COLORADO SUPREME COURT
COMMITTEE ON COUNTY AND DISTRICT COURT
CIVIL JURISDICTION AND ACCESS ISSUES
REPORT

August 10, 1999

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On December 31, 1997, Chief Justice Anthony F. Vollack Signed the Order Appointing the Supreme Court Committee on County and District Court Civil Jurisdiction and Access Issues

The committee was assigned the task of addressing concerns regarding the following issues:

- The high cost of litigation denying access to the courts;
- Increasing the jurisdictional limits of the county courts and the effect it would have on simplified procedure and the high volume case load in county court;
- The lack of formal court ordered alternative dispute resolution techniques;
- The impact of the application of certain rules of procedure in the district court and the length of time to process such cases.

The committee was also asked specifically to examine the application of C.R.C.P. 16 and 26 as regards the cost of litigation in the district court; examine length of time to process these cases both in the county and in the district court; examine the application of mandatory arbitration and mediation of cases under $50,000.00; examine the application of mandatory alternative dispute resolution of certain civil cases in the court; examine the increasing of the jurisdictional limits of the county court; and, such other issues as identified by the committee and relevant to providing effective, affordable access to the courts.

The following persons have served on this committee:

Name	Representation
Alex J. Martinez, Chair	Justice, Colorado Supreme Court
Roxanne Bailin	District Judge, 20th Judicial District
Pat Boyle	Representing the Colorado Association of Commerce and Industry
Terri Sue Diem	County Judge, 5th Judicial District
Cathryn Hazouri	Representing the Colorado Trial Lawyer Association
Marc J. Kaplan	Representing the Colorado Trial Lawyer Association
William Lawrence Keating	Representing the Colorado Trial Lawyer Association
Nicholas R. Massaro	District Judge, 21st Judicial District
Gary L. McPherson	Representative, State of Colorado

James S. Miller	County Judge, 18th Judicial District
Franklin D.Patterson	Representing the Colorado Defense Lawyer Association
Ed Perlmutter	Senator, State of Colorado
Manual Ramos	Representing the Legal Aid Society of Metropolitan Denver
Tom Romola	Representing the Credit/Collection Agencies
Debra K. Sutton	Representing the Colorado Defense Lawyer Association
Penfield Tate	Representative, State of Colorado
Dottie Wham	Senator, State of Colorado
Kim Morss	Legal Counsel Colorado Judicial Department
Cynthia Savage	Director of the Office of Dispute Resolution Colorado Judicial Department

EXECUTIVE SUMMARY

The full committee met on 9 occasions. Committee members also participated in subcommittee meetings during the course of the committee's investigation.

At the initial meeting, Justice Alex J. Martinez, as chair of the committee, reviewed the assignment the Chief Justice gave to the committee. The Chief Justice expressed concerns about the high cost of litigation potentially denying access to the courts, particularly in those situations where the value involved in the case was of a limited dollar amount. The Chief Justice noted a legislative proposal to increase the jurisdictional limits in county court to $25,000 in order to afford more litigants access to the less costly procedures of county court. The Supreme Court was concerned that such an increase in jurisdictional limits might have an adverse impact on the simplified procedure and the nature of the case in high volume county courts. The Chief Justice indicated concern that certain rules of procedure in the district court increase the cost to litigants and the length of time to process such cases. Further, the Supreme Court expressed concern about the lack of formal court ordered alternative dispute resolution in civil district court cases.

Justice Martinez asked the committee to consider actual lack of access to the courts as well as the perception that access is limited. He also asked the committee to consider the cost and effectiveness of any proposal that may be suggested. He stated that the State Judicial System is a varied and complex system reaching 63 counties. The committee was asked to bear in mind the varying resources and needs of local courts throughout the state in making recommendations.

Justice Martinez suggested an approach the committee could take to address the assignment from the Chief Justice. At the conclusion of the first meeting the committee adopted the following working criteria against which any proposed solution to the perceived problem would be measured. The solution should have the following characteristics:

- Less expensive.
- Less time consuming
- Fair
- Provide a Level Playing Field
- Allow an Opportunity to be Heard
- Proportional – Time and Expense Proportional to Seriousness and Complexity of the Case
- Provide a Variety of Different Tools or Options to Resolve Disputes
- Increase Access for Meritorious Claims while Limiting Access for Frivolous Actions
- Credible and Perceived as Fair
- Practical and Affordable

A County Court Subcommittee was appointed to examine the proposal to increase the jurisdictional limit in the county court, and to assess the possible impact.

