Applicability of Rules [Details]

(1) These rules of appellate procedure are intended to embrace appeals of both criminal and civil matters. The appeal replaces the writ of error.

(2) Rules 1 through 48, except where specifically noted otherwise, apply to appeals to either the supreme court or to the court of appeals. Whenever "appellate court" is used it refers to either court. Whenever in these rules the supreme court or court of appeals is referred to specifically the rule shall apply to procedure in that court and no other, e.g., C.A.R. 4.1.

(3) As near as practicable these rules are patterned on the Federal Rules of Appellate Procedure for the United States Courts of Appeal as of July 1, 1968. However, several of the rules peculiarly apply to procedure in the state practice.

(4) Procedure for invoking original jurisdiction of and for remedial writs in the supreme court are embraced in Rule 21 and 21.1. Certiorari proceedings to the supreme court from the court of appeals or from the district court when applicable are embraced in Rules 49 through 57.

Annotation

Law reviews. For article, "Colorado Appellate Rule Changes: A Commentary", see 12 Colo. Law. 1927 (1983).

Colorado Appellate Rules are patterned directly on the Federal Rules of Appellate Procedure. Almarez v. Carpenter, 347 F. Supp. 597 (D. Colo. 1972).

Rule-making authority of supreme court. The supreme court has authority to adopt rules for the regulation of the business of the courts and the procedure to be followed by litigants in doing that business. Nonetheless, absent constitutional authority, the supreme court cannot adopt a rule which changes jurisdiction of a court contrary to a provision of a statute. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

For the supreme court, see article 2 of title 13, C.R.S.; for the court of appeals, see article 4 of title 13, C.R.S.

RULE 1. Scope of Rules

(a) Matters Reviewable. An appeal to the appellate court may be taken from:

(1) A final judgment of any district, probate, or juvenile court in all actions or special proceedings whether governed by these rules or by the statutes;

(2) A judgment and decree, or any portion thereof, in a proceeding concerning water rights; and an order refusing, granting, modifying, cancelling, affirming or continuing in whole or in part a conditional water right, or a determination that reasonable diligence or progress has or has not been shown in an enterprise granted a conditional water right;

(3) An order granting or denying a temporary injunction;

(4) An order appointing or denying the appointment of, or sustaining or overruling a motion to discharge, a receiver.

(b) Limitation on Taking Appeals. The taking of appeals shall be in accordance with these rules except for special proceedings in which a different time period is set by statute for the taking of an appeal.

(c) Appeal Substitute for Writs of Error. Matters designated by statute to be reviewable by writ of error shall be reviewed on appeal as herein provided.

(d) Ground for Reversal, etc. Briefs filed pursuant to C.A.R. 28(a) shall state clearly and briefly the grounds upon which the party relies in seeking a reversal or modification of the judgment or the correction of adverse findings, orders, or rulings of the trial court. The party will be limited to the grounds so stated although the court may in its discretion notice any error appearing of record. When an appeal has been taken, it shall not be dismissed upon motion of an appellant without notice to all interested parties whose appearances have been entered in the appellate court, and order of the court permitting such dismissal; if dismissal is objected to by any such interested party, the party may, in the court's discretion, seek reversal, modification, or correction of the judgment.

(e) Review of Water Matters. The notice of appeal (see C.A.R. 4) for review of the whole or any part of a judgment and decree or order as defined in subsection (a)(2) of this Rule shall designate as appellant the party or parties filing the notice of appeal and as appellee all other parties whose rights may be affected by the appeal and who in the trial court entered an appearance, by application, protest, or in any other authorized manner. If not an appellant, the division engineer shall be an appellee; provided that

upon application, a dismissal may be entered as to the division engineer in the absence of objection made by any party to the appeal within 14 days from the mailing to such party of such application. The notice of appeal shall describe the water rights with sufficient particularity to apprise each appellee of the issues sought to be reviewed. The notice of appeal shall otherwise comply with the requirements of C.A.R. 3(d).

Annotation

I. General Consideration.

Law reviews. For article, "Necessity for Writs of Error and Motions for New Trial for a Review in Colorado", see 2 Rocky Mt. L. Rev. 99 (1930). For article, "The Grounds for Reversal of Criminal Cases in Colorado, 1864 to 1948", see 22 Rocky Mtn. L. Rev. 117 (1950). For note, "Colorado Appellate Procedure", see 40 U. Colo. L. Rev 551 (1968). For article, "Preserving Issues for Appeal", discussing the requirement of an offer of proof, see 20 Colo. Law. 879 (1991). For article, "Perfecting Appeals to the Colorado Court of Appeals", see 21 Colo. Law. 2385 (1992).

Appeal is a matter of right. Monti v. Bishop, 3 Colo. 605 (1877); Hull v. Denver Tramway Corp., 97 Colo. 523, 50 P.2d 791 (1935); Wheeler Kelly Hagny Trust Co. v. Williamson, 111 Colo. 515, 143 P.2d 685 (1943).

Appeal is adequate remedy to judgment of trial court. If, by any judgment entered by a trial court, the parties feel aggrieved, their remedy by appeal is speedy and altogether adequate for the protection of their rights, and there is no occasion for invoking the original jurisdiction of the supreme court. Prinster v. District Court, 137 Colo. 393, 325 P.2d 938 (1958).

Original proceeding may not be substituted for appeal. C.A.R. 21 concerning original proceedings may not be utilized to avoid the requirements of finality of judgments and orders set forth in this rule. Groendyke Transp., Inc. v. District Court, 140 Colo. 190, 343 P.2d 535 (1959).

Original proceedings in the supreme court may not be used as a substitute for appeal. Douglas v. Municipal Court, 151 Colo. 358, 377 P.2d 738 (1963); DeLong v. District Court, 151 Colo. 364, 377 P.2d 737 (1963).

Nor may writ of habeas corpus. Habeas corpus will not lie where an appeal is adequate and may not be used as a substitute for appeal. Nickle v. Reeder, 144 Colo. 593, 357 P.2d 921 (1960); Medberry v. Patterson, 142 Colo. 180, 350 P.2d 571 (1960), cert. denied, 368 U.S. 839, 82 S. Ct. 59, 7 L. Ed. 2d 39 (1961).

A party seeking only to affirm a lower court so that its holding may be used as precedent in other cases has not presented adequate grounds for an appeal, because the party is not seeking the reversal, modification, or correction of the holding as required under subsection (d). Broomfield v. Farmers Reservoir & Irrigation Co., 235 P.3d 296 (Colo. 2010).

Appellant must be party or aggrieved by lower court's decision. One of two tests must be met before a party may prosecute an appeal to the supreme court. He must either be a party to the action or he must be a person substantially aggrieved by the disposition of the case in the lower court. Tower v. Tower, 147 Colo. 480, 364 P.2d 565 (1961).

Only parties aggrieved may appeal. The word aggrieved refers to a substantial grievance, the denial to the party of some claim of right, either of property or of person, or the imposition upon him of some burden or obligation. Miller v. Reeder, 157 Colo. 134, 401 P.2d 604 (1965).

Guarantors of a surety company on a criminal recognizance, who are permitted to intervene in the trial court, and who are the only persons who would suffer loss from a forfeiture, are parties to the record and entitled to seek a review in the supreme court by appeal. Allison v. People, 132 Colo. 156, 286 P.2d 1102 (1955).

The attorney is properly before the supreme court on a motion for fees because he is a party substantially aggrieved by the disposition in the trial court. Equity demands that he be treated as an intervenor and he was so considered by the trial court and the parties because his motion for fees was on behalf of himself and not for the wife. Tower v. Tower, 147 Colo. 480, 364 P.2d 565 (1961).

Else appellant lacks standing. Where appellants are not proper parties in an action, they have no standing in the court of appeals to question the validity of a judgment. Duke v. Pickett, 30 Colo. App. 438, 494 P.2d 120 (1972).

Standing, for purposes of an appeal, means that a party must have alleged an injury in fact and that injury must be to a legally protected or cognizable interest. The right to appeal of a matter of law follows the property interest. City of Aspen v. Artes-Roy, 855 P.2d 22 (Colo. App. 1993).

Due process not denied by limitation on filing appeals. Prejudicial irregularity in a trial court proceeding must be asserted by an appeal, and where a party sues out an appeal to review a judgment, and thereafter dismisses the same and because of the lapse of time may not again apply for an appeal, due process of law is not denied. Davidson Chevrolet, Inc. v. City

& County of Denver, 138 Colo. 171, 330 P.2d 1116 (1958), cert. denied, 359 U.S. 926, 79 S. Ct. 609, 3 L. Ed. 2d 629 (1959).

Time limitations are procedural. Limitations of time within which an appeal may be brought is procedural and may be fixed by the supreme court. Sitler v. Brians, 126 Colo. 370, 251 P.2d 319 (1952).

Motion for a new trial is a prerequisite to review on appeal in cases involving questions of law only as well as in cases involving questions of fact. Colo. State Bd. of Exam'rs of Architects v. Marshall, 136 Colo. 200, 315 P.2d 198 (1957).

It is mandatory upon the party claiming error to move the trial court for a new trial, unless an order dispensing with same is entered. Security Bldg. Co. v. Lewis, 127 Colo. 139, 255 P.2d 405 (1953).

This applies to temporary injunctions. Sections (b) and (f) of C.R.C.P. 59, requiring a motion for a new trial or an order dispensing therewith, apply to appeals brought to determine validity of orders granting or denying temporary injunctions under this rule. Minshall v. Pettit, 151 Colo. 501, 379 P.2d 394 (1963); CF & I Steel, L.P. v. United Steel Workers of Am., 990 P.2d 1124 (Colo. App. 1999), aff'd on other grounds, 23 P.3d 1197 (Colo. 2001).

Failure to move for new trial requires dismissal of appeal. Where no motion for new trial was filed, and no order dispensing with such filing was entered, the requirements of this rule were not complied with, and the appeal is accordingly dismissed. People ex rel. Dunbar v. South Platt Water Conservancy Dist., 139 Colo. 503, 343 P.2d 812 (1959).

In an action on a promissory note where judgment notwithstanding the verdict was entered for plaintiff, and defendant failed to file a motion for a new trial, and the necessity for such a motion was not dispensed with pursuant to C.R.C.P. 59(f), an appeal to review such judgment will be dismissed. Boyd v. Adjustment Bureau, Inc., 148 Colo. 233, 365 P.2d 813 (1961).

As does insufficient motion for new trial. This rule presupposes that a motion for a new trial be filed with the trial court, and an appeal was dismissed where the motion which was filed was couched in such broad and general language that it informed the court that appellants were dissatisfied with the judgment, as if no motion for new trial was ever filed. Martin v. Opdyke Agency, Inc., 156 Colo. 316, 398 P.2d 971 (1965).

Substantial noncompliance with procedure requires dismissal. Where the rules relating to procedure on appeal in the supreme court are ignored or

disregarded in substantial particulars, an appeal will be dismissed. Farrell v. Bashor, 140 Colo. 408, 344 P.2d 692 (1959).

