



Litigating Business Cases in the Wild West: Are Colorado's Experimental Court Rules Snake Oil or Strong Medicine?

By: [Russ Miller](#)

Colorado's Civil Access Pilot Project Rules (CAPP Rules) represent a radical departure from most rules of civil procedure, which typically are based upon the federal model. The Colorado Supreme Court designed these experimental CAPP Rules for the purpose of reducing the time, burden, and expense of litigating business disputes. It remains to be seen whether they have achieved that purpose.

The CAPP Rules apply to all "business actions" (which include most actions other than environmental litigation or personal injury suits) filed in a state district court in Denver, Adams, Jefferson, Arapahoe, or Gilpin County before December 31, 2014. Although the rules are experimental, they are mandatory in the actions to which they apply. The trial courts must apply them strictly, and litigants may not opt out of them.

Any person or company involved in a business dispute that could be filed in a Colorado district court should immediately consult with a trial attorney who has experience under the CAPP Rules to determine whether it is advisable to take pre-emptive action before December 31, 2014, to either take advantage of those rules or avoid them.

Companies litigating a case under the CAPP Rules for the first time are likely to find some of the rules shocking. For example, under the CAPP Rules, regardless of the complexity of the case or the volume of documents associated with it:

- Neither side is allowed to depose the opposing party's expert witness (although experts are not allowed to offer any testimony that is not set forth with "reasonable detail" in their written reports);

- Plaintiffs must make their relevant documents available to the defendants within 21 days after plaintiffs file their Complaint, before a defendant is even required to file an Answer;
- Defendants must make their relevant documents available to the plaintiff within 21 days after they file their Answer;
- The parties may not extend their respective disclosure deadlines by agreement, and they must notify the Court when they have complied with those deadlines;
- The Court must apply mandatory sanctions upon a party that fails to disclose its relevant documents within the short time allowed, unless the Court makes an affirmative finding that a party's failure to disclose its relevant documents was justified or harmless;
- The filing of a Motion to Dismiss the lawsuit cannot avoid or delay the deadline for filing any pleading (including the Answer), disclosure or discovery response, or even a motion challenging the Court's jurisdiction;
- Discovery motions generally are not allowed; rather, the parties call the court clerk when they have a dispute, and the court then schedules a prompt conference call to hear the parties' respective arguments and issues its ruling with only minimal briefing (if any);
- The Court sets a trial date as quickly as possible (generally no later than a year from the date the plaintiff filed the lawsuit, although that requirement is not formally stated in the Rules), and the trial date subsequently cannot be changed absent "extraordinary circumstances;" and,
- Continuances and extensions of any deadlines are "strongly disfavored," the courts are instructed to deny motions for extensions or continuances upon receipt "absent extraordinary circumstances," and the parties are advised to "assume the motion will be denied."

The Colorado Supreme Court will decide whether these CAPP Rules should be abandoned, modified, or extended to apply in all district courts statewide after December 31, 2014. Until then, the CAPP Rules present an additional layer of strategic consideration for any energy company that may be subject to jurisdiction and venue in a district court in one of the 5 counties where these mandatory rules currently apply. In some instances, especially where a potential adversary is known to employ abusive litigation tactics, a company may want to take advantage of the opportunity to file suit in a venue where the CAPP Rules apply, thereby avoiding more protracted and expensive

litigation elsewhere. In other instances, a company involved in an especially complex dispute may want to file suit immediately in another venue, to avoid being “railroaded” by a Plaintiff in a court where the CAPP Rules apply. Alternatively, both parties may want to avoid these rules by mutually agreeing to venue in a county where they currently do not apply, before the Colorado Supreme Court decides whether to extend them state-wide.

The CAPP Rules strongly favor parties who work aggressively to develop their cases on the front end, and they penalize parties who adopt a more “reactive” approach to litigation. They can be effective at reducing costs in appropriate cases, but they also can hinder the full development of complex cases and create traps for the unwary. Whether you should regard them as snake oil or strong medicine will depend upon the extent to which you anticipate your opposing counsel will attempt to employ ‘scorched earth’ tactics or to conceal important information, and upon the facts and circumstances of your particular case.

If you would like to know more about Colorado’s CAPP Rules and their potential benefits and/or pitfalls, please contact [Russ Miller](#) or [Karen Spaulding](#).

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