A District Court Subcommittee was directed to consider amendments to C.R.C.P. 16 and 26, and to address the cost, proportionality and fairness issues with regard to pretrial and trial access, especially in limited dollar cases of $50,000 or less, consistent with the charge from the Chief Justice.

An Alternative Dispute Resolution Subcommittee was constituted to consider alternative dispute resolution techniques both inside and outside the court system, and possible changes and the likely impact on different types of cases.

The committee recommends the adoption of C.R.C.P. 26.3. This rule concerns limited monetary claim cases, defined as those district court cases where no claimant seeks money damages of more than $50,000, exclusive of costs and interest. The proposed rule is designed to reduce costs for limited monetary claim cases, where cost is the single biggest factor impairing access to the courts. The rule's application is governed by dollar value, not complexity, in order to enhance access to the courts for litigants with limited monetary claims. This rule proposes early limited disclosure, coupled with mandatory ADR and followed, where necessary, by limited discovery and trial, with a limitation on costs recovery of $5,000. Application of the rule is voluntary, by affirmative certification of a claimant. This proposal will reduce the costs of access to the courts for limited monetary claim actions.

The committee discussed whether to pursue legislation to address the possible conflict between proposed rule C.R.C.P. 26.3 and section 13-17-202, 5 C.R.S. (1998). That statute deals with offer of settlement in civil cases. The rule would limit the application of the statute by permitting no more than $5,000.00 to be awarded as costs in these cases. The statute does not specifically bar application of this rule. It is recommended that the legislature be apprised of this rule exception from the statutory provision. The committee further recommends that the court solicit input from the bench and bar concerning this report and the proposed rule.

COUNTY COURT JURISDICTION

The County Court Subcommittee met to determine whether the proposal to increase the county court jurisdictional limits to $25,000.00 was an appropriate solution to the identified problem. Judge Miller, as chair of the committee, surveyed his county court colleagues at the mid-term meeting of judges and found that out of 30 judges, only 2 supported the proposal to increase the jurisdictional limit in county court to $25,000.00. The major concern of the judges was the impact of discovery requests on the county court. Under C.R.C.P. 316, parties make disclosure, but may only have discovery if ordered by the court after a pre-trial conference with the judge. Judges were concerned that for cases, which moved from the district court to the county court as a result of a change in the jurisdictional limit, litigants would seek pre-trial conferences and discovery orders from judges. Given the current caseload pressures in the county court, further delays were predicted in the processing of civil cases. Further, judges were concerned that the county court would lose its identity as a quick, efficient, and cost effective means of litigating small disputes.

The subcommittee concluded that even if one were to ignore the overwhelming opposition of county court judges, the proposal still was not a good idea because it is very difficult to schedule multi-day trials in the county court given its current caseload. The system would either need more county court judges or less discovery. It was concluded by the subcommittee that placing such a burden on the county courts to effectively handle such cases could ultimately leave a very bad impression with the public, since it could appear to the public to be reducing the emphasis and time given to the vast majority of current cases in preference to civil litigation.

The subcommittee recommended that some type of truncated discovery procedure in the district court or a rule similar to the former C.R.C.P. 26.1, would be a more appropriate approach to addressing this access issue. It was felt that transferring this group of cases from the district to the county court could paralyze operations in the county court. Moreover there was a concern that there would be a growth in appellate work at the district court level if the jurisdictional limits were increased for county court.

In its report, the subcommittee emphasized that such a jurisdictional change would impact adversely the identity of the county court. The committee members agreed that other types of cases heard in the county court would be affected, since getting coverage for judges in trial is virtually impossible at the county court level. The committee observed that county courts could not accommodate these types of cases without additional judicial resources and a significant budget increase.

The subcommittee recommended, and the committee adopted, the following findings:

- The county courts throughout Colorado offer quick, efficient and cost-effective means of litigating small disputes, and the current jurisdictional limit is appropriate.
- Increasing the jurisdictional limits in county court is not an effective way to address the problems identified for access to the courts for limited monetary claim actions.

- The county court is not just a forum for litigation of civil matters, but includes a wide variety of case types, each of which benefits from the county courts' ability to deal promptly and efficiently with those matters.

ALTERNATIVE DISPUTE RESOLUTION

The Alternative Dispute Resolution (ADR) Subcommittee was asked by the full committee to consider the use of alternative dispute resolution, both outside and inside the court system, and to consider the likely impact of ADR on different types of cases. Specifically, to examine the application of mandatory arbitration and mediation of district court cases under $50,000.00. The committee, chaired by Cynthia Savage, met on several occasions and agreed that ADR can be a significant part of the solution to the issues before the committee. The subcommittee submitted a proposal to the full committee, which was adopted (see Appendix for Proposal 4-9-98).