But strict compliance not necessary where status of children at stake. While a motion may fail to comply strictly with the requirements of C.R.C.P. 59, when the status of minor children is at stake, a court of appeals will notice error in the trial court proceedings, and remand for findings. In re Brown, 626 P.2d 755 (Colo. App. 1981).

Supreme court may dismiss an appeal on its own motion where there is no jurisdiction to review the case. Unzicker v. Unzicker, 74 Colo. 211, 220 P. 495 (1923); Diebold v. Diebold, 74 Colo. 557, 223 P. 46 (1924).

Jurisdiction of district court while appeal pending. Once a case is in the supreme court on appeal, a trial court is without jurisdiction to vacate its judgment or enter another or different judgment. Davidson Chevrolet, Inc. v. City & County of Denver, 138 Colo. 171, 330 P.2d 1116 (1958), cert. denied, 359 U.S. 926, 79 S. Ct. 609, 3 L. Ed. 2d 629 (1959).

Appellate court must not, upon review, sit as thirteenth juror and set aside a verdict because it might have drawn different conclusion from all evidence. People v. Vigil, 180 Colo. 104, 502 P.2d 418 (1972).

If sentences imposed are within statutory bounds, and if they do not shock the conscience of the court, they will not be disturbed on the grounds that they constitute cruel and unusual punishment. Trujillo v. People, 178 Colo. 136, 496 P.2d 1026 (1972).

Transfer to court of appeals does not violate rule. Section 13-4-110(2), providing that cases within the jurisdiction of the court of appeals may be transferred from the supreme court, is not void and the statutory procedure is not contrary to this rule. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

There is a recognized distinction between "proceedings" and "special proceedings". Hewitt v. Landis, 75 Colo. 277, 225 P. 842 (1924); Silter v. Brians, 126 Colo. 370, 251 P.2d 319 (1952).

Applied in Graham v. Swift, 123 Colo. 309, 228 P.2d 969 (1951); Hart v. Herzig, 131 Colo. 458, 283 P.2d 177 (1955); Cline v. McDowell, 132 Colo. 37, 284 P.2d 1056 (1955); Addressograph-Multigraph Corp. v. Kelly, 146 Colo. 550, 362 P.2d 184 (1961); Schwab v. Martin, 165 Colo. 547, 441 P.2d 17 (1968); Reed v. Reed, 29 Colo. App. 199, 481 P.2d 125 (1971); People v. Morris, 190 Colo. 215, 545 P.2d 151 (1976); In re Gardella, 190 Colo. 402, 547 P.2d 928 (1976); Sanderson v. District Court, 190 Colo. 431, 548 P.2d

921 (1976); Bd. of Water Works v. Pueblo Water Works Employees Local 1045, 196 Colo. 308, 586 P.2d 18 (1978); In re Estate of Dandrea, 40 Colo. App 547, 577 P.2d 1112 (1978); People v. Rael, 198 Colo. 225, 597 P.2d 584 (1979); Gardner v. State, 200 Colo. 221, 614 P.2d 357 (1980); Abts v. Bd. of Educ., 622 P.2d 518 (Colo. 1980); Ward v. Indus. Comm'n, 44 Colo. App. 301, 612 P.2d 1164 (1980); People in Interest of G.L., 631 P.2d 1118 (Colo. 1981); In re Rominiecki v. McIntyre Livestock Corp., 633 P.2d 1064 (Colo. 1981); Schuster v. Zwicker, 659 P.2d 687 (Colo. 1983); M.E.G. v. R.B.D., 676 P.2d 1250 (Colo. App. 1983).

II. Matters Reviewable.

A. In General.

Practice under the former code of civil procedure is analogous to the practice under this rule. Burks v. Maudlin, 109 Colo. 281, 124 P.2d 601 (1942).

Appeals are not allowed for mere purpose of delay, or to present purely abstract legal questions, however important or interesting, but to correct errors injuriously affecting the rights of some party to the litigation. Miller v. Reeder, 157 Colo. 134, 401 P.2d 604 (1965).

Jurisdiction cannot be conferred by act of parties. Jurisdiction of an appeal which otherwise does not exist cannot be conferred by act of the parties. Sons of Am. Bldg. & Inv. Ass'n v. City of Denver, 15 Colo. 592, 25 P. 1091 (1890); Bd. of Comm'rs v. McIntire, 23 Colo. 137, 46 P. 638 (1896).

An appellate court will consider only those questions properly raised by the appealing parties. Denver United States Nat'l Bank v. People ex rel. Dunbar, 29 Colo. App. 93, 480 P.2d 849 (1970).

And issues between parties to appeal. Appellate review is limited to a consideration of issues between the parties to an appeal. Mills v. Saunders, 30 Colo. App. 462, 494 P.2d 1309 (1972).

Constitutional challenges to sales and use tax provisions of municipal code made to an administrative agency but were not made in declaratory judgment action in district court are not properly preserved for appellate review. Arapahoe Roofing & Sheet Metal v. Denver, 831 P.2d 451 (Colo. 1992).

Colorado rules and decisions discourage the review of a cause piecemeal. Vandy's, Inc. v. Nelson, 130 Colo. 51, 273 P.2d 633 (1954); Berry v. Westknit Originals, Inc., 145 Colo. 48, 357 P.2d 652 (1960); Levine v. Empire Sav. & Loan Ass'n, 34 Colo. App. 235, 527 P.2d 910 (1974), aff'd, 189 Colo. 64, 536 P.2d 1134 (1975).

Only section (a) orders are appealable. One seeking review of a judgment or order must bring his case within one of the categories under section (a); otherwise, it is not an appealable order. Freshpict Foods, Inc. v. Campos, 30 Colo. App. 354, 492 P.2d 867 (1971).

A denial of a summary judgment motion is not generally considered a final decision that is immediately appealable under this rule. City of Lakewood v. Brace, 919 P.2d 231 (Colo. 1996).

The denial of a motion for summary judgment is not an appealable ruling. Herrera v. Gene's Towing, 827 P.2d 619 (Colo. App. 1992).

Interlocutory appeal proper on denial of county department of social services employees' motion for summary judgment based on qualified immunity where denial was based on trial court's finding that plaintiff children pleaded facts sufficient to establish a violation by county employees of a clearly established constitutional right. Interlocutory review is proper but limited to the trial court's legal conclusions, taking plaintiff children's factual allegations as true. Shirk v. Forsmark, 2012 COA 3, 272 P.3d 1118.

Temporary restraining order is not appealable. Under this rule an ex parte temporary restraining order entered by the trial court is not an order granting a "temporary injunction" which is subject to review on appeal. Simpson v. Simpson, 151 Colo. 88, 376 P.2d 55 (1962).

A temporary restraining order issued under C.R.C.P. 65(b), is not an appealable order under section (a) of this rule. Freshpict Foods, Inc. v. Campos, 30 Colo. App. 354, 492 P.2d 867 (1971); O'Connell v. Colo. State Bank, 633 P.2d 511 (Colo. App. 1981).

But order granting preliminary injunction is reviewable. An order granting a preliminary injunction restraining the board of optometric examiners from enforcing its regulation is reviewable by appeal. Colo. State Bd. of Optometric Exam'rs v. Dixon, 165 Colo. 488, 440 P.2d 287 (1968).

Order appointing or overruling motion to discharge a receiver is reviewable on appeal before final judgment. Boyd v. Brown, 79 Colo. 568, 247 P. 181 (1926).

This rule provides opportunity to seek a receiver's discharge and have review if the trial court should refuse the request. Thompson v. Beck, 92 Colo. 441, 21 P.2d 712 (1933).

An order entered on a motion to discharge a receiver, although intermediate in a sense, is expressly made reviewable on appeal before final judgment. Melville v. Weybrew, 108 Colo. 520, 120 P.2d 189 (1941), cert. denied, 315

U.S. 811, 62 S. Ct. 795, 86 L. Ed. 1210, reh'g denied, 315 U.S. 830, 62 S. Ct. 913, 86 L. Ed. 1224 (1942).

But appeal from interlocutory order not mandatory. Although an order granting or denying the appointment of a receiver is appealable as of right, pursuant to this rule, it is not mandatory that an appeal be taken from such an interlocutory order. Jouflas v. Wyatt, 646 P.2d 946 (Colo. App. 1982).

If an interlocutory appeal is not taken from an order appointing a receiver, a party may still appeal the subject matter of the interlocutory order upon the entry of a final judgment. Application of Northwestern Mut. Life Ins. Co., 703 P.2d 1314 (Colo. App. 1985).

And matters not disposed of by trial court not considered on review. Where a petition in intervention is filed in an action involving the appointment of a receiver, questions raised by the petition which have not been disposed of by the trial court will not be considered on review of the order appointing the receiver. Woods v. Capitol Hill State Bank, 70 Colo. 221, 199 P. 964 (1921).

Prosecutor's appeal pursuant to ? §16-12-102 subject to the final judgment requirement of this rule. People v. Guatney, 214 P.3d 1049 (Colo. 2009).

An order declining to revoke probation is not a final judgment within meaning of this rule, thus the court of appeals lacked jurisdiction to entertain the appeal. People v. Guatney, 214 P.3d 1049 (Colo. 2009).

Probation revocation order reviewable. Nothing in ? §16-12-101, prohibits a direct appeal of a probation revocation order under this rule. People v. Carr, 185 Colo. 293, 524 P.2d 301 (1974).

Appellate review of a county court's decision is available by direct appeal to the Colorado supreme court. Abts v. Bd. of Educ., 622 P.2d 518 (Colo. 1980).

Appeal may not be taken from order denying application to compel arbitration on an employment contract entered into before July 14, 1975. Monatt v. Pioneer Astro Indus., Inc., 42 Colo. App. 265, 592 P.2d 1352 (1979).

Chartering decisions of banking board not within rule. Proceedings in the court of appeals to review chartering decisions of the banking board do not fall within the rules applicable to appeals generally. Columbine State Bank v. Banking Bd., 34 Colo. App. 11, 523 P.2d 474 (1974).

B. Final Judgment.

Appeal may be taken from final judgment only. Doane v. Glenn, 1 Colo. 417 (1872); Hadley v. Fish, 3 Colo. 51 (1876); Alvord v. McGaushey, 5 Colo. 244 (1880); Wehle v. Kerbs, 6 Colo. 167 (1882); Meyer v. Brophy, 15 Colo. 572, 25 P. 1090 (1890); Tatarsky v. Smith, 78 Colo. 491, 242 P. 971 (1926); Colo. State Bank v. Bird, 79 Colo. 625, 247 P. 802 (1926); People ex rel. Ernst v. Eldred, 86 Colo. 174, 279 P. 41 (1929); Martin v. Way, 86 Colo. 232, 280 P. 488 (1929); Commercial Credit Co. v. Higbee, 88 Colo. 300, 295 P. 792 (1931); Marysville & Colo. Land Co. v. Heyde, 93 Colo. 523, 27 P.2d 498 (1933); Crews-Beggs Dry Goods Co. v. Bayle, 96 Colo. 19, 40 P.2d 233 (1934); Julius Hyman & Co. v. Velsicol Corp., 119 Colo. 121, 201 P.2d 380 (1948); North Sterling Irrigation Dist. v. Knifton, 132 Colo. 212, 286 P.2d 612 (1955); People v. Hernandez, 155 Colo. 519, 395 P.2d 733 (1964) (decided prior to adoption of C.A.R. 4.1 providing for interlocutory appeals in criminal cases).

