

UPDATING CIVIL RULES OF PROCEDURE – 2007-2018

- 2006 Institute for the Advancement of the American Legal System (IAALS) is formed as a national independent research center at the University of Denver headed by former Colorado Supreme Court Justice, Rebecca Love Kourlis.
- 2007 IAALS and the American College of Trial Lawyers (ACTL) form a Joint Task Force. Task Force contains about 30 ACTL Fellows with significant civil trial experience for both plaintiffs and defendants, and several federal and state trial judges
- 2008 IAALS and ACTL undertake a large survey of ACTL members which reflects substantial concerns about status of civil litigation and access to justice. *See Interim Report & 2008 Litigation Survey of the Fellows of the American College of Trial Lawyers*(<http://iaals.du.edu/rule-one/publications/interim-report-joint-project-actl-task-force-discovery-and-iaals>). Subsequent similar survey by ABA Litigation Section, reaches similar conclusions.
- 2009 IAALS and ACTL publish the *Final Report* (<http://iaals.du.edu/rule-one/publications/final-report-joint-project-actl-task-force-discovery-and-iaals>) containing 29 principles for consideration in revised civil rules.
- 2010 Conference is held at Duke University with about two hundred trial lawyers, state and federal judges and academics to discuss what can and should be done to deal with recognized problems in civil litigation.
- 2008-2013 The “firestorm” for change gathers momentum. *See, Summary of Empirical Research on the Civil Justice Project – 2008-2013*, IAALS (<http://iaals.du.edu/rule-one/publications/summary-empirical-research-civil-justice-process-2008-2013>).
- 2011-2015 Several states undertake pilot projects to test some of those theories and proposals. *E.g.*, Colorado’s Civil Action Pilot Project (CAPP) was one of those pilots. New Hampshire (<http://iaals.du.edu/blog/new-hampshires-pad-pilot-project-rules-be-implemented-statewide>) and Utah (<http://iaals.du.edu/rule-one/utah-rules-civil-procedure>) actually revise their civil rules to incorporate many of those reports’ recommendations.
- 2015 Based on studies and reviews of pilot projects and new rules, IAALS and ACTL revise the 2009 *Final Report*, reduce the number of “principles” to 24, and encourage states to act. *See Reforming Our Civil Justice System: A Report on Progress and Promise* (<http://iaals.du.edu/rule-one/publications/reforming-our-civil-justice-system-report-progress-and-promise>).

- 2012-2015 The Federal Judicial Conference Committee on Rules of Practice and Procedure studies and recommended changes to the Federal Rules of Civil Procedure, which became effective in December 2015. These amendments adopt a substantial number of the IAALS-ACTL principles.
- 2015 Colorado adopts substantial amendments to Rules 16 (case management) and 26 (disclosure and discovery) which include many of the changes to the Federal Rules and the IAALS-ACTL principles. See Holme, “Proposed New Pretrial Rules for Civil Cases – Part I: A New Paradigm,” 44 *The Colorado Lawyer* 43 (April 2015); Holme, “New Pretrial Rules for Civil Cases – Part II: What is Changed,” 44 *The Colorado Lawyer* 111 (July 2015).
- 2016 After significant study and deliberation the Council of Chief Justices adopts and promulgates “*Call to Action: Achieving Civil Justice for All: Recommendations to the Conference of Chief Justices by the Civil Justice Improvements Committee*” (“*Call to Action*”), <http://www.ncsc.org/sitecore/content/microsites/civil-justice-initiative/home/CCJ-Reports.aspx>.
- 2018 Colorado Civil Rules Committee proposed revisions to Rule 16.1, Simplified Procedure, for cases with damages not exceeding \$100,000. Initial Rule 16.1 was solely voluntary and rarely used. Effective September 1, 2018, Colorado Supreme Court revised Rule 16.1 making it mandatory unless exempted by trial court order for good cause. Discovery is dramatically restricted and mandatory disclosures are substantially increased.

Colorado Civil Courts and Updated Civil Rules

The following is a very brief description of the Colorado judicial system as it is relevant to analyzing the efficiency of the Colorado judicial system as well as its efforts to increase access to justice for ordinary citizens.

Small Claims Courts-Division of County Courts (C.R.C.P. 501-521)

Jurisdiction – damages up to \$7,500

Parties file only a short statement of claim and a response. No motions allowed. No discovery allowed. No jury trials; trials before magistrates; rules of evidence not strictly applied; several standardized forms available for parties to use. Appeals allowed to District Court. In general, attorneys are not allowed to represent parties.

Some cases with higher damages are filed in Small Claims Courts to take advantage of simplicity and speed, even though subject to the jurisdictional limitation on damages.

County Courts (C.R.C.P. 301-412)

Jurisdiction – damages up to \$15,000 (increased to \$35,000 in 2018)

Pleading forms are available and required to be short; motions are allowed on a limited basis; disclosures of witnesses and brief description of their testimony, and of documents may be sought if requesting party provides same information at time of making the request; discovery may be requested if court pretrial conference is held subject to court's limitations; depositions to preserve testimony are allowed. Appeals allowed to District Court. E-filing permitted and encouraged.

Some cases with higher damages are filed in County Courts to take advantage of simplicity and speed, even though subject to the jurisdictional limitation on damages.

District Courts (C.R.C.P. 1-122)

Jurisdiction – trial courts of general jurisdiction; Public Trustee real estate foreclosures; appeals from Small Claims and County Courts, administrative hearings, and governmental quasi-judicial proceedings.

Generally, follows Fed. R. Civ. P.

Has adopted a significantly new Rule 16 to increase substantially early and direct judicial supervision and control of pretrial discovery and motion practice. Strongly urges those judges to require personal contact with judge before written motions may be filed.

Adopted Fed. R. Civ. P. changes to Rule 26, including more complete disclosures, limits on discoverable matters and proportionality of discovery.

Rule 16.1 – Simplified Procedure. A special rule for handling civil cases with damages of not more than \$100,000. Includes dramatically reduced discovery, but more detailed disclosures of expected trial testimony. Originally adopted as a purely voluntary; but effective 9/1/2018, Supreme Court’s revisions make it as mandatory unless specifically excluded by court order.

Domestic Relations – adopted a Rule 16.2 to facilitate judicial case management and create specificity and clarity to financial disclosures and limited discovery.

Foreclosures of real estate. Significant revisions have been made to Rule 120 requirements for proper handling of Public Trustee foreclosures.

Forcible Entry and Detainer. Statutory provisions expedite handling of landlord/tenant disputes. Smaller cases in County Court, larger ones in District Court.

E-filing is mandated for all district court filings.

Other Specialized Courts with Unique Rules.

Water courts – a division of a district court in each of Colorado’s seven water sheds designated to deal with matters relating to disputes over water rights.

Probate court – a district court level court only in the City and County of Denver, dealing only with estate and probate matters and disputes.