It was the recommendation of the subcommittee that all limited monetary claim actions of $50,000.00 or less, filed in the district court, be required to use non-binding ADR pursuant to the Colorado Dispute Resolution Act, Section 13-22-301 C.R.S., et seq, C.P.C.R.P., within 120 days from the date when the case is at issue. Parties may choose a binding form of ADR if they prefer. The subcommittee recommended that a party's certification of a limited monetary claim should not be used for any purpose than other to initiate the limited monetary claims rule and the ADR provisions.

It was recommended that a variety of ADR methods be employed by the litigants, including mediation, non-binding arbitration, settlement conference, case evaluation, etc. The subcommittee believed that non-binding arbitration is an acceptable approach for some litigants and further that mediation, which is non-binding, is usually a lower cost alternative compared with binding or non-binding arbitration. It was the conclusion of the subcommittee that the parties should be able to determine which method of ADR best met their needs, including an appropriate cost choice.

The subcommittee recommended that the parties be able to choose between public or private sector providers. In the event that parties cannot agree on a process or provider, the subcommittee recommended a requirement that the case be mediated through the Office of Dispute Resolution. It recommended that the cost of ADR be borne by the parties, except where parties are indigent. In such a situation, the Office of Dispute Resolution may provide mediation free of charge. Local bar associations might also provide such ADR services. Another source of services for indigent cases would be settlement conferences provided by magistrates, judges or senior judges. Each district should assess the need to provide such ADR services and the resources available. If resources aren't provided, claimants may elect not to be governed by this rule.

It was the recommendation of the subcommittee that this requirement be adopted by Rule, statewide. The committee concluded that it would be too difficult to have different standards for different parts of the state. Further, the cost of trying cases does not differ substantially between urban and rural districts and many rural counties now have a similar workload per judge as the urban districts.

Of concern to the subcommittee was the need to ensure quality, neutral ADR providers, and a need to ensure access to affordable ADR services for all parties and in all parts of the state.

The subcommittee wanted to be certain that confidentiality of the ADR process was preserved, pursuant to the Colorado Dispute Resolution Act. The subcommittee recommended that an on-going education effort for judges, attorneys and court personnel was necessary to assure understanding of ADR processes and awareness of the confidentiality provisions of the Colorado Dispute Resolution Act. The subcommittee hopes that lawyers will support this proposal due to the lower cost and speedy resolution afforded under the proposal.

The full committee adopted the recommendations of the subcommittee and found specifically that the ADR proposal suggested by the subcommittee should be adopted and incorporated within the limited monetary claim rule. The other recommendations adopted were that:

- Early utilization of the ADR process, coupled with early and limited disclosure, can result in reduction of time and expense to resolve these cases.
- ADR techniques can be successful, both in reducing the cost to the parties and enhancing the likelihood of successful resolution of litigation.
- An ADR meeting can do much to eliminate outstanding legal and factual issues in a case and can thereby reduce the cost and length of time associated with a contested resolution of the matter.

PRE-ADR DISCLOSURE AND DISCOVERY

The District Court Subcommittee, chaired by Frank Patterson, considered both pre-ADR and post-ADR discovery/disclosure and other court procedures. This section will discuss the committee's recommendations concerning pre-ADR discovery and disclosure.

The subcommittee concluded that there were three broad stages identified in the life of a limited monetary claim action. These were the early stage, generally the first 120 days or so of the case, including the ADR meeting; the post-ADR discovery phase of the case; and the trial stage. It was the conclusion of the subcommittee that costs of a case can be controlled best if the claims can be resolved, or be put in a position to be resolved, in the early stage of litigation. Recognizing that conclusion, the subcommittee recommended that both parties be required to file early disclosure statements. Discovery should be undertaken without court involvement and should be sufficient to conduct an effective ADR meeting. Each side may undertake any form of discovery, except depositions, without waiting for the completion of the case management order (CMO). Only depositions of the parties may be taken prior to ADR. Speedy discovery allows for prompt case evaluation and early preparation for ADR. The limit on depositions should significantly reduce the costs of these cases.

It was the consensus of the subcommittee, and the full committee, that this outline of the early stages of a limited monetary claim action should lay the groundwork for many cases to settle within the first few months after the case is filed. The subcommittee also considered, and the full committee later discussed the applicability of these proposals to non-bodily injury/personal injury cases, e.g. suits on contract, business matters. It was felt by all that these case types could be included in a limited monetary claim action track.

