished funds by judgment debtor. Upon reasonable written request by a judgment debtor, the judgment creditor shall provide an accounting in writing of all funds received to the date of the request, including the balance due at the date of the request.

SECTION 2 WRIT OF GARNISHMENT (ON PERSONAL PROPERTY OTHER THAN EARNINGS OF A NATURAL PERSON) WITH NOTICE OF EXEMPTION AND PENDING LEVY

(a) **Definition.**
"Writ of garnishment with notice of exemption and pending levy" means the exclusive procedure through which the personal property of any kind (other than earnings of a natural person) in the possession or control of a garnishee including the credits, debts, choses in action, or money owed to the judgment debtor, whether they are due at the time of the service of the writ or are to become due thereafter, is required to be held for payment of a judgment debt. For the purposes of this rule such writ is designated "writ with notice."

(b) **Form of Writ With Notice and Claim of Exemption.** A writ with notice shall be in the form and content of Appendix to Chapters 1 to 17, Form 29, C.R.C.P. A judgment debtor's written claim of exemption shall be in the form and content of Appendix to Chapters 1 to 17, Form 30, C.R.C.P.

(c) **When Writ With Notice Issues.** After entry of a judgment when a writ of execution may issue, a writ with notice shall be issued by the clerk of the court upon request. Under such writ any indebtedness, intangible personal property, or tangible personal property capable of manual delivery, other than earnings of a natural person, owed to, or owned by, the judgment debtor, and in the possession or control of the garnishee at the time of service of such writ upon the garnishee, shall be subject to the process of garnishment. Issuance of a writ of execution shall not be required before the issuance of a writ with notice.

(d) **Service of Writ With Notice.**

(1) Service of a writ with notice shall be made in accordance with C.R.C.P. 304.

(2) Following service of the writ with notice on the garnishee, a copy of the writ with notice, together with a blank copy of C.R.C.P. Form 30 "Claim of Exemption to Writ of Garnishment with Notice" (Appendix to Chapters 1 to 17, Form 30, C.R.C.P.), shall be served upon each judgment debtor whose property is subject to garnishment by such writ as soon thereafter as practicable. Such service shall be in accordance with C.R.S. 13-54.5-107(2).

(e) **Jurisdiction.** Service of a writ with notice upon the garnishee shall give the court jurisdiction over the garnishee and any personal property of any description, owned by, or owed to the judgment debtor in the possession or control of the garnishee.

(f) **Claim of Exemption.** A judgment debtor's claim of exemption shall be in accordance with Section 6 of this rule.

(g) **Court Order on Garnishment Answer.**

(1) If an answer to a writ with notice shows the garnishee is indebted to the judgment debtor, the clerk shall enter judgment in favor of the judgment debtor and against the garnishee for the use of the judgment creditor in an amount not to exceed the total amount due and owing on the judgment and if the judgment creditor is pro se, request such indebtedness be paid to the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection agency licensed pursuant to 12-14-101 , et. seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency.

(2) No such judgment and request shall enter until the judgment creditor has made a proper showing that:(A) a copy of the writ with notice was properly served upon the judgment debtor, and (B) no written claim of exemption was filed within 14 days after such service or a written claim of exemption was properly filed and the same was disallowed.

(3) If an answer to a writ with notice shows the garnishee to possess or control intangible personal property or personal property capable of manual delivery owned by the judgment debtor, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor.

(4) No such order shall enter until the judgment creditor has made a proper showing that: (A) a copy of the writ with notice was properly served upon the judgment debtor, and (B) no written claim of exemption was filed within 14 days after such

service or a written claim of exemption was properly filed with the court and the same was disallowed.

(h) **Disbursement by Clerk of Court.** The clerk of the court shall disburse funds to the judgment creditor without further application or order and enter the disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

(i) **Automatic Release of Garnishee.** If a garnishee answers a writ with notice that the garnishee is indebted to the judgment debtor in an amount less than $50.00 and no traverse has been filed, the garnishee shall automatically be released from said writ if the garnishee shall not have been ordered to pay the indebtedness to the clerk of the court within six (6) months from the date of service of such writ.

SECTION 3 WRIT OF GARNISHMENT FOR SUPPORT

(a) **Definitions.**

(1) "Writ of garnishment for support" means the exclusive procedure for withholding the earnings of a judgment debtor for payment of a judgment debt for child support arrearages, maintenance when combined with child support, or child support debts, or maintenance.

(2) "Earnings" shall be as defined in Section 13-54.5-101(2), C.R.S., as applicable.

(b) **Form of Writ of Garnishment for Support.** A writ of garnishment for support shall be in the form and content of Appendix to Chapters 1 to 17, Form 31, C.R.C.P. and shall include at least four (4) "Calculation of Amount of Exempt Earnings" forms which shall be in the form and content of Appendix to Chapters 1 to 17, Form 27, C.R.C.P.

(c) **When Writ of Garnishment for Support Issues.** Upon compliance with C.R.S. 14-10-122(1)(c), a writ of garnishment for support shall be issued by the clerk of the court upon request. Under such writ a judgment creditor may garnish earnings except to the extent such are exempt under law. Issuance of a writ of execution shall not be required.

(d) **Service of Writ of Garnishment for Support.** Service of a writ of garnishment for support shall be in accordance with C.R.C.P. 304.

(e) **Jurisdiction.** Service of a writ of garnishment for support upon the garnishee shall give the court jurisdiction over the garnishee and any earnings of the judgment debtor within the control of the garnishee.

(f) **Effective Garnishment Period and Priority.**

(1) A writ of garnishment for support shall be continuing and shall require the garnishee to withhold, pursuant to law, the portion of earnings subject to

garnishment at each succeeding earnings disbursement interval until the judgment is satisfied or the garnishment released by the court or released in writing by the judgment creditor.

(2) A writ of garnishment for support shall have priority over any writ of continuing garnishment notwithstanding the fact such other writ may have been served upon the garnishee previously.

(g) **Answer and Tender of Payment by Garnishee.**

(1) The garnishee shall answer the writ of garnishment for support no less than 7 nor more than 14 days following the time the judgment debtor receives earnings for the first pay period affected by such writ. If the judgment debtor is not employed by the garnishee at the time the writ is served, the garnishee shall answer the writ within 14 days from the service thereof.

(2) The garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings, to the clerk of the court which issued such writ no less than 7 nor more than 14 days following the time the judgment debtor receives earnings during the Effective Garnishment Period to such writ.