Entry of final judgment is a prerequisite to the right to prosecute an appeal. Stonebraker v. Konugres, 117 Colo. 429, 188 P.2d 894 (1948).

An order entered by a trial court which is a final judgment is subject to review on appeal, and on such appeal an adequate remedy is available. DeLong v. District Court, 151 Colo. 364, 377 P.2d 737 (1963).

Other than to orders of the kinds specifically enumerated, an appeal may be taken only from a final judgment, and questions with respect to other interlocutory orders may be presented only on review of the final judgment. State v. Harrah, 118 Colo. 468, 196 P.2d 256 (1948); Vandy's, Inc. v. Nelson, 130 Colo. 51, 273 P.2d 633 (1954).

The supreme court cannot determine the propriety of the order of the district court dismissing the action as against the bank where the order or judgment, which the appellant has brought up for review is not a final judgment, but interlocutory, to which an appeal does not lie unless some statute expressly authorizes it. Boxwell v. Greenley Union Nat'l Bank, 89 Colo. 574, 5 P.2d 868, 80 A.L.R. 1179 (1931).

Or from order mentioned in subsections (a)(2), (3), or (4). Save in the exceptional instances mentioned in subsection (a)(2), (3), and (4), an appeal may be taken from a final judgment only. Burks v. Maudlin, 109 Colo. 281, 124 P.2d 601 (1942); Vandy's, Inc. v. Nelson, 130 Colo. 51, 273 P.2d 633 (1954).

But not interlocutory order. An appeal may not be taken to review an interlocutory order unless expressly authorized by rule or statute. Vandy's, Inc. v. Nelson, 130 Colo. 51, 273 P.2d 633 (1954); Lucas v. District Court, 140 Colo. 510, 345 P.2d 1064 (1959).

An appeal to review an interlocutory order of a district court may not be taken. Town of Glendale v. City & County of Denver, 137 Colo. 188, 322 P.2d 1053 (1958).

Appeal dismissed if no final judgment. If it appears on review that there is no final judgment, the appeal will be dismissed. People ex rel. Ernst v. Eldred, 86 Colo. 174, 279 P. 41 (1929); Martin v. Way, 86 Colo. 232, 280 P. 488 (1929); Stuchlik v. Talpers, 90 Colo. 277, 8 P.2d 762 (1932); Marysville & Colo. Land Co. v. Heyde, 93 Colo. 523, 27 P.2d 498 (1933); Morron v. McDaniel, 127 Colo. 180, 254 P.2d 862 (1953); Vandy's, Inc. v. Nelson, 130 Colo. 51, 273 P.2d 633 (1954); Schoenwald v. Schoen, 132 Colo. 142, 286 P.2d 341 (1955); Cutting v. DeAndrea, 135 Colo. 501, 313 P.2d 315 (1957); Groendyke Transp., Inc. v. District Court, 140 Colo. 190, 343 P.2d 535 (1959); Ortega v. Bd. of County Comm'rs, 657 P.2d 989 (Colo. App. 1982).

Where record discloses only the sustaining of a motion to dismiss the action without the entry of any order of dismissal, no "matter reviewable" being presented, the appeal will be dismissed. Slifka v. Viettie, 110 Colo. 138, 131 P.2d 417 (1942).

Where there was no final judgment for money against appellants, only an injunction to desist from manufacturing and selling their products, and an accounting was still to be had, an appeal may not be taken and must be dismissed. Julius Hyman & Co. v. Velsicol Corp., 119 Colo. 121, 201 P.2d 380 (1948).

Because case improperly before appellate court. Where the so-called judgment and orders of the court from which an appeal is taken do not constitute a final judgment, a case is therefore improperly before an appellate court on appeal. People v. People in Interest of G.L.T., 177 Colo. 196, 493 P.2d 20 (1972).

Judicial notice of absence of final judgment. Although the absence of a final judgment was not raised by any of the parties, the court is required to take notice thereof. Hait v. Miller, 38 Colo. App. 503, 559 P.2d 260 (1977).

"Final judgment" is one which ends the particular action in which it is entered, leaving nothing further for the court pronouncing it to do in order to completely determine the rights of the parties involved in the proceeding. People v. Cochran, 176 Colo. 364, 490 P.2d 684 (1971); People in Interest of D.H., 37 Colo. App. 544, 552 P.2d 29 (1976), aff'd, 192 Colo. 542, 561 P.2d 5 (1977); Moore v. Gardner, 40 Colo. App. 194, 571 P.2d 318 (1977); People in Interest of E.A., 638 P.2d 278 (Colo. 1981); Harding Glass Co. v. Jones, 640 P.2d 1123 (Colo. 1982); People in Interest of P.L.B., 743 P.2d 980 (Colo.

App. 1987); Foothills Meadow v. Myers, 832 P.2d 1097 (Colo. App. 1992); Things Remembered v. Fireman's Ins. Co., 924 P.2d 1089 (Colo. App. 1996).

The supreme court has consistently defined a final judgment as one which concludes a case to the extent that no further action is required in order to completely determine the rights of the parties involved. Levine v. Empire Sav. & Loan Ass'n, 34 Colo. App. 235, 527 P.2d 910 (1974), aff'd, 189 Colo. 64, 536 P.2d 1134 (1975).

Until a final judgment has been rendered and entered, no substantial rights of the parties have been determined or effected. North Sterling Irrigation Dist. v. Knifton, 132 Colo. 212, 286 P.2d 612 (1955).

Otherwise, it is interlocutory. If the order entered in a cause does not put an end to the action, but leaves something further to be done before the rights of the parties are determined, it is interlocutory and not final, for, to be final, it must end the particular suit in which it is entered. Dusing v. Nelson, 7 Colo. 184, 2 P. 922 (1883); Rice v. Van Why, 49 Colo. 7, 111 P. 599 (1910); District Court v. Eagle Rock Gold Mining & Reduction Co., 50 Colo. 365, 115 P. 706 (1911); Goodknight v. Harper, 70 Colo. 41, 197 P. 237 (1921); Peters v. Peters, 82 Colo. 503, 261 P. 874 (1927); Boxwell v. Greeley Union Nat'l Bank, 89 Colo. 574, 5 P.2d 868, 80 A.L.R. 1179 (1931); Julius Hyman & Co. v. Velsicol Corp., 119 Colo. 121, 201 P.2d 380 (1948); Morron v. McDaniel, 127 Colo. 180, 254 P.2d 862 (1953); Vandy's, Inc. v. Nelson, 130 Colo. 51, 273 P.2d 633 (1954); Jones v. Galbasini, 134 Colo. 64, 299 P.2d 503 (1956); Groendyke Transp., Inc. v. District Court, 140 Colo. 190, 343 P.2d 535 (1959); Berry v. Westknit Originals, Inc., 145 Colo. 48, 357 P.2d 652 (1960); Andrews v. Hayward, 149 Colo. 585, 369 P.2d 980 (1962); Stillings v. Davis, 158 Colo. 308, 406 P.2d 337 (1965).

Final judgment must terminate the litigation between the parties. Boxwell v. Greeley Union Nat'l Bank, 89 Colo. 574, 5 P.2d 868, 80 A.L.R. 1179 (1931); Johnson v. Johnson, 132 Colo. 236, 287 P.2d 49 (1955); Jones v. Balbasini, 134 Colo. 64, 299 P.2d 503 (1956).

A judgment or decree is not final which determines the action as to less than all of the defendants. Berry v. Westknit Originals, Inc., 145 Colo. 48, 357 P.2d 652 (1960).

Until such time as the issue raised by the plea of not guilty by reason of insanity be resolved, there can be no final judgment from which an appeal could be taken, as the litigation has not yet been terminated on its merits. Rupert v. People, 156 Colo. 277, 398 P.2d 434 (1965).

Final judgment must leave nothing to be done except ministerial act of execution. Boxwell v. Greeley Union Nat'l Bank, 89 Colo. 574, 5 P.2d 868, 80 A.L.R. 1179 (1931).

Where there was no order dismissing or otherwise disposing of the claim against the appellee nor was there any order entered in accordance with C.R.C.P. 54(b), there was no final judgment to support an appeal. Hait v. Miller, 38 Colo. App. 503, 559 P.2d 260 (1977).

Certification of order does not constitute final adjudication. If an order does not constitute final adjudication of a claim, certification of it as such does not operate to make it so. Levine v. Empire Sav. & Loan Ass'n, 34 Colo. App. 235, 527 P.2d 910 (1974), aff'd, 189 Colo. 64, 536 P.2d 1134 (1975).

No particular form of words necessary. A judgment must adjudicate the issues and be complete in itself. Apart from statute, no particular form of words is necessary to constitute a judgment. Jones v. Galbasini, 134 Colo. 64, 299 P.2d 503 (1956).

The court should regard the substance and effect of an order, rather than its form, to determine whether it is subject to review. Cent. Locomotive & Car Works v. Smith, 27 Colo. App. 449, 150 P. 241 (1915).

The character of an instrument, whether a judgment or an order, is to be determined by its contents and substance, and not by its title. Johnson v. Johnson, 132 Colo. 236, 287 P.2d 49 (1955).

Counsel, by the simple step of relabeling the procedure by which review is sought, generally may not make a judicial order that is interlocutory in nature reviewable before a final judgment is entered in a case. Groendyke Transp., Inc. v. District Court, 140 Colo. 190, 343 P.2d 535 (1959).

In dissolution proceeding, where trial court incorporated partial separation agreement as well as oral supplemental agreement into the decree of dissolution, there was a final, appealable order notwithstanding the fact that wife's counsel failed to prepare and file a written form of the supplemental agreement. The decree was dated and signed by the trial court and, by expressly incorporating both the partial separation agreement and the supplemental agreement, it left nothing further for the court to do in order to completely determine the rights of the parties. In re Sorensen, 166 P.3d 254 (Colo. App. 2007).

Relief granted may be equitable or legal. A final determination of a cause is a judgment whether the relief granted is equitable or legal. Johnson v. Johnson, 132 Colo. 236, 287 P.2d 49 (1955).

Multiple claims or parties. Final adjudication of a particular claim in a case involving multiple claims or multiple parties may be certified as a final judgment. Levine v. Empire Sav. & Loan Ass'n, 34 Colo. App. 235, 527 P.2d 910 (1974), aff'd, 189 Colo. 64, 536 P.2d 1134 (1975).

In a multi-count information, dismissal of some charges is a final order appealable under this rule. People v. Jefferson, 748 P.2d 1223 (Colo. 1988).