The subcommittee recommended that the new rule would postpone the obligation of the parties to comply with C.R.C.P. 16 (b), the case management order, until 15 days following completion of the ADR meeting and, to the fullest extent possible, would reduce the amount of judicial time necessary in a case prior to the ADR meeting. This proposal should reduce the number of times an attorney must handle a case early on, which generally increases costs to litigants. The use of standardized interrogatories and early disclosure would further reduce costs and properly posture the case for early settlement. This proposal accelerates the disclosure requirement of C.R.C.P. 26 (A) (1).

While the subcommittee concluded and the committee recommended that this rule be self-implementing, to the extent possible, to avoid the necessity of judicial involvement, the committee also recognized that early judicial involvement in a case can be useful. Unfortunately, attempting to require further judicial involvement in the management of these cases is unrealistic due to limited resources. (Please see discussion under additional judicial resources.)

POST-ADR PROCEDURES

The District Court Subcommittee considered various proposals for the post-ADR phase of limited monetary claim actions. The emphasis of the committee in these discussions was on reducing the cost of litigation. The committee considered limitations on the number of expert witnesses who could be presented at trial and limitations on the number of depositions permitted. The committee concluded that a cap on recoverable costs would be the best method of encouraging the efficient use of expert witnesses and depositions.

The rule makes an effort to minimize costs before ADR so that the truly routine small cases can be settled. But if the case is not going to settle, then neither side will want to have its ability to prepare a case impaired.

The full committee recommended that depositions of experts be admissible at trial without a showing of unavailability.

- The committee recommends that an advisement be developed to assure that the client has been fully apprised of the effect of certification under this rule and to obtain client approval of actual costs.

- The attached proposed rule caps the right to recover costs at $5,000 by a successful litigant. The committee recommends that C.R.C.P. 54 be amended to provide that for any action certified as a limited monetary claim action, no more than $5,000 in costs may be awarded to the prevailing party.

ADDITIONAL JUDICIAL RESOURCES

Woven throughout the course of the subcommittee discussions, and the full committee meetings, was a concern about adequate resources being provided, throughout the system, to resolve disputes efficiently. The committee recognized that one factor in the adoption of C.R.C.P. 16 and 26 was a belief that early judicial involvement in cases could result in speedier and, therefore less costly litigation and resolution of disputes. It was the sense of the committee that the court system would be hard pressed to clear docket and judicial time for early resolution of disputes in civil litigation, including discovery and disclosure disputes, implementation of case management orders, etc.

The subcommittee discussed the successful master program in Boulder and the utilization of magistrates for discovery/disclosure dispute resolution. While these programs may afford a useful model for effective management of judicial resources and provide early and effective resolution of these disputes for litigants, thereby reducing costs in civil cases, the committee recognized that statewide implementation of such programs would require the addition of significant new judicial resources.

The committee recognized that adding new judicial officers, either district court judges or magistrates, was a difficult proposition in light of the existing limitations on expenditure of state funds. The committee strongly urged the court to continue to pursue expansion of judicial resources, in order to ensure more efficient and more cost effective processes for dispute resolution in the court system.

The committee observed that the public perception of justice in this state is that it is available only to rich people. The committee cited the study conducted by Paul Talmey for the 1997 Judicial Conference in urging the court to consider, as part of its implementation of this report, focusing attention on enhancing access to all persons. While implementation of the committee's proposed rule cannot fully level the playing field between parties of very disparate financial resources, this effort to enhance access should do much to address this adverse public perception.

The caseload issues are significant, and more resources should be provided throughout the court system. Recognizing, however, that such additional new resources may not be available in the short-term, the committee recommends that as much as possible of the proposed rule for limited monetary claim actions be self-executing so as to not require significant judicial involvement.

CONCLUSION

There is a need, statewide, for a greater recognition and understanding of the value of access for limited monetary claim cases to Colorado's judicial system. Both from the perception of the public at large and the viewpoint of individual litigants, denial of access to the courts because of the high cost of litigation is unacceptable and contrary to the basic constitutional mission of the courts. The committee concluded that a rule could be adopted to provide greater access for claims of limited monetary value. The proposed C.R.C.P. 26.3 includes early and firm deadlines for disclosure at the initiation of a lawsuit; early and firm deadlines for mandatory alternative dispute resolution; less costly procedures for presenting expert witness testimony; and a limitation on recovery of costs to $5,000 to further reduce expenditure escalation.

The committee believes that components of this rule should be self-executing and should not lengthen the time to trial or increase the cost to parties. Rather, it is believed that these procedures, as proposed, would reduce the length of time to resolve disputes and reduce the costs to the parties.

