

January 1932

Report of the Special Committee - Elimination of Unnecessary Delay in Procedure

Dicta Editorial Board

Follow this and additional works at: <https://digitalcommons.du.edu/dlr>

Recommended Citation

Report of the Special Committee - Elimination of Unnecessary Delay in Procedure, 9 Dicta 167 (1932).

This Article is brought to you for free and open access by the Denver Law Review at Digital Commons @ DU. It has been accepted for inclusion in Denver Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

REPORT OF THE SPECIAL COMMITTEE

ELIMINATION OF UNNECESSARY DELAY IN PROCEDURE

YOUR committee appointed to make recommendations for the elimination of unnecessary delay in procedure, recommends that the rules of the District Court of the Second Judicial District of the State of Colorado be amended in the following particulars:

I.

All motions and demurrers to any complaint shall be filed at one time and within the period now allowed for answer under the code after service of the summons and/or complaint.

All motions and demurrers to any answer or replication (as the case may be) shall be filed at one and the same time, within such period as may be fixed for filing of the same.

(Your committee believes that needless delay in civil trials results from the filing of successive motions and demurrers, seldom presenting vital questions but each requiring separate disposition. The present recommendations recognize this evil and would require all motions and demurrers to be filed together. It will frequently be found that both the motions and demurrers are without merit, and where this is true, both can be disposed of at the same time. If the motions are not good, but the demurrer is good, that can likewise be determined at one hearing. If the motions are good, no confusion will arise from having the demurrer filed therewith, for if the motion is sustained, a ruling on the demurrer will be unnecessary; the unsuccessful party will either stand on his pleadings or plead over; and if he pleads over, the amended pleading will be in turn subject to a demurrer which will be disposed of at a subsequent hearing).

II.

All motions, demurrers, and proceedings of every kind arising prior to the trial of the issues shall be receipted for by the opposing counsel or served upon him and, upon filing of the same, together with the receipt therefor or affidavit of service, the same shall without further notice be placed upon the calendar of hearings by the Clerk of the Court upon the following Monday thereafter, or, if the Presiding Judge system be adopted then three days after day of receipt of service of notice, in either case, subject to the right of the Court to grant continuances upon good cause shown as hereinafter provided in this report.

(The Committee believes that the only reason for filing motions or demurrers should be a desire to obtain a clear-cut issue and that such issue should be arrived at as speedily as possible).

III.

Continuances of hearings on motions, demurrers and other preliminary matters (unless by written stipulations of the attorneys) shall not be granted except upon a strict showing of necessity and proper legal grounds therefor.

(This adds nothing to the present law, as we understand it, but your committee believes that continuances in preliminary matters have nevertheless come to be asked for and granted for insufficient reasons. We believe that the Bar as a whole will in the long run profit by the speedy settlement of all litigation, and that emphasis, by rule of Court, upon the necessity therefor will be helpful).

IV.

After a ruling upon any motions or demurrers, to any pleading, the party against whom said ruling was made shall be required to plead further within ten days thereafter, unless otherwise ordered by the Court.

(This amendment will accelerate proceedings and will work no hardship since it will be known in advance that after the motions have been disposed of, further pleadings must promptly follow).

V.

(a) That the division of Court presided over by the Presiding Judge shall hear and dispose of all preliminary, emergency, and ex parte matters, all motions and demurrers, and all other proceedings prior to the trial of the issues.

(b) That the remaining divisions shall be trial divisions, and shall try the issues in all actions and proceedings.

(c) That when any action or proceeding is at issue it may, upon due notice, be set for trial to the Court, or, if the action be one in which the issues may be tried to a jury, and a jury be demanded by either party, to a jury. Such notice with proof of due service shall be filed with the Clerk, who shall, on the next following court day, present such notice, together with all similar notices then filed, to the Presiding Judge, who shall, by lot, or by some other automatic means, and in such a manner as to equalize so far as possible the work of the various divisions, assign to the trial divisions all such actions or proceedings at issue, and all further proceedings in such actions or proceedings shall be had in the division to which they are so assigned. Motions for new trials and other matters incidental or subsequent to the trial of the issues shall be disposed of on Saturdays.

(This amendment constitutes a radical departure from the system now in use, and substitutes one, which, we are informed, is used in other large centers with variations. This system, by an article published in "The Denver Bar Association Record" of January, 1925, was advocated in Denver by Hudson Moore, and formerly by a committee of which Albert T. Vogl was a member, who gave the subject extensive study and investigation. It has more recently been advocated in substantially the above form by Mr. Carle Whitehead, a member of this committee, whose article in the January 1932 issue of "Dicta" clearly presents its merits and advantages. Major J. B. Goodman, Chief Deputy Clerk of the Civil Divisions, has furthermore, advocated this system as a more efficient one. The adoption of the same having thus been already ably advocated, little beyond a short resume of our own

reason for recommending it is here necessary, reference being made to the foregoing articles for a fuller exposition of its advantages and method of operation.

We believe, first, that by having all motions passed on by a single Judge, greater uniformity in rulings on questions of pleading may be expected; second, that by having four judges constantly engaged solely in trying cases, greater facility in trial practice will necessarily follow; and third, that litigants and the community generally will benefit by the greater speed with which the entire legal procedure will operate under this plan. Since the preliminary matters simply make the issues, we do not believe that the hearing of arguments thereon would be of sufficient value to the trial court to counter-balance the other obvious advantages of the single calendar system.)

Your Committee are agreed that these changes in the rules of court will help to eliminate delay without injustice to any litigant.

Respectfully submitted,

KENNETH ROBINSON
 CARLE WHITEHEAD
 BENTLEY McMULLIN
 LOUIS A. HELLERSTEIN
 HAMLET J. BARRY, *Chairman*

MINORITY REPORT

SPECIAL COMMITTEE—DENVER BAR ASSOCIATION

Elimination of Unnecessary Delay in Procedure

The undersigned member of the Committee approves the majority report subject to the following suggestions:

Regarding the first recommendation—That all motions and demurrers attacking or directed to any pleading be filed simultaneously:

It is suggested that the adoption of this recommendation *might be* dangerous and is unnecessary, because:

a. Motions logically precede demurrers and it may be held that the filing of a demurrer waives motions. If so, this change in the rule would require a party to waive either the right to move (by filing a demurrer) or the right to demur (by filing a motion without a demurrer). See *Bollen vs. Woodhams*, 68 Colo. 322, 49 C. J. 760 Sec. 1081.

b. Both motions and demurrers have a proper and important office. Their importance should not be disregarded or their proper use hampered or endangered for the sake of speed.

c. The adoption of the recommended Presiding Judge system will so facilitate disposition of motions and demurrers that they will no longer be effective as means of delay and their use for that purpose will cease, thus eliminating the need for this recommendation.

Respectfully submitted,

CARLE WHITEHEAD,
Minority Member.