Decision to remand is final judgment where based on denial of procedural due process. The trial court's decision to remand is a final judgment where the remand is premised solely on the conclusion that the party seeking review has been denied procedural due process. Scott v. City of Englewood, 672 P.2d 225 (Colo. App. 1983).

District court's dismissal without prejudice was not final and appealable order. Court's dismissal, without prejudice, of plaintiff's claims under 42 U.S.C. ? §? § 1983 and 1988 on the basis that claims were not properly joined with claim for judicial review under ? §42-2-122, was not a final and appealable order, and dismissal of appeal was therefore proper. Norby v. Charnes, 764 P.2d 407 (Colo. App. 1988).

The denial of a motion for judgment on the pleadings is not a final judgment subject to review on appeal. It is an interlocutory order. Central Locomotive & Car Works v. Smith, 27 Colo. App. 449, 150 P. 241 (1915); North Sterling Irrigation Dist. v. Knifton, 132 Colo. 212, 286 P.2d 612 (1955).

When denial of summary judgment is not appealable. Denial of a motion for summary judgment is not an appealable order when it does not otherwise put an end to the litigation. Glennon Heights, Inc. v. Cent. Bank & Trust, 658 P.2d 872 (Colo. 1983).

Pretrial ruling that statute is unconstitutional does not constitute a "final judgment" for purposes of appeal. People v. Young, 814 P.2d 834 (Colo. 1991).

A default is not a final judgment. Moore v. Gardner, 40 Colo. App. 194, 571 P.2d 318 (1977).

Neither is an order quashing service of summons. An order quashing service of summons and denying a default, but entering no judgment against plaintiff, is not a final judgment that can be reviewed in the appellate court. Brockway v. W. & T. Smith Co., 17 Colo. App. 96, 66 P. 1073 (1902).

Nor order striking bench warrants. An order of the trial court striking all bench warrants issued in aid of an execution and discharging defendant

from custody is not a final judgment from which an appeal may be taken. Latimer Constr. Co. v. Cram, 152 Colo. 533, 383 P.2d 315 (1963).

Nor an order for costs. An order of the district court requiring defendants to pay for the additions to the record requested by them was not such a final judgment as would form basis for an allegation of error. Hays v. City & County of Denver, 127 Colo. 154, 254 P.2d 860 (1953).

An order of a trial court rendering judgment for costs alone, but not adjudicating the case proper is not such a final judgment as would be subject to review on appeal. Free v. Chandler, 155 Colo. 128, 393 P.2d 9 (1964).

Nor an order for sales under powers. Proceedings under C.R.C.P. 120, providing for orders for sales under powers are not an adversary proceeding in which the court determines issues and enters a final judgment, and no appeal may be taken to review the same. Hastings v. Sec. Thrift & Mtg. Co., 145 Colo. 36, 357 P.2d 919 (1960).

Nor an order on motion to vacate a judgment. An order overruling a motion to vacate a judgment is not final in the sense that it may be reviewed on appeal. Polk v. Butterfield, 9 Colo. 325, 12 P. 216 (1886); Hughes v. Felton, 11 Colo. 489, 19 P. 444 (1888); Miller v. Buyer, 77 Colo. 329, 236 P. 990 (1925); Van Dyke v. Fishman, 77 Colo. 333, 236 P. 990 (1925).

An order of a trial court in setting aside its former judgment is not a final judgment; therefore, an appeal is premature. Schtul v. Christ, 132 Colo. 293, 287 P.2d 661 (1955).

An appeal may not be taken from an order of the trial court vacating a judgment since that order is not a final judgment within the scope and meaning of this rule. Westerkamp v. Westerkamp, 155 Colo. 534, 395 P.2d 737 (1964).

Order setting aside default. The only proper procedure to secure review of a trial court's order granting an application to set aside a default judgment is by appeal after final judgment. Gen. Aluminum Corp. v. Arapahoe County Dist. Court, 165 Colo. 445, 439 P.2d 340 (1968).

Additur to verdict. An order of the trial court granting additur to verdict of jury, or, if either party elected not to accept such additur, granting a new trial is not a final judgment from which an appeal may be taken until, following an election to stand upon the record, the action proceeds to judgment. Herzog v. Murad, 147 Colo. 345, 363 P.2d 645 (1961).

Orders for intervention. The nature of orders for intervention is interlocutory. An order granting intervention does no more than add a new

party plaintiff. Such an order is not final, and no appeal from it lies until after entry of final judgment in an action. Groendyke Transp., Inc. v. District Court, 140 Colo. 190, 343 P.2d 535 (1959).

Denial of motion to join third parties. An order denying defendant's motion to make another a third-party plaintiff, being interlocutory and not a final judgment, could be presented only on review of the final judgment as an appeal cannot be taken to review such order. Burks v. Maudlin, 109 Colo. 281, 124 P.2d 601 (1942).

Denial of a motion to make a party or parties third-party defendants is not a final judgment subject to review on appeal. Weaver v. Bankers Life & Cas. Co., 146 Colo. 157, 360 P.2d 807 (1961).

Order for temporary possession. In an eminent domain proceeding an appeal may not be taken to review an interlocutory order granting immediate temporary possession. Lucas v. District Court, 140 Colo. 510, 345 P.2d 1064 (1959).

Remand of license application without affirmance or reversal. Where a trial court remands a license application case without affirming or reversing, but with instructions for further proceedings, the order is not final and appealable. Safeway Stores, Inc. v. City of Trinidad, 31 Colo. App. 75, 497 P.2d 1277 (1972).

Appeal while motion for new trial is pending is premature. Plaintiff's appeal is premature, inasmuch as the trial court has not yet entered any final judgment resolving once and for all the controversy at the trial court level, because plaintiff's motion for new trial is still pending. Commercial Credit Corp. v. Frederick, 164 Colo. 5, 431 P.2d 1016 (1967).

Order granting or denying a motion for a new trial is not appealable. Gonzales v. Trujillo, 133 Colo. 64, 291 P.2d 1063 (1956).

Where a motion for new trial is granted the issues stand undisposed of; hence an appeal taken from the granting of such motion will be dismissed. Gonzales v. Trujillo, 133 Colo. 64, 291 P.2d 1063 (1956); Andrews v. Hayward, 149 Colo. 585, 369 P.2d 980 (1962).

Where a court has ordered that the defendant be tried again on the same charge, such a ruling is not appealable, for the judgment is not final. People v. Cochran, 176 Colo. 364, 490 P.2d 684 (1971).

The granting of "a motion for new trial" is not a motion from which the state can appeal an adverse ruling, for an order granting a motion for new trial

does not constitute a final judgment. People v. Cochran, 176 Colo. 364, 490 P.2d 684 (1971).

Child custody order reviewable. An order determining custody of children, like an order determining alimony, is reviewable in the supreme court. Miller v. Miller, 129 Colo. 462, 271 P.2d 411 (1954); People in Interest of K.L. and A.L., 681 P.2d 535 (Colo. App. 1984).

Even though child custody order states that it is "temporary", the order is permanent and appealable if it is a permanent adjudication of custody. In re Murphy, 834 P.2d 1287 (Colo. App. 1992).

Delinquency proceedings subject to finality requirements. Delinquency proceedings are no less subject to the finality requirements of subsection (a)(1) of this rule than any other type of proceeding. People in Interest of D.H., 37 Colo. App. 544, 552 P.2d 29 (1976), aff'd, 192 Colo. 542, 561 P.2d 5 (1977).

Dependency and neglect proceedings are subject to the finality requirements of subsection (a)(1). People in Interest of P.L.B., 743 P.2d 980 (Colo. App. 1987); People in Interest of C.L.S., 934 P.2d 851 (Colo. App. 1996).

Following an adjudication of dependency and neglect, the initial disposition order adopting a treatment plan constitutes a "decree of disposition" and renders the adjudication and the initial dispositional order final for purposes of appeal. People in Interest of C.L.S., 934 P.2d 851 (Colo. App. 1996).

Modification of an order for out-of-home placement of a child is interlocutory and not appealable as such modification does not affect the legal custody of the child. People in Interest of P.L.B., 743 P.2d 980 (Colo. App. 1987).

Permanency order in juvenile proceedings held interlocutory in nature. People in Interest of H.R., 883 P.2d 619 (Colo. App. 1994).

Adjudication of a child as dependent or neglected, with the dispositional hearing continued to a future date, does not become a final judgment until a decree of disposition is entered. People in Interest of E.A., 638 P.2d 278 (Colo. 1981).

Order of juvenile division of district court waiving jurisdiction. It is evident from the provisions of ? §? § 19-3-108(4), 19-3-106, and 19-3-109, that an order of the juvenile division of the district court waiving jurisdiction is not a final disposition of the action. People in Interest of D.H., 37 Colo. App. 544, 552 P.2d 29 (1976), aff'd, 192 Colo. 542, 561 P.2d 5 (1977).

Whether a probate court order is final and appealable must be determined on a case-by-case basis. The test for finality is whether the order disposes of and is conclusive of the controverted claim for which the proceeding was brought. Estate of Binford v. Gibson, 839 P.2d 508 (Colo. App. 1992).

An order which completely determines the issues of the trustee's indebtedness to and compensation from the estate is a final judgment on those issues. Retainer of jurisdiction by the probate court to later modify the trustee's rate of compensation does not change the order into an interlocutory order. Estate of Binford v. Gibson, 839 P.2d 508 (Colo. App. 1992).

The same rules of finality apply in probate cases as in other civil cases. An order of the probate court is final if it ends the particular action in which it is entered and leaves nothing further for the court pronouncing it to do in order to completely determine the rights of the parties as to that proceeding. In re Estate of Scott, 119 P.3d 511 (Colo. App. 2004), aff'd, 136 P.3d 892 (Colo. 2006).

C.R.C.P. 54(b) governs the interlocutory appeal of a probate court order. In re Estate of Scott, 119 P.3d 511 (Colo. App. 2004), aff'd, 136 P.3d 892 (Colo. 2006).

Where probate court's order of partial summary judgment adjudicated fewer than all of the parties' claims, it was not a final judgment, and party could not appeal the order without C.R.C.P. 54(b) certification. In re Estate of Scott, 119 P.3d 511 (Colo. App. 2004), aff'd, 136 P.3d 892 (Colo. 2006).

Order granting a stay in action pending resolution of case involving similar issues in another state was not a final appealable order where the issues and parties were not identical in the two proceedings and the order did not preclude plaintiff from seeking to lift the stay based upon a showing of prejudice. Things Remembered v. Fireman's Ins. Co., 924 P.2d 1089 (Colo. App. 1996).

Granting a motion to dismiss a complaint is not in and of itself a final and reviewable order of judgment from which an appeal may be taken. District 50 Metro. Rec. Dist. v. Burnside, 157 Colo. 183, 401 P.2d 833 (1965).

But entry of judgment on dismissal is final. A written ruling by a trial court ordering a complaint to be dismissed and the entry of judgment of dismissal by the clerk pursuant thereto, constitutes a final judgment. Jones v. Galbasini, 134 Colo. 64, 299 P.2d 503 (1956).