(h) **Disbursement of Garnished Earnings.** The clerk of the court shall disburse nonexempt earnings to the judgment creditor without further application or order and enter such disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 4 WRIT OF GARNISHMENT -- JUDGMENT DEBTOR OTHER THAN NATURAL PERSON

(a) **Definition.** "Writ of garnishment -- judgment debtor other than natural person" means the exclusive procedure through which personal property of any kind of a judgment debtor other than a natural person in the possession or control of the garnishee including the credits, debts, choses in action, or money owed to the judgment debtor, whether they are due at the time of the service of the writ or are to become due thereafter is required to be held by the garnishee for payment of a judgment debt. For purposes of this rule, such writ is designated "writ of garnishment -- other than natural person."

(b) **Form of Writ of Garnishment -- Other Than Natural Person.** A writ of garnishment under this Section shall be in the form and content of Appendix to Chapters 1 to 17, Form 32, C.R.C.P.

(c) **When Writ of Garnishment -- Other Than Natural Person Issues.** When the judgment debtor is other than a natural person, after entry of a judgment, and when a writ of execution may issue, a writ of garnishment shall be issued by the clerk of the court upon request. Under such writ of garnishment, the judgment creditor may garnish personal

property of any description owned by, or owed to, such judgment debtor and in the possession or control of the garnishee. Issuance of a writ of execution shall not be required.

(d) **Service of Writ of Garnishment -- Other Than Natural Person.** Service of the writ of garnishment -- other than natural person shall be made in accordance with C.R.C.P. 304. No service of the writ or other notice of levy need be made on the judgment debtor.

(e) **Jurisdiction.** Service of the writ of garnishment -- other than natural person shall give the court jurisdiction over the garnishee and personal property of any description, owned by, or owed to, a judgment debtor who is other than a natural person, in the possession or control of the garnishee.

(f) **Court Order on Garnishment Answer.** When the judgment debtor is other that a natural person:

(1) If the answer to a writ of garnishment shows the garnishee is indebted to such judgment debtor, the clerk shall enter judgment in favor of such judgment debtor and against the garnishee for the use of the judgment creditor for the amount of the indebtedness shown in such answer and if the judgment creditor is pro se, request such indebtedness paid into the registry of the court. However, if the judgment creditor is represented by an attorney or is a collection agency licensed pursuant to 12-14-101 , et. seq., C.R.S., the garnishee shall pay the funds directly to the attorney or licensed collection agency. In no event shall any judgment against the garnishee be more than the total amount due and owing on the judgment.

(2) If the answer to a writ of garnishment shows the garnishee to possess or control personal property of any description, owned by, or owed to, such judgment debtor, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor.

(g) **Disbursement by Clerk of Court.** The clerk of the court shall disburse any funds in the registry of court to the judgment creditor without further application or order and enter such disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 5 WRIT OF GARNISHMENT IN AID OF WRIT OF ATTACHMENT

(a) **Definition.** "Writ of garnishment in aid of writ of attachment" means the exclusive procedure through which the personal property of any kind of a defendant in an attachment action (other than earnings of a natural person) in the possession or control of

the garnishee including the credits, debts, choses in action, or money owed to the judgment debtor, whether they are due at the time of the service of the writ or are to become due thereafter, is required to be held by a garnishee. For the purposes of this rule such writ is designated "writ of garnishment in aid of attachment."

(b) **Form of Writ of Garnishment in Aid of Attachment and Form of Notice of Levy.** A writ of garnishment in aid of attachment shall be in the form and content of Appendix to Chapters 1 to 17, Form 33, C.R.C.P. A Notice of Levy shall be in the form and content of Appendix to Chapters 1 to 17, Form 34, C.R.C.P.

(c) **When Writ of Garnishment in Aid of Attachment Issues.** At any time after the issuance of a writ of attachment in accordance with C.R.C.P. 402, a writ of garnishment shall be issued by the clerk of the court upon request. Under such writ of garnishment the plaintiff in attachment may garnish personal property of any description, except earnings of a natural person, owed to, or owned by, such defendant in attachment and in the possession or control of the garnishee.

(d) **Service of Writ of Garnishment in Aid of Attachment.** Service of the writ of garnishment in aid of attachment shall be made in accordance with C.R.C.P. 304. If the defendant in attachment is a natural person, service of a notice of levy shall be made as required by C.R.S. 13-55-102 . If the defendant in attachment is other than a natural person, a notice of levy need not be served on the defendant in attachment.

(e) **Jurisdiction.** Service of the writ of garnishment in aid of attachment shall give the court jurisdiction over the garnishee and personal property of any description (except earnings of a natural person), owned by, or owed to, a defendant in attachment in the possession or control of the garnishee.

(f) **Court Order on Garnishment Answer.**

(1) When the defendant in attachment is an entity other than a natural person:

(A) If the answer to a writ of garnishment in aid of attachment shows the garnishee is indebted to such defendant in attachment, the clerk shall enter judgment in favor of such defendant in attachment and against the garnishee for the use of the plaintiff in attachment for the amount of the indebtedness shown in such answer and order such amount paid into the registry of the court. In no event shall any judgment against the garnishee be more than the total amount due and owing nor shall such judgment enter for the benefit of a plaintiff in attachment until a judgment has been entered by the court against such defendant in attachment.

(B) If the answer to a writ of garnishment in aid of attachment shows the garnishee to possess or control personal property of any description, owned by, or owed to, such defendant in attachment, at any time after judgment

has entered against such defendant in attachment, the court shall order the garnishee to deliver such property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt, but any surplus of property or proceeds shall be delivered to the judgment debtor/defendant in attachment.

(2) When the defendant in attachment is a natural person:

(A) If the answer to a writ of garnishment in aid of attachment shows the garnishee is indebted to such defendant in attachment, after judgment has entered against such defendant in attachment/judgment debtor upon a showing that such defendant in attachment has been served with a notice of levy as required by C.R.S. 13-55-102 , the court shall enter judgment in favor of the defendant in attachment/judgment debtor and against the garnishee for the use of the plaintiff in attachment/judgment creditor for the amount of the indebtedness shown in such answer and order such amount paid into the registry of the court. In no event shall any judgment against the garnishee be more than the amount of the judgment against the defendant in attachment/judgment debtor.

(B) If the answer to a writ of garnishment in aid of attachment shows the garnishee to possess or control personal property owned by, or owed to, such defendant in attachment, after judgment has entered against such defendant in attachment/judgment debtor and upon a showing that such defendant in attachment has been served with a notice of levy as required by C.R.S. 13-55-102 , the court shall order the garnishee to deliver the property to the sheriff to be sold as upon execution and the court may enter any order necessary to protect the interests of the parties. Any proceeds received by the sheriff upon such sale shall be paid to the registry of the court to be applied to the judgment debt but any surplus of property or proceeds shall be delivered to the defendant in attachment/judgment debtor.

