

COLORADO COURT RULES
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COLORADO RULES OF CIVIL PROCEDURE
CHAPTER 2 PLEADINGS AND MOTIONS

C.R.C.P. 16.2 (2016)

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

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

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

(c) Scheduling and Case Management for New Filings.

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

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

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

(C) If both parties are represented by counsel, counsel may submit a Stipulated Case Management Plan

signed by counsel and the parties. Counsel shall also exchange Mandatory Disclosures and file a Certificate of Compliance. The filing of such a plan, the Mandatory Disclosures and Certificate of Compliance shall exempt the parties and counsel from attendance at the initial status conference. The court shall retain discretion to require a status conference after review of the Stipulated Case Management Plan.

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

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

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

(2) Status conference procedures.

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

(B) The conferences shall be informal.

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

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

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

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

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

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

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

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

(4) Motions.

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

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

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

(e) Disclosure.

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

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

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

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

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

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

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

(7) A Certificate of Compliance shall accompany the Mandatory Disclosures and shall be filed with the court. A party's signature on the Certificate constitutes certification that to the best of the signer's knowledge, information, and belief, formed after a reasonable inquiry, the Mandatory Disclosure is complete and correct as of the time it is made, except as noted with particularity in the Certificate of Compliance.

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

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

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

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

(1) Depositions of parties are permitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Unless otherwise ordered by the court, expert reports shall be provided to the parties 56 days (8 weeks) prior to hearing. Rebuttal reports shall be provided 21 days thereafter. If an initial report is served early, the rebuttal report shall not be required sooner than 35 days (5 weeks) before the hearing.

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

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

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

(h) Trial Management Certificates.

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

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

(i) Alternative Dispute Resolution.

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

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

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

HISTORY: Source: Entire rule adopted May 5, 1995, effective July 1, 1995, for all cases filed on or after that date; committee comment approved May 5, 1995, effective July 1, 1995; entire rule and committee comment repealed and replaced September 30, 2004, effective for Domestic Relations Cases as defined in 16.2(a) filed on or after January 1, 2005, and for post-decree motions filed on or after January 1, 2005; (e), (f), (h), and committee comment amended and adopted February 9, 2006, effective March 1, 2006; (c)(1)(E), (d), (e)(2), (e)(3), (f)(5), (g)(5), 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); (g)(5) amended and effective February 8, 2013.

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

DISCLOSURES

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

RULE 26.2

The current Rule 26.2 will be repealed. Disclosure of expert testimony and the signing of disclosures and discovery responses will be governed by C.R.C.P. 26 as specifically incorporated into section (e) of new

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

APPENDICES AND FORMS

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

SETTLEMENT CONFERENCES

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

RECENT ANNOTATIONS

Husband's failure to disclose mandatory financial information regarding his company violates section (e), even though wife subsequently entered into a memorandum of understanding. Duty is on husband to report all required financial information without the other spouse having to request it. In re Hunt, 2015 COA 58, 353 P.3d 911.

Wife's motion to reopen property division after entering a memorandum of understanding should be granted because husband's violation of disclosure requirements affected the division of assets. In re Hunt, 2015 COA 58, 353 P.3d 911.

ANNOTATION

Law reviews. For article, "Everything You Want to Know About the New Domestic Rules", see 24 Colo. Law. 1795 (1995). For article, "Rules 16 and 16.2: Reality Check 1998", see 27 Colo. Law. 45 (March 1998). For article, "Tips for Working With Evidence in Domestic Relations Cases", see 31 Colo. Law. 87 (June 2002). For article, "New Rule 16.2: A Brave New World", see 34 Colo. Law. 101 (January 2005). For article, "Complex Financial Issues in Family Law Cases", see 37 Colo. Law. 53 (October 2008). For article, "The Motion in Limine: Use in Domestic Relations Cases", see 43 Colo. Law. 47 (March 2014). For article, "Divorce in the Land of Startups", see 43 Colo. Law. 47 (December 2014).

Where hearing on removal issue is set in shorter time frame than envisioned by C.R.C.P. 26.2, then the 60-day time limit for the disclosure of expert witness testimony set forth in that rule cannot be met and the more general provisions of that rule must yield to the provisions of this rule, which contain specific provisions for post-decree and modification matters subject to a shortened time schedule. In re Woolley, 25 P.3d 1284 (Colo. App. 2001).

Court properly balanced its obligation to accord mother due process against its need to efficiently manage

the case when it denied mother's last minute request to call 40 witnesses without providing prior notice to father. In re Hatton, 160 P.3d 326 (Colo. App. 2007).

Five-year retention provision in subsection (e)(10) of this rule applies only to disclosures made in connection with marital dissolution cases filed after January 1, 2005, the effective date of this rule as repealed and replaced. The five-year retention provision applies only to disclosures made pursuant to the new rule for the purposes of resolving new cases or new post-decree motions filed after the effective date of the rule. Disclosures made before January 1, 2005 were not subject to the heightened disclosure duties of the new rule and are therefore not subject to the retention provision. Even in cases where post-decree motions alleging improper asset disclosure are filed after January 1, 2005, trial court does not have jurisdiction to modify property divisions based on such disclosures filed under the old rule. In re Schelp, 228 P.3d 151 (Colo. 2010).

Application of this rule to wife's post-decree motion does not constitute retrospective legislation in accordance with art. II, § 11, of the Colorado constitution. In re Roberts, 194 P.3d 443 (Colo. App. 2008), rev'd on other grounds sub nom. In re Schelp, 228 P.3d 151 (Colo. 2010).

Husband's omission of the value of his marital portion of his pension materially affected the division of assets. Trial court correctly reopened permanent orders and awarded wife entire marital portion of husband's pension. In re Schelp, 194 P.3d 450 (Colo. App. 2008), rev'd on other grounds, 228 P.3d 151 (Colo. 2010).

Child support is not a "liability", the omission or nondisclosure of which materially affects the division of assets or liabilities under section (e)(10). In re Roddy, 2014 COA 96, 338 P.3d 1070.

Five-year reach-back provision in subsection (e)(10) applies only to assets and liabilities, not maintenance or income for the purpose of determining maintenance. The rule does not allow a redetermination of maintenance. In re Dadiotis, 2014 COA 28, 343 P.3d 1017.