An order of a trial court dismissing an action for failure to prosecute is a final judgment. Johnson v. Johnson, 132 Colo. 236, 287 P.2d 49 (1955).

An appeal could be taken from a judgment of dismissal entered on the motion of the district attorney. People v. Hernandez, 155 Colo. 519, 395 P.2d 733 (1964).

A plaintiff who voluntarily accepted an award through stipulation is estopped by his conduct from claiming any further right to relief by appeal. Farmers Elevator Co. v. First Nat'l Bank, 30 Colo. App. 529, 497 P.2d 352 (1972), aff'd, 181 Colo. 231, 508 P.2d 1261 (1973).

Where parties stipulate that judgment be satisfied, and the stipulation is approved by the court, an appeal becomes moot. Farmers Elevator Co. v. First Nat'l Bank, 30 Colo. App. 529, 497 P.2d 352 (1972), aff'd, 181 Colo. 231, 508 P.2d 1261 (1973).

Unless there is no inconsistency between enforcement and appeal. A party who accepts an award or legal advantage under any order, judgment, or decree ordinarily waives his right to any such review of the adjudication as may again put in issue his right to the benefit which he has accepted, unless the decree is such or the circumstances such that there is no inconsistency between such enforcement and the appeal. Farmers Elevator Co. v. First Nat'l Bank, 30 Colo. App. 529, 497 P.2d 352 (1972), aff'd, 181 Colo. 231, 508 P.2d 1261 (1973).

Dimissal of class action aspects of case held to constitute final judgment. Levine v. Empire Sav. & Loan Ass'n, 192 Colo. 188, 557 P.2d 386 (1976).

Judgment of district court on appeal from assessment reviewable. Under subsection (a)(1) of this rule, the supreme court may review the judgment of the district court rendered in a statutory proceeding relating to appeals from assessments made by the county assessor. In re Hover Motors, Inc., 120 Colo. 511, 212 P.2d 99 (1949).

Revocation of deferred sentence appealable. A defendant may either appeal an order revoking a deferred sentence pursuant to this rule, or file a motion for postconviction review, pursuant to Crim. P. 35(c). People v. Boykin, 631 P.2d 1149 (Colo. App. 1981).

A postjudgment collection order is final if the order ends the particular part of the action in which it is entered, leaves nothing further for the court pronouncing it to do in order to completely determine the rights of the parties as to that part of the proceeding, and is more than a ministerial or

administrative determination. Luster v. Brinkman, 250 P.3d 664 (Colo. App. 2010).

State cannot appeal delinquency case. An appeal on behalf of the state to review decisions of trial courts on questions of law arising in criminal cases cannot lie for a proceeding in delinquency case, for such is not a criminal case. People in Interest of P.L.V., 176 Colo. 342, 490 P.2d 685 (1971).

Rather, the state's right to appeal exists only where the trial court's decision terminates a prosecution. People v. Cochran, 176 Colo. 364, 490 P.2d 684 (1971).

When final judgment entered. For purposes of appeal, the final judgment was entered when trial court reversed its previous order imposing costs on the defendant, and therefore state's appeal taken more than 30 days after sentencing was proper. People v. Fisher, 539 P.2d 1253 (1975).

Since the trial court reserved ruling on defendant's request to withdraw his guilty plea, there is no final appealable order, so appellate review is not available. People v. Durapau, __ P.3d __ (Colo. App. 2011).

C. Review of Water Matters.

The supreme court has jurisdiction to review a general adjudication decree settling the priorities of the reservoirs upon a particular stream, and this necessarily involves the power to determine whether a reservoir to which a priority has been awarded is entitled to any priority whatsoever. Greeley & Loveland Irrigation Co. v. Huppe, 60 Colo. 535, 155 P. 386 (1916).

And may make and direct the entry of a proper amended decree. On appeal to review an adjudication decree, when any part of the decree is reversed, and where practicable, the supreme court shall make and direct the entry of a proper amended decree. Greeley & Loveland Irrigation Co. v. Handy Ditch Co., 77 Colo. 487, 240 P. 270 (1925).

The supreme court has jurisdiction over an appeal from a water court judgment that is a full, final, and complete determination of claims presented. The only claim at issue was a city's application for a refill right, and the mere presence of a signature line for the federal court, per the parties' stipulation, did not affect the validity of the water court's decree nor did it transfer authority to the federal court. City of Grand Junction v. Denver, 960 P.2d 675 (Colo. 1998).

All water users are proper parties. Where a proceeding is conducted pursuant to statutory direction, all users of water affected by said proceeding

are, in effect, parties and have full right to protect their rights had they so desired. Green v. Chaffee Ditch Co., 150 Colo. 91, 371 P.2d 775 (1962).

But appellants must be aggrieved by judgment to prosecute appeal. Where the only parties designated as appellees and served with notice of appeal for supreme court review were the plaintiffs in the trial court whose claims therein were dismissed and judgment entered therein in favor of the appellants, the appellants being in no wise aggrieved by the judgment, the appeal will be dismissed. Camenisch v. Nuccitelli, 150 Colo. 141, 372 P.2d 85 (1962).

Incomplete judgment on claims reversed. Where a statutory water adjudication proceeding is brought up for review, and it appears that there was an incomplete determination of some of the claims before the trial court, the judgment is reversed on that ground only, the supreme court declining to pass upon the case piecemeal. Northern Colo. Irrigation Co. v. City & County of Denver, 86 Colo. 54, 278 P. 592 (1929).

In a proceeding to adjudicate priority of rights to the use of water, a general water adjudication was held not final, where it failed to determine all claims presented. Northern Colo. Irrigation Co. v. City & County of Denver, 86 Colo. 54, 278 P. 592 (1929).

III. Grounds for Reversal.

No judicial obligation is more imperative than the accomplishment of justice in any particular case where the trial record does not reflect as an absolute that every evidentiary requirement for sustaining a guilty verdict was fulfilled. People v. Emeson, 179 Colo. 308, 500 P.2d 368 (1972).

Specification of points no longer required. The rules of civil procedure, apparently having been confusing to the bar as to the distinction between the "specification of points" and the "statement of each point intended to be urged" formerly required, were amended to eliminate specification of points. Mauldin v. Lowery, 127 Colo. 234, 255 P.2d 976 (1953); Allison v. Heller, 132 Colo. 415, 289 P.2d 160 (1955).

Incorrect instruction may be error. Where the instruction affects substantial rights of the plaintiffs, the supreme court may elect to address the correctness of the instruction in order to prevent injustice. Blueflame Gas, Inc. v. Van Hoose, 679 P.2d 579 (Colo. 1984).

General statement of error insufficient. A statement of grounds for reversal so general that it covers any possible question involved in the record is not

sufficient to authorize its consideration on review. Allison v. Heller, 132 Colo. 415, 289 P.2d 160 (1955).

A general specification of points is insufficient and will not be considered upon review. Farrell v. Bashor, 140 Colo. 408, 344 P.2d 692 (1959).

An assertion that the findings and orders of a trial court are contrary to the evidence and contrary to the law is not sufficient to authorize its consideration upon review. Allison v. Heller, 132 Colo. 415, 289 P.2d 160 (1955); Phipps v. Hurd, 133 Colo. 547, 297 P.2d 1048 (1956).

Generally stating that evidence was insufficient to support trial court's determinations, and failing to make specific arguments, identify supporting facts, or set forth specific authorities to support contention of error was insufficient to authorize consideration upon review. People ex rel. D.B-J., 89 P.3d 530 (Colo. App. 2004).

Court may decline to notice errors where statement is deficient. Where a proper statement of grounds for reversal is lacking, or where it fails to direct attention to the alleged error, the supreme court may decline to notice alleged errors presented in the argument. Allison v. Heller, 132 Colo. 415, 289 P.2d 160 (1955).

Brief must direct attention of court to alleged error. A statement of grounds required under section (d) of this rule that fails to direct attention to any alleged error is meaningless and does not comply with this rule. Allison v. Heller, 132 Colo. 415, 289 P.2d 160 (1955).

Even though matter alleged to be error is mentioned in the defendant's motion for new trial, it was not mentioned in his brief to the supreme court, and therefore, it was waived. People v. Pleasant, 182 Colo. 144, 511 P.2d 488 (1973).

Contemporaneous objection required. An appellate court need not review errors where counsel fails to make a contemporaneous objection. City & County of Denver v. Hinsey, 177 Colo. 178, 493 P.2d 348 (1972); People v. Chavez, 179 Colo. 316, 500 P.2d 365 (1972); People v. Routa, 180 Colo. 386, 505 P.2d 1298 (1973).

Where defendant fails to object during trial to statements made by prosecutor, he waives further objection as matter of right on appeal. People v. Jacobs, 179 Colo. 182, 499 P.2d 615 (1972).

Absent defect affecting substantial right. The failure to timely object will preclude an appellate from reversing on the ground that there is an absence

of a showing of defects affecting the substantial rights. Crespin v. People, 175 Colo. 509, 488 P.2d 877 (1971).

Lack of contemporaneous objection at trial constitutes waiver of objections to admission of evidence, and issues may not be raised on appeal; if they are, they will not be considered unless errors are so fundamental as to seriously prejudice basic rights of defendant. People v. Vigil, 180 Colo. 104, 502 P.2d 418 (1972).

Or where contemporaneous objection impossible. Where purported impropriety of comments in prosecutor's opening statement cannot be alleged until prosecutor fails to support statements during presentation of case, and strict contemporaneous objection by defense counsel following opening statement is therefore impossible, the failure to object immediately to prosecutor's statements does not constitute waiver of right to object as matter of right on appeal. People v. Jacobs, 179 Colo. 182, 499 P.2d 615 (1972).

This rule modifies C.R.C.P. 51. C.R.C.P. 51, providing that only grounds specified in objections to instructions will be considered on appeal is modified by this rule permitting the supreme court at its discretion to notice any error of record, and such discretion will be exercised when necessary to do justice. Warner v. Barnard, 134 Colo. 337, 304 P.2d 898 (1956).

Court may notice error of record on its own motion. Although counsel are confined to the points properly specified, the supreme court, under special circumstances, frequently notices error appearing of record and takes appropriate action to protect the right of a litigant to have his cause determined under well-established principles of law. Warner v. Barnard, 134 Colo. 337, 304 P.2d 898 (1956); Mt. Emmons Mining Co. v. Town of Crested Butte, 690 P.2d 231 (Colo. 1984); People v. Herrera, 734 P.2d 136 (Colo. App. 1986).

The discretionary power of the supreme court to notice any error appearing of record is granted by this rule even where the plaintiff in the lower court failed to make appropriate objections and exceptions thereto. Mumm v. Adam, 134 Colo. 493, 307 P.2d 797 (1957).

Under the provisions of this rule the supreme court may notice error appearing on the face of the record when in the interest of justice to a litigant it is appropriate to do so. Kendall v. Hargrave, 142 Colo. 120, 349 P.2d 993 (1960).