(g) **Disbursement by Clerk of Court.** The clerk of the court shall disburse any funds in the registry of the court to the judgment creditor without further application or order and enter such disbursement in the court records. The judgment creditor shall refund to the clerk of the court any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 6 JUDGMENT DEBTOR'S OBJECTION -- WRITTEN CLAIM OF EXEMPTION -- HEARING

(a) **Judgment Debtor's Objection to Calculation of Exempt Earnings Under Writ of Continuing Garnishment.**

(1) If a judgment debtor objects to the initial or a subsequent calculation of the amount of exempt earnings, the judgment debtor shall have 7 days from the receipt of the copy of the writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods, within which to resolve the issue of such miscalculation by agreement with the garnishee.

(2) If the judgment debtor's objection is not resolved with the garnishee within 7 days upon good faith effort, the judgment debtor may file a written objection setting forth, with reasonable detail, the grounds for such objection. Such objection must be filed within 14 days from receipt of the copy of writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods.

(3) The written objection shall be filed with the clerk of the court by the judgment debtor in the form and content of Appendix to Chapters 1 to 17, Form 28, C.R.C.P.

(4) The judgment debtor shall, by certified mail, return receipt requested, immediately deliver a copy of such objection to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor. If the garnishee has been directed to transmit the nonexempt earnings to an attorney or a collection agency licensed pursuant to section 12-14-101 , et seq, C.R.S., then upon receipt of the objection, the garnishee shall transmit the nonexempt earnings to the clerk of the court.

(5) Upon the filing of a written objection, all proceedings with relation to the earnings of the judgment debtor in possession and control of the garnishee, the judgment creditor, the attorney for the judgment creditor, or in the registry of the court shall be stayed until the written objection is determined by the court.

(b) **Judgment Debtor's Claim of Exemption Under a Writ With Notice.**

(1) When a garnishee, pursuant to a writ with notice, holds any personal property of the judgment debtor, other than earnings, which the judgment debtor claims to be exempt, the judgment debtor, within 14 days after being served a copy of such writ as required by Section 2(d)(2) of this rule, shall make and file a written claim of exemption with the clerk of the court in which the judgment was entered.

(2) The claim of exemption to the writ of garnishment with notice shall be in the form and content of Appendix to Chapters 1 to 17, Form 30, C.R.C.P.

(3) The judgment debtor shall, by certified mail, return receipt requested, deliver a copy of the claim of exemption to the garnishee and the judgment creditor's attorney of record, or if none, to the judgment creditor.

(4) Upon the filing of a claim of exemption to a writ with notice, all proceedings with relation to property in the possession or control of the garnishee shall be stayed until such claim is determined by the court.

(c) **Hearing on Objection or Claim of Exemption.**

(1) Upon the filing of an objection pursuant to Section 6(a) of this rule or the filing of a claim of exemption pursuant to Section 6(b) of this rule, the court in which the judgment was entered shall set a time for hearing of such objection or claim of exemption which hearing shall not be more than 14 days after the filing of such objection or claim of exemption.

(2) When an objection or claim of exemption is filed, the clerk of the court shall immediately inform the judgment creditor, the judgment debtor and the garnishee, or their attorneys of record, by telephone, by mail, or in person, of the date and time of such hearing.

(3) The clerk of the court shall document in the court record that notice of the hearing has been given in the manner required by this rule. Said documentation in the court record shall constitute a sufficient return and prima facie evidence of such notice.

(4) The court in which judgment was entered shall conduct a hearing at which all interested parties may testify, and shall determine the validity of the objection or claim of exemption filed by the judgment debtor and shall enter a judgment in favor of the judgment debtor to the extent of the validity of the objection or claim of exemption, which judgment shall be a final judgment for the purpose of appellate review.

(5) If the court shall find the amount of exempt earnings to have been miscalculated or if said property is found to be exempt, the court shall order the clerk of the court to remit the amount of over-garnished earnings, or the garnishee to remit such exempt property to the clerk of the court for the use and benefit of the judgment debtor within three (3) business days.

(d) **Objection or Claim of Exemption Within Six (6) Months.**

(1) Notwithstanding the provisions of Section 6(a)(2) and Section 6(b)(1) of this rule, a judgment debtor failing to make and file a written objection or claim of exemption within the time therein provided, may, at any time within six (6) months from receipt of the copy of the writ with notice or a copy of the writ of continuing garnishment or the calculation of the amount of exempt earnings, move the court in which the judgment was entered to hear an objection or claim of exemption as to any earnings of property levied in garnishment which the judgment debtor claims to have been miscalculated or which the judgment debtor claims to be exempt.

(2) A hearing pursuant to this subsection shall be held only upon a verified showing, under oath, of good cause which shall include: mistake, accident, surprise, irregularity in proceedings, newly discovered evidence, events not in the control of the judgment debtor, or such other grounds as the court may allow, but in no event shall a hearing be held pursuant to this subsection on grounds available to the judgment debtor as the basis of an objection or claim of exemption within the time periods provided in Section 6(a)(2) and Section 6(b)(1).

(3) At such hearing, if the judgment giving rise to such claim has been satisfied against property or earnings of the judgment debtor, the court shall hear and summarily try and determine whether the amount of the judgment debtor's earnings paid to the judgment creditor was correctly calculated and whether the judgment debtor's property sold as upon execution was exempt. If the court finds earnings to have been miscalculated of if property is found to be exempt, the court shall enter judgment in favor of the judgment debtor for the amount of the over-garnished earnings or such exempt property or the value thereof which judgment shall be satisfied by payment to the clerk of the court or the return of exempt property to the judgment debtor within three (3) business days.

(e) **Reinstatement of Judgment Debt.** If at any time the court orders a return of over-garnished earnings or exempt property or the value of such exempt property pursuant to Sections 6(c)(5) and 6(d)(3) of this rule, the court shall thereupon reinstate the judgment to the extent of the amount of such order.

SECTION 7 FAILURE OF GARNISHEE TO ANSWER (ALL FORMS OF GARNISHMENT)

(a) **Default Entered by Clerk of Court.**

(1) If a garnishee, having been served with any form of writ provided for by this rule, fails to answer or pay any nonexempt earnings as directed within the time required, the clerk of the court shall enter a default against such garnishee upon request.

(2) No default shall be entered in an attachment action against the garnishee until the expiration of 35 days after service of a writ of garnishment upon the garnishee.

(b) **Procedure After Default of Garnishee Entered.**

(1) After a default is entered, the judgment creditor, plaintiff in attachment or any intervenor in attachment, may proceed before the court to prove the liability of the garnishee to the judgment debtor or defendant in attachment.