The committee further found the following:

- The high cost of litigation in district court does in fact deny access to the court to litigants with claims of $50,000.00 or less;
- C.R.C.P. 16 and 26 have increased the cost of litigation in the district court, and in the case of limited monetary claim cases, have worked to deny access, on a practical basis, to litigants with such claims. While C.R.C.P. 16 and 26 are appropriate for many cases, assuming compliance with the rule and early judicial involvement in case management, these rules are unnecessarily costly and time consuming in limited monetary claim cases. Increasing the jurisdictional limitation of county court is not an effective way to address this problem.
- Additional judicial resources should be sought to address problems of delay and expense associated with delay in the state court system. Alternative Dispute Resolution can be successful, both in reducing the costs to parties and enhancing the likelihood of an early and successful resolution of litigation.
- The attached proposed C.R.C.P. 26.3 provides for early limited disclosure; mandatory alternative dispute resolution; limited cost recovery in an effort to simplify procedures for limited monetary claim cases.
- The committee believes that the proposed C.R.C.P. 26.3 meets the working criteria identified by the committee to address this problem.

Rule 26.3 LIMITED MONETARY CLAIM ACTIONS

Statement of Purpose

The purpose of this Rule is to provide for disclosure, Alternative Dispute Resolution, discovery and trial procedures for those district court civil actions in which the claimant seeks monetary damages not exceeding $50,000, exclusive of costs and interest. These cases shall be known as Limited Monetary Claim Actions, and shall be governed by this rule.

(a) Definition

A Limited Monetary Claim Action is a civil action in which no claimant seeks money damages of more than $50,000, exclusive of costs and interest, from one party. In the event third party claims, cross-claims or counter-claims also seek money damages, the claims of each party must be $50,000 or less for the action to be governed by this rule. If such a certification is made, then the matter shall be governed by the provisions of this Rule.

(b) Certification

At the time of the filing of the complaint the plaintiff may certify that the money damages being sought by plaintiff are $50,000 or less, exclusive of costs and interest, against any one party. This certification shall limit plaintiff's right to recover money damages to a maximum of $50,000, exclusive of costs and interest. Upon the filing of this certification, the case shall be governed by this Rule unless any party filing a third party claim, cross-claim or counter-claim certifies that any such claim for money damages is in excess of $50,000, exclusive of costs and interest. When such a certification is filed by a party presenting a third party claim, a cross-claim, or a counter-claim, the action shall not be governed by this Rule. Such certification by either party may not be used for any purpose other than to bring the civil action under this rule. All certifications are subject to C.R.C.P. 11. Certification may only be withdrawn by order of the court upon a showing of changed circumstances.

(c) Disclosures

In a case governed by this Rule the disclosure rules of C.R.C.P. 26(a) shall apply with the following exceptions: The parties shall make their disclosures required by C.R.C.P. 26(a)(1) and 16(b) no later than 21 days after the case is at issue. In personal injury cases, the plaintiff shall disclose all health care providers and employers for the past ten years, and the defendant shall disclose the present claim case file, including any evidence supporting affirmative defenses and provide a copy of all insurance policies including each declaration page.

(d) Discovery Scope and Limits

(1) In General. Discovery in a case governed by this rule shall be pursuant to the provisions of C.R.C.P. 26(b) subject to the following additional provisions and limitations.

(a) prior to the ADR required by Subsection (E), the only deposition a party may take is that of the adverse party;

(b) All forms of discovery may be had immediately after the case is at issue and without completion of the Case Management Order.

(2) Post-ADR. If a case governed by this rule has not settled prior to or at the time of the ADR required by subsection (e), discovery shall be as permitted by C.R.C.P. 26(b), and a case management order shall be filed 15 days following the ADR session.

(e) ADR

The parties in a case governed by this rule shall attend a non-binding ADR pursuant to the Colo. Disp. Res. Act, C.R.S. Section 13-22-301 et. Seq., within 120 days of the date the case is at issue. The parties may agree to a binding form of ADR. This time may not be extended except by Order of the court, and no extension shall be granted absent extreme hardship. Each party shall bear its own costs for the ADR. The parties shall certify to the court that ADR has occurred.

(f) Costs

No party in a case governed by this rule may receive an order for costs in excess of $5,000.

(g) Trial Procedures

Use of Expert Depositions. A deposition of an expert may be used at the trial without a showing of unavailability.

(h) Judgment

A party proceeding in an action governed by this rule may not recover money damages in excess of $50,000, exclusive of costs and interest, against any one party.