The right and duty of an appellate court to notice error on appeal and to reverse under section (d) of this rule has generally been applied to those

situations where the error could be characterized as "fundamental" or where it is the cause of a "miscarriage of justice". Polster v. Griff's of Am., Inc., 184 Colo. 418, 520 P.2d 745 (1974).

Such as error in amount of verdict. An error in the amount of a verdict not properly before the supreme court, as for excessive damages, is one which is of enough importance to consider on the supreme court's own motion when such a course is considered necessary to do complete justice. Lamborn v. Eshom, 132 Colo. 242, 287 P.2d 43 (1955).

Where counsel failed to tender suitable instructions on the measure of damages in a personal injury action, it was the duty of the court to so instruct on its own motion. In such circumstances, the supreme court exercised its discretion in noticing error appearing on the face of the record even though not raised by the parties. Kendall v. Hargrave, 142 Colo. 120, 349 P.2d 993 (1960).

Error noticed on record was not prejudicial. Clark v. Bunnell, 172 Colo. 32, 470 P.2d 42 (1970).

Ground waived in motion for new trial unavailable on appeal. In an action to foreclose a deed of trust, where defendants' motion for a new trial waived the defense of tender before the trial court, it cannot be reasserted in the supreme court on appeal. Bernklau v. Stevens, 150 Colo. 187, 371 P.2d 765 (1962).

When defendant claims that evidence is insufficient to convict, an appellate court should view evidence in light most favorable to prosecution. People v. Vigil, 180 Colo. 104, 502 P.2d 418 (1972).

As to time limit for filing of notice of appeal and extension of such time, see C.A.R. 4; for time period for transmission of record, see C.A.R. 11; for requirements and contents of briefs, see C.A.R. 28; for enlargement of time limits in general, see C.R.C.P. 6(b); for provision that party claiming error must move for new trial, see C.R.C.P. 59; for provision exempting special proceedings from the rules of civil procedure, see C.R.C.P. 81; for statutory provisions for review of judgments in criminal cases, see ? §? §16-12-101 through 16-12-103, C.R.S.

RULE 2. Suspension of Rules

In the interest of expediting decision, or for other good cause shown, the appellate court may, except as otherwise provided in C.A.R. 26(b), suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.

Annotation

The supreme court may retain and review an appeal of a declaratory order of the state personnel board that should have been filed with the court of appeals. The court's authority rests in its power under C.A.R. 50(b) to review cases pending in the court of appeals prior to judgment and under this rule to suspend the rules of appellate procedure. Colorado Ass'n of Pub. Emp. v. DOH, 809 P.2d 988 (Colo. 1991).

This rule permits an appellate court to expedite decisions and order proceedings in accordance with its direction even though C.A.R. 3.4 does not extend to permanent custody orders entered in dependency or neglect proceedings. People ex rel. K.A., 155 P.3d 558 (Colo. App. 2006).

Applied in Rivera v. Civil Serv. Comm'n, 34 Colo. App. 152, 529 P.2d 1347 (1974); Converse v. Zinke, 635 P.2d 1228 (Colo. App. 1979); People v. Williams, 736 P.2d 1229 (Colo. App. 1986).

RULE 3. Appeal as of Right-How Taken

(a) Filing the Notice of Appeal in Appeals from Trial Courts. An appeal permitted by law from a trial court to the appellate court must be taken by filing a notice of appeal with the clerk of the appellate court within the time allowed by C.A.R. 4. Upon the filing of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal and all procedures concerning the appeal unless otherwise specified by these rules. An advisory copy of the notice of appeal must be served on the clerk of the trial court within the time for its filing in the appellate court. Failure of an appellant to take any step other than the timely filing of a notice of appeal in the appellate court does not affect the validity of the appeal, but is a ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal. Content of the notice of appeal is not jurisdictional.

(b) Filing the Notice of Appeal or Petition for Review in Appeals from State Agencies. An appeal permitted by statute from a state agency directly to the court of appeals or appellate review from a district court must be in the manner and within the time prescribed by the particular statute.

(c) Joint or Consolidated Appeals. If two or more persons are entitled to appeal from a judgment or order of a trial court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, or may join in appeal after filing separate timely notices of appeal, and they may thereafter proceed on appeal as a single appellant. Appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party, or by stipulation of the parties to the several appeals.

(d) Contents of the Notice of Appeal in Civil Cases (Other Than District Court Review of Agency Actions and Appeals From State Agencies). The notice of appeal must set forth:

(1) A caption that complies in form with C.A.R. 32;

(2) A brief description of the nature of the case including:

(A) A general statement of the nature of the controversy (not to exceed one page);

(B) The judgment, order or parts being appealed and a statement indicating the basis for the appellate court's jurisdiction;

(C) Whether the judgment or order resolved all issues pending before the trial court including attorneys' fees and costs;

(D) Whether the judgment was made final for purposes of appeal pursuant to C.R.C.P. 54(b);

(E) The date the judgment or order was entered (if there is a question of the date, set forth the details) and the date of mailing to counsel;

(F) Whether there were any extensions granted to file any motion(s) for post-trial relief, and, if so, the date of the request, whether the request was granted, and the date to which filing was extended;

(G) The date any motion for post-trial relief was filed;

(H) The date any motion for post-trial relief was denied or deemed denied under C.R.C.P. 59(j); and

(I) Whether there were any extensions granted to file any notice(s) of appeal, and, if so, the date of the request, whether the request was granted, and the date to which filing was extended;

(3) An advisory listing of the issues to be raised on appeal;

(4) Whether the transcript of any evidence taken before the trial court or any administrative agency is necessary to resolve the issues raised on appeal;

(5) Whether the order on review was issued by a magistrate where consent was necessary. If the order on review was issued by a magistrate where consent was not necessary, whether a petition for review of the order was filed in the trial court and ruled on by a trial court judge pursuant to the Colorado Rules for Magistrates;

(6) The names of counsel for the parties, their addresses, telephone numbers, e-mail addresses, and registration numbers;

(7) An appendix containing a copy of the judgment or order being appealed, the findings of the court, if any, the motion for new trial, if any, and a copy of the trial court's order granting or denying leave to proceed in forma pauperis if appellant is filing without docket fee pursuant to C.A.R. 12(b); and

(8) A certificate of service, in compliance with C.A.R. 25 showing service of a copy of the notice of appeal (with attachments) on the trial court and all other parties to the action in the trial court.

(e) Contents of Notice of Appeal from State Agencies (Other Than the Industrial Claim Appeals Office) Directly to the Court of Appeals. The notice of appeal must set forth:

(1) A caption that complies in form with C.A.R. 32;

(2) A brief description of the nature of the case including:

(A) A general statement of the nature of the controversy (not to exceed one page);

(B) The order being appealed and a statement indicating the basis for the appellate court's jurisdiction;

(C) Whether the order resolved all issues pending before the agency;

(D) Whether the order is final for purposes of appeal; and

(E) The date of service of the final order entered in the action by the agency. The date of service of an order is the date on which a copy of the order is delivered in person, or, if service is by mail, the date of mailing;

(3) An advisory listing of the issues to be raised on appeal;

(4) Whether the transcript of any evidence taken before the administrative agency is necessary to resolve the issues raised on appeal;

(5) The names of counsel for the parties, their addresses, telephone numbers, e-mail addresses, and registration numbers;

(6) An appendix containing a copy of the order being appealed and the findings of the agency, if any; and

(7) A certificate of service in compliance with C.A.R. 25 showing service of a copy of the notice of appeal (with attachments) on the state agency and all other persons who have appeared as parties to the action before the agency, or as required by section 24-4-106(4), C.R.S. concerning rule-making appeals.

(f) Contents of Notice of Appeal from District Court Review of Agency Actions. The notice of appeal must set forth:

(1) A caption that complies in form with C.A.R. 32;

(2) A brief description of the nature of the case including:

(A) A general statement of the nature of the controversy (not to exceed one page);

(B) The decision or order being appealed and a statement indicating the basis for the appellate court's jurisdiction;

(C) Whether the decision or order resolved all issues pending before the agency;

(D) Whether the decision or order is final for purposes of appeal;

(E) The date the decision or order was entered (if there is a question of the date, set forth the details) and the date of mailing to counsel;

(F) Whether there were any extensions granted to file any motion(s) for post-trial relief, and, if so, the date of the request, whether the request was granted, and the date to which filing was extended;

(G) The date any motion for post-trial relief was filed;

(H) The date any motion for post-trial relief was denied or deemed denied under C.R.C.P. 59(j);

(I) The date the notice of intent to seek appellate review was filed with the district court pursuant to C.R.S. 24-4-106(9), C.R.S.; and

(J) Whether there were any extensions granted to file any notice(s) of appeal, and, if so, the date of the request, whether the request was granted, and the date to which filing was extended;

(3) An advisory listing of the issues to be raised on appeal;

(4) Whether the transcript of any evidence taken before the administrative agency is necessary to resolve the issues raised on appeal;

(5) The names of counsel for the parties, their addresses, telephone numbers, e-mail addresses, and registration numbers;

(6) An appendix containing a copy of the decision or order being appealed, the agency order and the findings of the agency, if any; and

(7) A certificate of service in compliance with C.A.R. 25 showing service of a copy of the notice of appeal (with attachments) on the reviewing court, the agency and all other persons who have appeared as parties to the district court proceedings.

(g) Contents of the Notice of Appeal in Criminal Cases. The notice of appeal must set forth:

(1) A caption that complies in form with C.A.R. 32;

(2) A brief description of the nature of the case including:

(A) A general statement of the nature of the case;

(B) The charges upon which defendant was tried;

(C) The charges for which defendant was convicted;

(D) The date judgment of conviction or the order granting or denying a motion for postconviction relief was entered;

(E) The date the sentence was imposed;

(F) The sentence; and

(G) A statement indicating the basis for the appellate court's jurisdiction;

(3) Whether an appeal bond was granted and, if so, the amount of the bond;

(4) An advisory listing of the issues to be raised on appeal;

(5) Whether any transcript of evidence taken at trial is necessary to resolve the issues on appeal;

(6) The names of counsel for the parties, their addresses, telephone numbers, e-mail addresses, and registration numbers;

(7) An appendix containing a copy of the judgment or order being appealed, the mittimus, the findings of the court, if any, the motion for new trial, if any, and a copy of the trial court's order granting or denying leave to proceed in forma pauperis if appellant is filing without docket fee pursuant to C.A.R. 12(b); and

(8) A certificate of service in compliance with C.A.R. 25 showing service of a copy of the notice of appeal (with attachments) on the trial court and all other parties to the action in the trial court.

(h) Contents of any Notice of Cross-Appeal. A notice of cross-appeal must set forth the same information required for a notice of appeal and must set forth the party initiating the cross-appeal and designate all cross-appellees.