(2) If a garnishee is under subpoena to appear before the court for a hearing to prove such liability and such subpoena shall have been issued and served in accordance with C.R.C.P. 345 and shall fail to appear, the court shall thereupon enter such sanctions as are just, including, but not limited to, contempt of court, issuance of a

bench warrant, reasonable attorney fees and the cost and expense of the judgment creditor, plaintiff in attachment or intervenor in attachment.

(3) Upon hearing, if the court finds the garnishee liable to the judgment debtor or defendant in attachment or in the possession or control of personal property of the judgment debtor or defendant in attachment at the time of service of the writ:

(A) The court shall enter judgment in favor of the judgment debtor or defendant in attachment against the garnishee for the use and benefit of the judgment creditor, plaintiff in attachment or intervenor in attachment, if the garnishee was liable to the judgment debtor or defendant in attachment;

(B) The court shall order the garnishee to deliver the personal property to the sheriff to be sold as upon execution in the same manner as section 4(f)(2) of this rule, if the garnishee was in the possession or control of personal property of the judgment debtor or defendant in attachment and may enter any order necessary to protect the interests of the parties. Provided, however, in the event that the garnishee no longer has possession or control over the personal property, the court may either enter a judgment for the value of such property at the time of the service of the writ or enter any order necessary to protect the interests of the parties or both.

(4) At any hearing the court shall make such orders as to reasonable attorney's fees, costs and expense of the parties to such hearing, as are just.

SECTION 8 TRAVERSE OF ANSWER (ALL FORMS OF GARNISHMENT)

(a) **Time for Filing of Traverse.** The judgment creditor, plaintiff in attachment or intervenor in attachment, may file a traverse of an answer to any form of writ provided by this rule provided such traverse is filed within the greater time period of 21 days from the date such answer should have been filed with the court or 21 days after such answer was filed with the court. The failure to timely file a traverse shall be deemed an acceptance of the answer as true.

(b) **Procedure.**

(1) Within the time provided, the judgment creditor, plaintiff in attachment, or intervenor in attachment, shall state, in verified form, the grounds of traverse and shall mail a copy of the same to the garnishee in accordance with C.R.C.P. 305.

(2) Upon application of the judgment creditor, plaintiff in attachment, or intervenor in attachment, the traverse shall be set for hearing before the court at which hearing the statements in the traverse shall be deemed admitted or denied.

(3) Upon hearing of the traverse, if the court finds the garnishee liable to the judgment

debtor or defendant in the attachment or in the possession or control of personal property of the judgment debtor or defendant in attachment at the time of service of the writ:

(A) The court shall enter judgment in favor of the judgment debtor or defendant in attachment against the garnishee for the use and benefit of the judgment creditor, plaintiff in attachment of intervenor in attachment, if the garnishee was liable to the judgment debtor or defendant in attachment;

(B) The court shall order the garnishee to deliver the personal property to the sheriff to be sold as upon execution in the same manner as section 4(f)(2) of this rule, if the garnishee was in the possession or control of personal property of the judgment debtor or defendant in attachment and may enter any order necessary to protect the interests of the parties. Provided, however, in the event that the garnishee no longer has possession or control over the personal property, the court may either enter a judgment for the value of such property at the time of the service of the writ or enter any order necessary to protect the interests of the parties or both.

(4) If a garnishee is under subpoena to appear for a hearing upon a traverse and such subpoena shall have been issued and served in accordance with C.R.C.P. 345, and shall fail to appear, the court shall thereupon enter such sanctions as are just, including, but not limited to, contempt of court, issuance of a bench warrant, reasonable attorney fees and the cost and expense of the judgment creditor, plaintiff in attachment or intervenor in attachment.

(5) At any hearing upon a traverse, the court shall make such orders as to reasonable attorney fees, costs and expense of the parties to such hearing as are just.

SECTION 9 INTERVENTION (ALL FORMS OF GARNISHMENT)

Any person who claims an interest in any personal property of any description of a judgment debtor or defendant in attachment which property is the subject of any answer made by a garnishee, may intervene as provided in C.R.C.P. 324 at any time prior to entry of judgment against the garnishee.

SECTION 10 SET-OFF BY GARNISHEE (ALL FORMS OF GARNISHMENT)

Every garnishee shall be allowed to claim as a set-off and retain or deduct all demands or claims on the part of the garnishee against any party to the garnishment proceedings, which the garnishee might have claimed if not summoned as a garnishee, whether such are payable or not at the time of service of any form or writ provided for by this rule.

SECTION 11 GARNISHEE NOT REQUIRED TO DEFEND CLAIMS OF THIRD PERSONS (ALL FORMS OF GARNISHMENT)

(a) **Garnishee With Notice.** A garnishee with notice of the claim of a third person in any property of any description of a judgment debtor or defendant in attachment which is the subject of any answer made by the garnishee in response to any form of writ provided for by this rule shall not be required to defend on account of such claim, but shall state in such answer that the garnishee is informed of such claim of a third person.

(b) **Court to Issue Summons.** When such an answer has been filed, the clerk of the court, upon application, shall issue a summons requiring such third person to appear within the time specified in C.R.C.P. 312 to answer, set up, and assert a claim or be barred thereafter.

(c) **Delivery of Property by Garnishee.**

(1) If the answer states that the garnishee is informed of the claim of a third person, the garnishee may at any time pay to the clerk of the court any garnished amount payable at the time of the service of any writ provided for by this rule, or deliver to the sheriff any property the garnishee is required to hold pursuant to any form of writ provided for in this rule.

(2) Upon service of the summons upon such third person pursuant to C.R.C.P. 304, the garnishee shall thereupon be released and discharged of any liability to any person on account of such indebtedness to the extent of any amount paid to the clerk of the court or any property delivered to the sheriff.

SECTION 12 RELEASE AND DISCHARGE OF GARNISHEE (ALL FORMS OF GARNISHMENT)

(a) **Effect of Judgment.** A judgment against a garnishee shall release and discharge such garnishee from all claims or demands of the judgment debtor or defendant in attachment to the extent of all sums paid or property delivered by the garnishee pursuant to such judgment.

(b) **Effect of Payment.** Payment by a garnishee of any sums required to be remitted by such garnishee pursuant to Sections 1(k)(2) or 3(g)(2) of this rule shall release and discharge such garnishee from all claims or demands of the judgment debtor to the extent of all such sums paid.

(c) **Release by Judgment Creditor or Plaintiff in Attachment.** A judgment creditor or plaintiff in attachment may issue a written release of any writ provided by this rule. Such release shall state the effective date of the release and shall be promptly filed with the clerk of the court.

SECTION 13 GARNISHMENT OF PUBLIC BODY (ALL FORMS OF GARNISHMENT)

Any writ provided for in this rule wherein a public body is designated as the garnishee, shall be served upon the officer of such body whose duty it is to issue warrants, checks or money to the judgment debtor or defendant in attachment, or, such officer as the public body may have designated to accept service. Such officer need not include in any answer to such writ, as money owing, the amount of any warrant or check drawn and signed prior to the time of service of such writ.

