

RULE CHANGE 2020(16)
COLORADO RULES OF PROBATE PROCEDURE

PART 9. REMOTE WITNESSING OF DOCUMENTS

Rule 91. Remote Witnessing of Certain Non-Testamentary Instruments

(a) Any of the following documents is signed in the presence of a witness if the witness observes the signing through real-time audio-video communication in accordance with this rule:

- (1) Declaration as to medical treatment, as provided under §15-18-104, C.R.S.;
- (2) Behavior health order for scope of treatment, as provided under § 15-18.7-202, C.R.S.; and
- (3) Anatomical gift, as provided under § 15-19-205, C.R.S., including an anatomical gift contained within a declaration as to surgical treatment described in subsection (a)(1) or within a medical durable power of attorney, as provided under § 15-14-506, C.R.S.

(b) The use of real-time audio-video communication to witness the signing of a document described in subsection (a) is subject to the following requirements with respect to each remotely located witness:

(1) “Real-time audio-video communication” means an electronic system of communication by which remotely located individuals are able to see, hear, and communicate with one another, substantially simultaneously and without interruption or disconnection. Delays of a few seconds that are inherent in the method of communication do not prevent the interaction from being considered to have occurred in real time.

(2) At the time of the document’s signing:

A. Each signer and witness must be a domiciliary of and located within the State of Colorado; and

B. Each witness must be otherwise qualified to sign the document under any applicable statute.

(3) During real-time audio-video communication:

A. Prior to the document’s signing, the signer of the document must:

(i) Make available for remote examination by the witness a complete copy of the unsigned document and, if the signer is not personally known to the witness, the signer’s government-issued photo identification; and

(ii) Orally state to the witness the signer’s name; the name, purpose, and number of pages of the document to be signed; and the signer’s current location and State of domicile.

B. Prior to the document’s signing, each witness must:

(i) Confirm the identity of the signer either by personal knowledge or by examining the signer's government-issued photo identification; and

(ii) Confirm that the name, purpose, and number of pages of the document to be signed as described by the signer match the copy of the unsigned document examined by the witness.

C. The signer must sign the document; and the witness must observe the signer's signing of the document.

(4) The signer must transmit a copy of the signed document by fax, email, or other means to the witness within a reasonable period after signing the document.

(5) Within 14 days after receiving a copy of the signed document, each remotely located witness must:

A. Certify his or her witnessing of the document's signing in a form substantially similar to the following:

I certify that on _____, 20__, I witnessed, through the use of real-time audio-visual communication, _____ (the "signer") sign the _____ (the "document"); and during the audio-visual communication I (a) confirmed the identity of the signer, (b) observed the signer's signing of the document, and (c) confirmed that the signed document had the same name, purpose, and number of pages as represented to me by the signer prior to his or her signing.

B. Transmit a copy of the signed document with the completed witness certification to the signer by fax, email, or other means.

(c) Except as otherwise provided by statute, a non-testamentary instrument executed pursuant to subsection (b) of this rule is effective as of the date the signer signed the instrument.

(d) This rule shall be effective during any period in which the Governor of Colorado, by executive order, has formally declared the existence of a public health crisis that, by the terms of such order, requires social or physical distancing throughout Colorado.

Comment

2020

This rule was promulgated by the Colorado Supreme Court's Probate Rules Committee during the COVID-19 pandemic to address issues arising from the Governor's Order D 2020 017, dated March 25, 2020, concerning social and physical distancing.

Rule 92. Remote Witnessing of Certain Testamentary Instruments

(a) A will, as defined under § 15-10-201(59), C.R.S., that is signed by a testator and attested by two qualified witnesses through the use of real-time audio-video communication, or by one witness in the testator's physical presence and the second qualified witness through the use of real-time audio-video communication, as defined in Rule 91(b)(1), shall constitute a valid attested will under C.R.S. § 15-11-502(1)(c)(I) if each of the following conditions is satisfied:

(1) Each of the witnesses must be either (a) a licensed Colorado attorney of whom the testator is a current client within the meaning of the Colorado Rules of Professional Conduct, or (b) if that attorney is a participant in the document's execution, any other lawyer or nonlawyer assistant whose professional activities are regularly performed under the authority of the attorney or the attorney's law firm.

(2) The requirements set forth in subsection (b) of Rule 91 must be satisfied and certified with respect to each witness's attestation of the will, subject to the following modifications:

A. The certification of a remotely located witness, in the form required by subsection (b)(5)A of Rule 91, must be contained in the will. A separate document of certification by a remotely located witness cannot be used to attest a will under this rule.

B. If more than one remotely located witness attests the will, the will must contain multiple certifications.

(3) After the will has been signed and attested:

A. Within a reasonable time after the will's signing, the original, signed will must be presented to an attorney who has witnessed the will's signing, or who is affiliated with or supervising other witnesses, as provided under subsection (a)(1) of this rule;

B. Within a reasonable time after receiving the original, signed will, the attorney must confirm that the document is identical to the will remotely witnessed under subsection (a)(2) of this rule; and

C. Within a reasonable period after confirming the will's status under subsection (a)(3)B of this rule:

i. The original, signed will must be presented to each witness who remotely attested the will's signing under subsection (a)(2) of this rule; and

ii. Each such witness must sign a witness certification in the original will in the same manner as that witness's certification was completed and signed for purposes of subsection (a)(2) of this rule.

(b) A will signed and attested in accordance with subsection (a) of this rule is executed as of the date the testator signed the will.

(c) If any portion of a will is executed pursuant to this rule, the will must be presented to the court in a formal testacy proceeding pursuant to C.R.S. 15-12-401 et seq.

(d) This rule shall be effective during any period in which the Governor of Colorado, by executive order, has formally declared the existence of a public health crisis that, by the terms of such order, requires social or physical distancing throughout Colorado.

Comment

2020

This rule was promulgated by the Colorado Supreme Court's Probate Rules Committee during the COVID-19 pandemic to address issues arising from the Governor's Order D 2020 017, dated March 25, 2020, concerning social and physical distancing.

Amended and Adopted by the Court, En Banc, April 24, 2020, effective immediately.

By the Court:

**Richard L. Gabriel
Justice, Colorado Supreme Court**