(Source: IP(d) added and (d)(1), (d)(2), IP(f), (f)(1), and (f)(2) amended August 23, 1984, effective January 1, 1985; (d)(2)(B), (e)(2)(B), (f)(2)(B), (g)(2)(E), and (g)(2)(F) amended and (g)(2)(G) and (i) added August 30, 1985, effective January 1, 1986; (d)(7) and (g)(7) amended May 15, 1986, effective November 1, 1986; and IP(e) and (e)(7) amended June 4, 1987, effective January 1, 1988; (h) amended March 17, 1994, effective July 1, 1994; (h) amended June 7, 1994, effective July 1, 1994; IP(d)(1), IP(e)(1),

IP(f)(1), and IP(g)(1) amended June 1, 2000, effective July 1, 2000; (a) amended and (a) comment deleted, (b) and (d) amended and (d) comment deleted, (e) to (g) amended and (g) comment amended, and (h) amended, and (i) repealed and comment added and effective October 17, 2014.)

Comment: In most criminal cases, the State of Colorado is represented by the Office of the Attorney General. See §24-31-101(l)(a), C.R.S.

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ANNOTATION

Law reviews.

For article, "Appellate Procedure and the New Supreme Court Rules", see 30 Dicta 1 (1953).

Purpose of the notice of appeal

is simply to put the other party on notice that an appeal will be taken and to identify the action of the trial court from which the appeal is to be taken. Widener v. District Court, 200 Colo. 398, 615 P.2d 33 (1980).

The particular function of the notice of appeal is to require the clerk of the court, in which the judgment complained of is entered, to certify the record for review. Hull v. Denver Tramway Corp., 97 Colo. 523, 50 P.2d 791 (1935); Wheeler Kelly Hagny Trust Co. v. Williamson, 111 Colo. 515, 143 P.2d 685 (1943); People v. Bost, 770 P.2d 1209 (Colo. 1989).

Purpose of requiring notice where less than the entire record is designated on appeal

is to permit the appellee an opportunity to add to the designated portions. People v. Slender Wrap, Inc., 36 Colo. App. 11, 536 P.2d 850 (1975).

Timely filing of notice of appeal is mandatory and jurisdictional.

Chapman v. Miller, 29 Colo. App. 8, 476 P.2d 763 (1970); Cline v. Farmers Ins. Exchange, 792 P.2d 305 (Colo. App. 1990).

Failure to file a notice of appeal within the prescribed time deprives the appellate court of jurisdiction and precludes a review of the merits. Widenerv. District Court, 200 Colo. 398,615 P.2d 33 (1980).

The filing of a notice of appeal is mandatory and a jurisdictional prerequisite for appellate review of a lower court decision to deny a Rule 35(a), Crim. P. motion. People v. Silvola, 198 Colo. 228, 597 P.2d 583 (1979).

Notice of appeal not timely filed.

Earlier notice of appeal, which related to probate of will, did not provide notice of appeal of order vacating notices of lis pendens to estate property, and since no timely appeal was filed, court lacked jurisdiction over appeal. Matter of Estate of Anderson, 727 P.2d 867 (Colo. App. 1986)(decided under former rule).

Untimely service of notice of appeal to appellee

does not affect court's jurisdiction to hear appeal. B.A. Leasing Corp. v. State Bd. of Equal., 745 P.2d 254 (Colo. App. 1987), aff'd sub nom. Gates Rubber Co. v. Bd. of Equalization, 770 P.2d 1189 (Colo. 1989).

Notice of appeal is not "pleading" within strict definition of term,

and therefore failure to serve copies of notice as directed by trial court did not warrant court of appeals decision to dismiss appeal. Matter of Estate of Jones, 704 P.2d 845 (Colo. 1985) (decided under former rule).

Dismissal of appeal for failure to serve notice of designation of record

is made discretionary by section (a). People v. Slender Wrap, Inc., 36 Colo. App. 11, 536 P.2d 850 (1975).

Substantial compliance with section (c) is all that is required.

Widener v. District Court, 200 Colo. 398, 615 P.2d 33 (1980); See People v. Bost, 770 P.2d 1209 (Colo. 1989).

Lack of designation in the caption that the document is a notice of appeal will not defeat substantial compliance. Widener v. District Court, 200 Colo. 398, 615 P.2d 33 (1980).

Where defendant objected to venue by filing a proper motion prior to answering complaint, issue was preserved for appeal regardless of lack of specific reference to venue in notice of appeal. Resolution Trust Corp. v. Parker, 824 P.2d 102 (Colo. App. 1991).

Defect in the notice of appeal was harmless where appellant failed to list all of the parties to the appeal, but complied with all other provisions of the rule. Turkey Creek, LLC v. Rosania, 953 P.2d 1306 (Colo. App. 1998).

When sanctions are imposed against a litigant's attorney, the attorney is a real party in interest and must appeal in his or her own name.

Because plaintiffs' attorney did not file a separate notice of appeal and the plaintiffs' notice of appeal did not name the attorney as an appellant, the court is jurisdictionally barred from deciding whether the trial court abused its discretion in imposing sanctions against the attorney. Maul v. Shaw, 843 P.2d 139 (Colo. App. 1992), impliedly overruled in Cruz v. Benine, 984 P.2d 1173 (Colo. 1999).

To have standing to appeal an award of attorney fees only against a party's attorney,

the attorney must file a separate appeal or be added as an appellant to the party's appeal. Anglum v. USAA Cas. Ins. Co., 166 P.3d 191 (Colo. App. 2007).

Abuse of discretion.

In light of the significance of the issues on appeal (i.e., the state's obligation to maintain state prisoners in state correctional facilities and to reimburse counties for confining state prisoners) and the fact that both petitioner and respondent sought appellate review, the court of appeals abused its discretion in dismissing case for failure to timely transmit the record. Dept. of Corr. v. Pena, 788 P.2d 143 (Colo. 1990).

Substantiality of issues.

When determining whether dismissal is an appropriate sanction for failure to timely transmit the record, an appellate court should consider the substantiality of the issues on appeal and the full range of possible sanctions and should select the sanction most appropriate under the circumstances. Dept. of Corr. v. Pena, 788 P.2d 143 (Colo. 1990).

Court elected to suspend strict requirements of this rule.

Serv. Oil Co. v. Rhodus, 179 Colo. 335, 500 P.2d 807 (1972); Converse v. Zinke, 635 P.2d 1228 (Colo. App. 1979), aff'd in part, and rev'd on other grounds, 635 P.2d 882 (Colo. 1981).

Supersedeas not required.

The appeal and the supersedeas are two separate things, and the appeal can be sustained without a supersedeas. Monks v. Hemphill, 119 Colo. 378, 203 P.2d 503 (1949).

Rule inapplicable to industrial commission orders.

This rule has no application to the review of orders of the industrial commission. Trujillo v. Indus. Comm'n, 31 Colo. App. 297, 501 P.2d 1344 (1972).

Applied in Beadles v. Metayka, 135 Colo. 366, 311 P.2d 711 (1957); In re Peterson, 40 Colo. App. 115, 572 P.2d 849 (1977); Catron v. Catron, 40 Colo. App. 476, 577 P.2d 322 (1978); Gillespie v. Dir. of Dept. of Rev., 41 Colo. App. 561, 592 P.2d 418 (1978); Dayhoff v. State, Motor Vehicle Div., 42 Colo. App. 91, 595 P.2d 1051 (1979); People v. Moore, 674 P.2d 354 (Colo. 1984).

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For time within which notice of appeal must be filed, see C.A.R. 4.

RULE 3.1. Appeals from Industrial Claim Appeals Office

(a) How Taken. Appeals from orders and awards of the Industrial Claim Appeals Office shall be in the manner and within the time prescribed by statute. On appeal from orders and awards entered upon review of cases determined by the Industrial Claim Appeals Office, the record of the proceedings shall be arranged in chronological order, with all duplicates omitted. The record shall be properly paginated and fully indexed and bound by the agency.

(b) 14 days after return of the record, the appellant shall file an opening brief. Within 14 days after service of the opening brief, the appellee shall file an answer brief. Within 7 days after service of the answer brief, the appellant may file a reply brief. Briefs may be printed, typewritten, mimeographed, or otherwise reproduced in conformity with the provisions of C.A.R. 28.

(c) Priority of Industrial Claim Appeals Office Cases. All appeals from the Industrial Claim Appeals Office shall have precedence over any civil cause of a different nature pending in said court, and the Court of Appeals shall always be deemed open for the determination thereof, and shall be determined by the Court of Appeals in the manner as provided for other appeals.

(d) Contents of Notice of Appeal from the Industrial Claim Appeals Office Directly to the Court of Appeals. The notice of appeal shall set forth:

(1) A caption that complies in form with C.A.R. 32. In the caption:

(A) The case title in compliance with C.A.R. 12(a);

(B) The party or parties initiating the appeal;

(C) All others who have appeared as parties to the action before the agency; and

(D) The agency case number.

(2) A brief description of the nature of the case including:

(A) A general statement of the nature of the controversy (not to exceed one page);

(B) The order being appealed and a statement indicating the basis for the appellate court's jurisdiction;

(C) Whether the order resolved all issues pending before the agency;

(D) Whether the order is final for purposes of appeal; and

(E) The date of the certificate of mailing of the final order.

(3) An advisory listing of the issues to be raised on appeal;

(4) The names of counsel for the parties, their addresses, telephone numbers, and registration numbers;

(5) An appendix containing a copy of the order being appealed and the findings of the agency, if any; and

(6) A certificate of service in compliance with C.A.R. 25 showing service of a copy of the notice of appeal (with attachments) on the Industrial Claim Appeals Office panel in workmen's compensation cases, and on the Division of Employment and Training in unemployment insurance cases, and on all other persons who have appeared as parties to the action before the agency.

(Source: Entire rule amended June 4, 1987, effective January 1, 1988; IPd1 amended June 1, 2000, effective July 1, 2000; b amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1 b.)

Annotation

Procedural requirements mandatory and jurisdictional. The procedural requirements for obtaining administrative or appellate review of the commission's orders are mandatory and jurisdictional. Hildreth v. Dir. of Div. of Labor, 30 Colo. App. 415, 497 P.2d 350 (1972).

One seeking to exercise a statutory right of review or appeal must follow and comply with the procedures prescribed, and failure to do so deprives the court of jurisdiction. Trujillo v. Indus. Comm'n, 31 Colo. App. 297, 501 P.2d 1344 (1972).

There is no authority for the filing of notice of appeal in proceedings in the appellate court for review of final orders of the industrial commission; therefore, such notice is inoperative for any purpose and, being a nullity, does not extend the time prescribed for commencing the review. Trujillo v. Indus. Comm'n, 31 Colo. App. 297, 501 P.2d 1344 (1972).

With respect to the service of process requirement of ? § 8-53-119(3), (now ? §8-43-307) service upon the attorney general constitutes service upon

industrial commission (now industrial claim appeals office). Butkovich v. Indus. Comm'n, 723 P.2d 1306 (Colo. 1985).

No damages may be awarded under this section as a sanction for a frivolous review petition. Haynes v. Interior Investments, 725 P.2d 100 (Colo. App. 1986).