EFFECTIVE DATE OF RULE AND AMENDMENTS OF THIS RULE

Repealed October 31, 1991, effective November 1, 1991.

Cite as (Casemaker) C.R.C.P. 403

History. Repealed and readopted November 5, 1984, effective January 1, 1985; section 1(d), (f)(1), (f)(2), and (h)(1), section 2(a), (d)(2), and (e), section 3(a)(1) and (c), section 4(a) and (d), section 5(a) and (d), section 7(a)(1), (b)(3), and (b)(4), section 8(b)(3), section 12, and effective date amended February 16, 1989, effective July 1, 1989; section 1(a)(2) and section 3(a)(2) amended, section 3(a)(2) committee comment added, and effective date repealed October 31, 1991, effective November 1, 1991; section 1(k)(1), (k)(2) and (l) amended and (m) added, section 6(a)(3), (a)(4), and (a)(5) amended, section 7(a)(1) amended, and section 12(b) amended and adopted October 30, 1997, effective January 1, 1998; section 1(d), (f), and (j) and section 3(f) and (g)(2) amended and adopted June 28, 2001, effective August 8, 2001; section 1(k)(1) and (k)(2) amended and effective November 18, 2010; section 1(f)(1), (k)(1), (k)(2), and (l)(1), section 2(g)(2) and (g)(4), section 3(g), section 6(a)(1), (a)(2), (b)(1), and (c)(1), section 7(a)(2), and section 8(a) amended and adopted December 14, 2011, effective July 1, 2012; section 2(g)(2) and (g)(4) corrected June 15, 2012, nunc pro tunc, December 14, 2011, effective July 1, 2012; section 2(g)(1) amended and effective June 7, 2013; section 4(f)(1) amended January 29, 2015, effective March 1, 2016; (b)(1) and (e) amended January 12, 2017, effective March 1, 2017.

Note:

COMMITTEE COMMENT

The Colorado Legislature amended Section 13-54-104 and 13-54.5-101 , C.R.S. (Section 7 of Chapter 65, Session Laws of Colorado 1991), which changed the definition of "earnings" applicable only to actions commenced on or after May 1, 1991. The amendment impacts the ability to garnish certain forms of income, depending upon when the original action was commenced. Sections 1 and 3 of the Rule and Forms 26 and 31 have been revised to deal with this legislative amendment.

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Rule 404. Replevin.

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 404. Replevin

(a) **Personal Property.** The plaintiff in an action in the county court to recover the possession of personal property, the value of which does not exceed fifteen thousand dollars, may, at the time of the commencement of the action, or at any time before trial, claim the delivery of such property to the plaintiff as provided in this Rule.

(b) **Causes, Affidavit.** Where a delivery is claimed, the plaintiff, the plaintiff's agent or attorney, or some credible person for the plaintiff, shall, by verified complaint or by complaint and affidavit under penalty of perjury show to the court as follows:

(1) That the plaintiff is the owner of the property claimed or is entitled to possession thereof and the source of such title or right; and if plaintiff's interest in such property is based upon a written instrument, a copy thereof shall be attached;

(2) That the property is being detained by the defendant against the plaintiff's claim of right to possession; the means by which the defendant came into possession thereof, and the specific facts constituting detention against the right of the plaintiff to possession;

(3) A particular description of the property, a statement of its actual value, and a statement to the plaintiff's best knowledge, information and belief concerning the location of the property and of the residence and the business address, if any, of the defendant;

(4) That the property has not been taken for a tax assessment or fine pursuant to a statute; or seized under an execution against the property of the plaintiff; or if so seized, that it is by statute exempt from seizure.

(c) **Show Cause Order; Hearing within 14 Days.** The court shall without delay, examine the complaint and affidavit, and if it is satisfied that they meet the requirements of subsection (b), it shall issue an order directed to the defendant to show cause why the property should not be taken from the defendant and delivered to the plaintiff. Such order shall fix the date and time for the hearing thereof. The hearing date shall be not more than 14 days from the date of the issuance of the order and the order must have been served at least 7 days prior to the hearing date. The plaintiff may request a hearing date beyond 14 days, which request shall constitute a waiver of the right to a hearing not more than 14 days from the date of issuance of the order. Such order shall inform the defendant that if the

hearing date on the order to show cause and the appearance date fixed in the summons are different dates, the defendant must appear at both times, that the defendant may file affidavits on the defendant's behalf with the court and may appear and present testimony on the defendant's behalf at the time of such hearing, or that the defendant may, at or prior to such hearing, file with the court a written undertaking to stay the delivery of the property, in accordance with the provisions of section (j) of this Rule, and that, if the defendant fails to appear at the hearing on the order to show cause or to file an undertaking, plaintiff may apply to the court for an order requiring the sheriff to take immediate possession of the property described in the complaint and deliver same to the plaintiff. The summons and complaint, if not previously served, and the order shall be served on the defendant and the order shall fix the manner in which service shall be made, which shall be by service in accordance with the provisions of Rule 4, C.R.C.P., or in such manner as the court may determine to be reasonably calculated to afford notice thereof to the defendant under the circumstances appearing from the complaint and affidavit.

(d) **Order for Possession prior to Hearing.** Subject to the provisions of 5-5-104 , C.R.S., and upon examination of the complaint and affidavit and such other evidence or testimony as the court may thereupon require, an order of possession may be issued prior to hearing, if probable cause appears that any of the following exist:

(1) The defendant gained possession of the property by theft.

(2) The property consists of one or more negotiable instruments or credit cards.

(3) By reason of specific, competent evidence shown, by testimony with the personal knowledge of an affiant or witness, the property is perishable, and will perish before any noticed hearing can be had, or that the defendant may destroy, dismantle, remove parts from, or in any way substantially change the character of the property, or the defendant may conceal or remove the property from the jurisdiction of the court to sell the property to an innocent purchaser.

(4) That the defendant has by contract voluntarily and intelligently and knowingly waived the right to a hearing prior to losing possession of the property by means of a court order.

Where an order of possession has been issued prior to hearing under the provisions of this section, the defendant or other persons from whom possession of said property has been taken, may apply to the court for an order shortening time for hearing on the order to show cause, and the court may, upon such application, shorten the time for hearing, and direct that the matter shall be heard on not less than forty-eight hours' notice to the plaintiff.

(e) **Bond.** An order of possession shall not issue pursuant to section (d) of this Rule until plaintiff has filed with the court in an amount set by the court in its discretion not to exceed

double the value of the property a written undertaking executed by plaintiff and such surety as the court may require for the return of the property to the defendant, if return thereof be ordered, and for the payment to the defendant of any sum that may from any cause be recovered against the plaintiff.

(f) **Temporary Order to Preserve Property.** Under the circumstances described in section (b) of this Rule, or in lieu of the immediate issuance of an order of possession under any circumstances described in section (d) of this Rule, the court may, in addition to the issuance of the order to show cause, issue such temporary orders, directed to the defendant, prohibiting or requiring such acts with respect to the property as may appear to be necessary for the preservation of the rights of the parties and the status of the property.

(g) **Order for Possession after Hearing; Bond; Directed to Sheriff.** Upon the hearing on the order to show cause, which hearing shall be held as a matter of course by the court, the court shall consider the showing made by the parties appearing, and shall make a preliminary determination of which party, with reasonable probability, is entitled to possession, use, and disposition of the property pending final adjudication of the claims of the parties. If the court determines that the action is one in which a prejudgment order of possession should issue, it shall direct the issuance of such order and may require a bond in such amount and with such surety as the court may determine to protect the rights of the parties. Failure of the defendant to be present or represented at the hearing on the order to show cause shall not constitute a default in the main action. The order of possession shall be directed to the sheriff within whose jurisdiction the property is located.

(h) **Contents of Possession Order.** The order of possession shall describe the specific property to be seized, and shall specify the location or locations where there is probable cause to believe the property or some part thereof will be found. It shall direct the sheriff to seize the same as it is found, and to retain it in the sheriff's custody. There shall be attached to such order a copy of the written undertaking filed by the plaintiff, and such order shall inform the defendant of the right to except to the sureties or to the amount of the bond upon the undertaking or to file a written undertaking for the redelivery of such property as provided in section (j).
Upon probable cause shown by further affidavit or declaration by the plaintiff or someone in the plaintiff's behalf, filed with the court, an order of possession may be endorsed by the court, without further notice, to direct the sheriff to search for the property at another specified location or locations and to seize the same if found. The sheriff shall forthwith take the property if it be in the possession of the defendant or the defendant's agent, and retain it to the sheriff's custody.

(i) **Sheriff May Break Building: When.** If the property or any part thereof is in a building or an enclosure, the sheriff shall demand its delivery, announcing the sheriff's identity, purpose, and authority under which the sheriff acts. If it is not voluntarily delivered, the sheriff shall cause the building or enclosure to be broken open in such a manner as the sheriff reasonably believes will cause the least damage to the building or enclosure, and

take the property into the sheriff's possession. The sheriff may call upon the power of the county to provide aid and protection, but if the sheriff reasonably believes that entry and seizure of the property will involve a substantial risk of death or serious bodily harm to any person, the sheriff shall refrain from seizing the property, and shall forthwith make a return before the court from which the order was issued, setting forth the reasons for the belief that such risk exists. The court may make such orders and decrees as may be appropriate.

The sheriff shall, without delay, serve upon the defendant a copy of the order of possession and written undertaking by delivering the same to the defendant personally, if the defendant can be found or to the defendant's agent for whose possession the property is taken; or, if neither can be found, by leaving them at the usual place of abode of either with some person of suitable age and discretion; or if neither has any known place of abode, by mailing them to the last known address of either.

(j) **When Returned to Defendant; Bond.** At any time prior to the hearing on the order to show cause, or before the delivery of the property to the plaintiff, the defendant may require the return thereof upon filing with the court a written undertaking, in an amount set by the court in its discretion not to exceed double the value of the property and executed by the defendant and such surety as the court may direct for the delivery of the property to the plaintiff, if such delivery be ordered, and for the payment to the plaintiff of such sum as may for any cause be recovered against the defendant. At the time of filing such undertaking, the defendant shall serve upon the plaintiff or Plaintiff's attorney, in the manner provided by Rule 305, C.R.C.P., a notice of filing of such undertaking, to which a copy of such undertaking shall be attached, and shall cause proof of service thereof to be filed with the court. If such undertaking be filed prior to hearing on the order to show cause, proceedings thereunder shall terminate, unless exception is taken to the amount of the bond or the sufficiency of the surety. If, at the time of filing of such undertaking, the property shall be in the custody of the sheriff, such property shall be redelivered to the defendant 7 days after service of notice of filing such undertaking upon the plaintiff or his attorney.

(k) **Exception to Sureties.** Either party may, within two business days after service of an undertaking or notice of filing and undertaking under the provisions of this Rule, give written notice to the court and the other party that the party excepts to do the sufficiency of the surety or the amount of the bond. If the party fails to do so, the party is deemed to have waived all objections to them. When a party excepts the court shall hold a hearing to determine the sufficiency of the bond or surety. If the property be in the custody of the sheriff, he shall retain custody thereof until the hearing is completed or waived. If the excepting party prevails at the hearing, the sheriff shall proceed as if no such undertaking has been filed. If the excepting party does not prevail at the hearing, or the exception is waived, the sheriff shall deliver the property to the party filing such undertaking.

(l) **Duty of Sheriff in Holding Goods.** When the sheriff has taken property as provided in

this Rule, it shall be kept in a secure place and delivered to the party entitled thereto, upon receiving the sheriff's fees for taking and the necessary expenses for keeping the same, after expiration of the time for filing of an undertaking for redelivery and for the exception to the sufficiency of the bond, unless the court shall by order stay such delivery.

(m) **Claim by Third Person.** If the property taken is claimed by any other person than the defendant or the plaintiff, such person may intervene under the provisions of Rule 324, C.R.C.P., and in the event of a judgment in the person's favor, the person may also recover such damages as may have been suffered by reason of any wrongful detention of the property.

(n) **Return; Papers by Sheriff.** The sheriff shall return the order of possession and undertakings and affidavits with the sheriff's proceedings thereon, to the court in which the action is pending, within 21 days after taking the property mentioned therein.

(o) **Precedence on Docket.** In all proceedings brought to recover the possession of personal property, all courts, in which such actions are pending, shall, upon request of any party thereto, give such actions precedence over all other civil actions, except actions to which special precedence is otherwise given by law, in the matter of the setting of the same for hearing or trial, and in hearing or trial thereof, to the end that all such actions shall be quickly heard and determined.

(p) **Judgment.** In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession or the value thereof in case a delivery cannot be had, and damages for the detention. If the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property, or the value thereof in case a return cannot be had, and damages for taking and withholding the same. The provisions of Rule 313, C.R.C.P., shall apply to replevin actions.

Cite as (Casemaker) C.R.C.P. 404

History. (a) amended and effective July 1, 1993; (a), (b)(3), (c), (d)(4), and (h) to (n) amended July 22, 1993, effective January 1, 1994; (c), (d)(4), (h), and (m) corrected and effective January 9, 1995; (c) corrected and effective January 23, 1995; (a) amended and adopted October 10, 2002, effective January 1, 2003; entire rule amended and adopted December 4, 2003, effective January 1, 2004; (c), (j), (k), and (n) 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).

Rule 405. No Colorado Rule.

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 405. No Colorado Rule

Cite as (Casemaker) C.R.C.P. 405

Rule 406. Remedial Writs.

Colorado Court Rules

Colorado Rules of Civil Procedure

Chapter 25. The Colorado Rules of County Court Civil Procedure

As amended through Rule Change 2019(13), effective July 9, 2019

Rule 406. Remedial Writs

Except for certiorari to the Supreme Court as provided by these rules the common law writs and any relief as provided in Rule 106, C.R.C.P., are not available in the county court.

Cite as (Casemaker) C.R.C.P. 406

Rule 407. Remedial and Punitive Sanctions for Contempt.

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As amended through Rule Change 2019(13), effective July 9, 2019

Rule 407. Remedial and Punitive Sanctions for Contempt

(a) **Definitions.**

(1) **Contempt:** Disorderly or disruptive behavior, a breach of the peace, boisterous conduct or violent disturbance toward the court, or conduct that unreasonably interrupts the due course of judicial proceedings; behavior that obstructs the administration of justice; disobedience or resistance by any person to or interference with any lawful writ, process, or order of the court; or any other act or omission designated as contempt by the statutes or these rules.

(2) **Direct Contempt.** Contempt that the court has seen or heard and is so extreme that no warning is necessary or that has been repeated despite the court's warning to desist.

(3) **Indirect Contempt:** Contempt that occurs out of the direct sight or hearing of the court.

(4) **Punitive Sanctions for Contempt:** Punishment by unconditional fine, fixed sentence of imprisonment, or both, for conduct that is found to be offensive to the authority and dignity of the court.

(5) **Remedial Sanctions for Contempt:** Sanctions imposed to force compliance with a lawful order or to compel performance of an act within the person's power or present ability to perform.

(6) **Court:** For purposes of this rule, "court" means any judge, magistrate, commissioner, referee, or a master while performing official duties.

(b) **Direct Contempt Proceedings.** When a direct contempt is committed, it may be punished summarily. In such case an order shall be made on the record or in writing reciting the facts constituting the contempt, including a description of the person's conduct, a finding that the conduct was so extreme that no warning was necessary or the person's conduct was repeated after the court's warning to desist, and a finding that the conduct is offensive to the authority and dignity of the court. Prior to the imposition of sanctions, the person shall have the right to make a statement in mitigation.

(c) **Indirect Contempt Proceedings.** When it appears to the court by motion supported by affidavit that indirect contempt has been committed, the court may exparte order a citation to issue to the person so charged to appear and show cause at a date, time and place designated why the person should not be punished. The citation and a copy of the motion, affidavit and order shall be served directly upon such person at least 21 days before the time designated for the person to appear. If such person fails to appear at the time so designated, and it is evident to the court that the person was properly served with copies of the motion, affidavit, order, and citation, a warrant for the person's arrest may issue to the sheriff. The warrant shall fix the date, time and place for the production of the person

in court. The court shall state on the warrant the amount and kind of bond required. The person shall be discharged upon delivery to and approval by the sheriff or clerk of the bond directing the person to appear at the date, time and place designated in the warrant, and at any time to which the hearing may be continued, or pay the sum specified. If the person fails to appear at the time designated in the warrant, or at any time to which the hearing may be continued, the bond may be forfeited upon proper notice of hearing to the surety, if any, and to the extent of the damages suffered because of the contempt, the bond may be paid to the aggrieved party. If the person fails to make bond, the sheriff shall keep the person in custody subject to the order of the court.

(d) **Trial and Punishment.**

(1) **Punitive Sanctions.** In an indirect contempt proceeding where punitive sanctions may be imposed, the court may appoint special counsel to prosecute the contempt action. If the judge initiates the contempt proceedings, the person shall be advised of the right to have the action heard by another judge. At the first appearance, the person shall be advised of the right to be represented by an attorney and, if indigent and if a jail sentence is contemplated, the court will appoint counsel. The maximum jail sentence shall not exceed six months unless the person has been advised of the right to a jury trial. The person shall also be advised of the right to plead either guilty or not guilty to the charges, the presumption of innocence, the right to require proof of the charge beyond a reasonable doubt, the right to present witnesses and evidence, the right to cross-examine all adverse witnesses, the right to have subpoenas issued to compel attendance of witnesses at trial, the right to remain silent, the right to testify at trial, and the right to appeal any adverse decision. The court may impose a fine or imprisonment or both if the court expressly finds that the person's conduct was offensive to the authority and dignity of the court. The person shall have the right to make a statement in mitigation prior to the imposition of sentence.

(2) **Remedial Sanctions.** In a contempt proceeding where remedial sanctions may be imposed, the court shall hear and consider the evidence for and against the person charged and it may find the person in contempt and order sanctions. The court shall enter an order in writing or on the record describing the means by which the person may purge the contempt and the sanctions that will be in effect until the contempt is purged. In all cases of indirect contempt where remedial sanctions are sought, the nature of the sanctions and remedies that may be imposed shall be described in the motion or citation. Costs and reasonable attorney's fees in connection with the contempt proceeding may be assessed in the discretion of the court. If the contempt consists of the failure to perform an act in the power of the person to perform and the court finds the person has the present ability to perform the act so ordered, the person may be fined or imprisoned until its performance.

(e) **Limitations.** The court shall not suspend any part of a punitive sanction based upon the

performance or non-performance of any future acts. The court may reconsider any punitive sanction. Probation shall not be permitted as a condition of any punitive sanction. Remedial and punitive sanctions may be combined by the court, provided appropriate procedures are followed relative to each type of sanction and findings are made to support the adjudication of both types of sanctions.

(f) **Appeal.** For the purposes of appeal, an order deciding the issue of contempt and sanctions shall be final.

Cite as (Casemaker) C.R.C.P. 407

History. Entire rule amended January 26, 1995, effective April 1, 1995; (c) 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).

Rule 408. Affidavits.

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As amended through Rule Change 2019(13), effective July 9, 2019

Rule 408. Affidavits

An affidavit may be sworn to either within or without this state before any officer authorized by law to take and certify the acknowledgment of deeds conveying lands.

Cite as (Casemaker) C.R.C.P. 408

Rule 409. No Colorado Rule.

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Rule 409. No Colorado Rule

Cite as (Casemaker) C.R.C.P. 409

Rule 410. Miscellaneous.

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As amended through Rule Change 2019(13), effective July 9, 2019

Rule 410. Miscellaneous

(a) **Amendments.** No writ or process shall be quashed, nor any order or decree set aside, nor any undertaking be held invalid, nor any affidavit, traverse or other paper be held insufficient if the same be corrected within the time and manner prescribed by the court, which shall be liberal in permitting amendments.

(b) **Use of Terms.** Words used in the present tense shall include the future; singular shall include the plural; masculine shall include the feminine; person or party shall include all manner of organizations which may sue or be sued. The use of the word clerk, sheriff, marshal, or other officer means such officer or his deputy or other person authorized to perform his duties. The word "oath" includes the word "affirmation"; and the phrase "to swear" includes "to affirm"; signature or subscription shall include mark, when the person is unable to write, his name being written near it and witnessed by a person who writes his own name as a witness. A superintendent, overseer, foreman, sales director, or person occupying a similar position, may be considered a managing agent for the purposes of these rules.

(c) **Certificates.** Certificates shall be made in the name of the officer either by the officer or by his deputy.

(d) **Counterclaimants.** Where a counterclaim is filed, the claimant thereunder shall have the same rights and remedies as the plaintiff.

Rule 411. Appeals.

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As amended through Rule Change 2019(13), effective July 9, 2019

Rule 411. Appeals

(a) **Notice of Appeal; Time for Filing; Bond.** If either party in a civil action believes that the judgment of the county court is in error, that party may appeal to the district court by filing a notice of appeal in the county court within 14 days after the date of entry of judgment. The notice shall be in the form appearing in the Appendix to Chapter 25, Form 4, C.R.C.P. If the notice of the entry of judgment is transmitted to the parties by mail, the time for the filing of the notice of appeal shall commence from the date of the mailing of the notice. The appealing party shall also file within the said 14 days an appeal bond with the clerk of the county court. The bond shall be furnished by a corporate surety authorized and licensed to do business in this state as a surety, or one or more sufficient private sureties, or may be a cash deposit by the appellant and, if the appeal is taken by the plaintiff, shall be conditioned to pay the costs of the appeal and the counterclaim, if any, and, if the appeal be taken by the defendant, shall be conditioned to pay the costs and judgment if the appealing party fail. The bond shall be approved by the judge or the clerk. Upon filing of the notice of appeal, the posting and approval of the bond, and the deposit by the appellant of an estimated fee in advance for preparing the record, the county court shall discontinue all further proceedings and recall any execution issued. The appellant shall also, within 35 days after the filing of the notice of appeal, docket the case in the district court and pay the docket fee.

(b) **Preparation of Record on Appeal.** Upon the deposit of the estimated record fee, the clerk of the court shall prepare and issue as soon as may be possible a record of the proceedings in the county court, including the summons, the complaint, proof of service, and the judgment. The record shall also include a transcription of such part of the actual evidence and other proceedings as the parties may designate or, in lieu of transcription, to which they may stipulate. If a stenographic record has been maintained or the parties agree to stipulate, the party appealing shall lodge with the clerk of the court the reporter's

transcript of the designated evidence or proceedings, or a stipulation covering such items within 42 days after the filing of the notice of appeal. If the proceedings have been electronically recorded, the transcription of designated evidence and proceedings shall be prepared in the office of the clerk of the county court or under the supervision of the clerk, within 42 days after the filing of the notice of appeal. The clerk shall notify, in writing, the opposing parties of the completion of the record, and such parties shall have 14 days within which to file objections. If none are received, the record shall be certified forthwith by the judge. If objections are made, the parties shall be called for hearing and the objections settled by the county judge as soon as possible, and the record then certified.

(c) **Filing of record.** When the record has been duly certified and any additional fees therefor paid, it shall be filed with the clerk of the district court by the clerk of the county court, and the opposing parties shall be notified of such filing by the clerk of the county court.

(d) **Briefs.** A written brief shall contain a statement of the matters relied upon as constituting error and the arguments with respect thereto. It shall be filed in the district court by the appellant 21 days after filing of the record therein. A copy of such brief shall be served on the appellee. The appellee may file an answering brief within 21 days after such service. In the discretion of the district court, the time for filing of briefs and answers may be extended. When the briefs have been filed the matter shall stand at issue and shall be determined on the record and the briefs, with such oral argument as the court in its discretion may allow. No trial shall be held de novo in the district court unless the record of the proceedings in the county court have been lost or destroyed or for some other valid reason cannot be produced; or unless a party by proper proof to the court establishes that there is new and material evidence unknown and undiscoverable at the time of the trial in the county court which, if presented in a de novo trial in the district court, might affect the outcome.

(e) **Determination of Appeal.** Unless there is further review by the Supreme Court upon writ of certiorari and pursuant to the rules of such court, after final disposition of the appeal by the district court, the judgment on appeal therein shall be certified to the county court for action as directed by the district court, except upon trials de novo held in the district court or in cases in which the judgment is modified, in which cases the judgment shall be that of the district court and enforced therefrom.

Cite as (Casemaker) C.R.C.P. 411

History. (a)(2) amended June 9, 1988, effective January 1, 1989; entire rule amended July 22, 1993, effective January 1, 1994; (a), (b), and (d) amended and adopted December 14, 2011, effective July 1, 2012; (a) and (b) corrected June 15, 2012, nunc pro tunc, December 14, 2011, effective July 1, 2012; (b) amended and effective June 7, 2013; (a) and (b) amended and effective October 10, 2013.

Case Notes:

ANNOTATION

The provisions of this section requiring the filing of an appeal bond for costs are not applicable to indigent plaintiffs. Bell v. Simpson, 918 P.2d 1123 (Colo. 1996).

A county court party found to be indigent and allowed to proceed in forma pauperis is not required to post a judgment bond before appealing to district court. O'Donnell v. State Farm Mut. Auto. Ins. Co., 186 P.3d 46 (Colo. 2008).

However, as with appeals from the district court to the court of appeals, the prevailing party in the county court would be able to execute the judgment while the appeal is still pending because the judgment would not have been stayed by a judgment bond. O'Donnell v. State Farm Mut. Auto. Ins. Co., 186 P.3d 46 (Colo. 2008).

Time for docketing appeals. Subsection (1)(b) of § 13-6-311 , relating to appeals from county court, and section (a)(1) of this rule clearly provide that the docketing must take place no later than the time allowed for completing and lodging the record. Tumbarello v. Superior Court, 195 Colo. 83, 575 P.2d 431 (1978).

Applied in Bachman v. County Court, 43 Colo. App. 175, 602 P.2d 899 (1979).

Rule 412 to 420. .

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Rule 412 to 420.

(There are no present Colorado Rules 412 to 420.)

Cite as (Casemaker) C.R.C.P. 412 to 420