Notice of appeal sufficient to satisfy requirements of ? § 8-53-119 (now ? §8-43-307) and to invoke the jurisdiction of the Court of Appeals where the document complied with the requirements of this rule and of that section but merely failed to bear the caption "Petition for Review". Hawkins v. State Comp. Ins. Authority, 790 P.2d 893 (Colo. App. 1990).

For statutory provision relating to appellate review of workers' compensation decisions, see part 3 of article 43 of title 8, C.R.S.

RULE 3.2. Appeals from the Denial of a Petition for Waiver of Parental Notification Requirements

Appeals from orders denying a petition for waiver of the parental notification requirements of Section 12-37.5-104, C.R.S., shall be in the manner and within the time prescribed in Rule 3 of Chapter 23.5 of the Colorado Rules of Civil Procedure.

(Source: Entire rule added and adopted September 18, 2003; entire rule corrected effective June 16, 2004; entire rule amended and effective June 23, 2014.)

This rule was originally adopted as rule 3.2 of chapter 1, C.R.C.P., on September 18, 2003, but was relocated pursuant to corrective order on June 16, 2004.

RULE 3.3. Appeals of Grant or Denial of Class Certification

An appeal from an order granting or denying class certification under C.R.C.P. 23(f) may be allowed pursuant to the procedures set forth in that rule and C.R.S. ? §13-20-901 .

(Source: Entire rule added and effective September 9, 2004; entire rule amended and effective April 5, 2010.)

RULE 3.4. Appeals from Proceedings in Dependency or Neglect

(a) How Taken. Appeals from judgments, decrees, or orders in dependency or neglect proceedings, as permitted by section 19-1-109(2)(b) and (c), C.R.S., including an order allocating parental responsibilities pursuant to section 19-1-104(6), C.R.S., final orders entered pursuant to section 19-3-612, C.R.S., and final orders of permanent legal custody entered pursuant to section 19-3-702, C.R.S, shall be in the manner and within the time prescribed by this rule.

(b) Time for Appeal.

(1) A Notice of Appeal and Designation of Transcripts (JDF 545) must be filed with the clerk of the court of appeals with an advisory copy served on the clerk of the trial court within 21 days after the entry of the judgment, decree, or order. The trial court continues to have jurisdiction to hear and decide a motion under C.R.C.P. 59, regardless of the filing of a notice of appeal, provided the C.R.C.P. 59 motion is timely filed under C.R.C.P. 59(a) and determined within the time specified in C.R.C.P. 59(j). An order is entered within the meaning of this rule when it is entered pursuant to C.R.C.P. 58. If notice of the entry of judgment, decree, or order is transmitted to the parties by mail or E-Service, the time for the filing of the notice of appeal commences. from the date of mailing or E-Service of the notice.

(2) If a timely notice of appeal is filed by a party, any other party may file a Notice of Cross-Appeal and Designation of Transcripts (JDF 545) within 7 days of the date on which the notice of appeal was filed or within the 21 days for the filing of the notice of appeal, whichever period last expires.

(3) The time in which to file a notice of appeal or a notice of cross-appeal and the designation of transcripts will not be extended, except upon a showing of good cause pursuant to C.A.R. 2 and C.A.R. 26(b).

(4) In appeals filed by respondent parents who were represented by counsel in the trial court, it is trial counsel's obligation to ensure a timely notice of appeal is filed. This obligation is met if different counsel for appeal timely files a notice of appeal. Self-represented parties are obligated to timely file a notice of appeal on their own behalf.

(c) Contents of the Notice of Appeal. A Notice of Appeal and Designation of Transcripts (JDF 545) must include:

(1) identification of the party or parties initiating the appeal;

(2) identification of the judgment, decree, or order from which the appeal is taken;

(3) the date the judgment, decree, or order from which the appeal is taken was signed by the trial court;

(4) a certificate of service in compliance with C.A.R. 25; and

(5) a copy of the judgment, decree, or order from which the appeal is taken.

(d) Composition of the Record on Appeal.

(1) The record on appeal must include the trial court file, including all exhibits. No designation of record is necessary for the trial court file and all exhibits. The record on appeal may also include any transcripts designated and ordered by the parties pursuant to this rule.

(2) It is the duty of the appellant and any cross-appellant to complete and properly serve the designation of transcripts portion of JDF 545 upon the trial court's managing court reporter at the time the notice of appeal is filed.

(3) The designation of transcripts portion of JDF 545 must set forth the dates of the proceedings for which transcripts are requested and the names of the court reporters, if applicable.

(4) Within 7 days after service of JDF 545, any appellee may complete and file a Supplemental Designation of Transcripts (JDF 547) with the clerk of the trial court and the clerk of the court of appeals and serve it on the trial court's managing court reporter

(5) The designating party or public entity responsible for the cost of transcription must make arrangements for payment with the managing court reporter within 7 days after serving the designation. Within 14 days after service of JDF 545, the court reporter must file a statement with the clerk of the trial court and the clerk of the court of appeals indicating whether arrangements for payment have been made.

(e) Transmission of Record.

(1) Within 42 days after the filing of JDF 545, the record, composed as set forth in subsection (d), must be transmitted to the court of appeals in accordance with C.A.R. 10(c)

(2) The appellant may request an extension of time of no more than 14 days in which to file the record, which will be granted only upon a showing of good cause. If a request of more than 14 days is based on a court reporter's

or transcriber's inability to complete the transcript, it must be supported by an affidavit of the reporter, transcriber, managing court reporter, or clerk of the trial court.

(f) Opening Brief on Appeal.

(1) Within 21 days after the record is filed, the appellant mst file a brief. appellant~ brief must be entitled "Opening Brief' and must contain the following under appropriate headings in the order indicated:

(A) a caption in compliance with C.A.R. 32(d);

(B) a certificate of compliance as required by C.A.R. 32(h);

(C) a table of contents, with page references;

(D) a table of authorities-cases (alphabetically arranged), statutes, and other authorities-with references to the pages of the brief where they are cited;

(E) a statement of compliance with the Indian Child Welfare Act (lCWA) with citation(s) to the location(s) in the designated record of:

(i) each date when the court made an inquiry to determine whether the child is or could be an Indian child, and a statement of any identified tribe(s) or potential tribe(s);

(ii) copies of ICWA notices (including for foster care placement and termination of parental rights proceedings, if applicable), and other communications intended to provide such notice, sent to the child's parents, the child's Indian custodian(s), the Bureau of Indian Affairs (BIA), or the child's tribe(s) or potential tribe(s) may be found;

(iii) the postal return receipts for Indian child welfare notices sent to the child's parents, the child's Indian custodian(s), the BIA, or the child's tribe(s) or potential tribe(s) may be found;

(iv) responses from the parent(s) or Indian custodian(s) of the child, the BIA, and child's tribe(s) or potential tribe(s) may be found;

(v) additional notices (including for a termination hearing) were sent to non-responding tribe(s), or the BIA; and

(vi) date(s) of any ruling as to whether the child is or is not an Indian child;

(F) a statement of the issues presented for review;

(G) a concise statement identifying the nature of the case, the relevant facts and procedural history, and the ruling, judgment, or order presented for review, with appropriate references to the record (see C.A.R. 28(e)).

(H) a summary of the arguments, which must:

(i) contain a succinct, clear, and accurate statement of the arguments made in the body of the brief;

(ii) articulate the major points of reasoning employed as to each issue presented for review; and

(iii) not merely repeat the argument headings or issues presented for reVIew;

(2) the arguments, which must contain:

(i) under a separate heading placed before the discussion of each issue, statements of the applicable standard of review with citation to authority, whether the issue was preserved, and if preserved, the precise location in the record where the issue was raised and where the court ruled; and

(ii) appellant's contentions and reasoning, with citations to the authorities and parts of the record on which the appellant relies; and

(J) a short conclusion stating the precise relief sought.

(2) The appellant may request one extension of time of no more than 7 days in which to file the opening brief.

(3) The opening brief must contain no more than 7,500 words, excluding attachments and/or any addendum containing statutes, rules, regulations, etc. A self-represented party who does not have access to a word-processing system must file a typewritten or legibly handwritten opening brief of not more than 25 double-spaced and single-sided pages. Such a brief must otherwise comply with this rule and C.A.R. 32.

(g) Answer Brief on Appeal.

(1) Within 21 days after service of the appellant's opening brief, petition on appeal, any appellee may file an answer brief that must be entitled "Answer Brief," and any cross-appellant may file an opening/answer brief that must be entitled "Cross-Appeal Opening/Answer Brief."

(2) Under a separate heading following the table of authorities, the brief must contain a statement of whether the appellee agrees with the appellant's statements concerning compliance with the ICWA, and if not, why not.

(3) The brief must conform to the requirements of C.A.R 3.4 (0 except that separate headings titled statement of the issues or of the case need not be included unless the appellee is dissatisfied with the appellant's statement. For each issue, the answer brief must, under a separate heading placed before the discussion of the issue, state whether the appellee agrees with the appellant's statements concerning the standard of review with citation to authority and preservation for appeal, and if not, why not.

(4) A party may request one extension of time of no more than 7 days to file an answer brief or cross-appeal opening/answer brief.

(5) The answer brief or cross-appeal opening/answer brief must contain no more than 7,500 words, excluding attachments and/or any addendum containing statutes, rules, regulations, etc. A self-represented party who does not have access to a word-processing system must file a typewritten or legibly handwritten brief of not more than 25 double-spaced and single-sided pages. Such a brief must otherwise comply with this rule and C.A.R. 32.

(6) In cases involving more than one appellant and in which the appellee chooses to file an answer brief, the appellee must file a combined answer brief addressing the legal issues raised by all appellants. The combined answer brief must be filed within 28 days of service of the last opening brief filed and must contain no more than 9,500 words.

(7) In cases involving more than one appellee, the court encourages coordination among appellees to avoid repetition within the answer briefs. A joint answer brief may, but is not required to, be filed by appellees.

(h) Reply Brief. Within 14 days after service of the appellee's answer brief, any appellant may file a reply brief, which must be entitled "Reply Brief," in reply to the answer brief. A reply brief must comply with C.A.R. 3.4(f)(1)(A)-(D) and must contain no more than 5,700 words. A self-represented party who does not have access to a word-processing system must file a typewritten or legibly handwritten reply brief of not more than 19 double-spaced and single-sided pages.

(i) Oral Argument. Oral argument will be allowed upon the written request of a party or upon the court's own motion, unless the court, in its discretion, dispenses with oral argument. A request for oral argument must be made in a separate, appropriately titled document filed no later than 7

days after briefs are closed. Unless otherwise ordered, argument may not exceed 15 minutes for the appellant and 15 minutes for the appellee.

(j) Advancement on the Docket. Appeals in dependency or neglect proceedings must be advanced on the calendar of the appellate courts pursuant to section 19-1-109(1), C.R.S., and will be set for disposition at the earliest practical time.

(k) Petition for Rehearing. A petition for rehearing in the form prescribed by C.A.R. 40(b) may be filed within 14 days after entry of judgment. The time in which to file the petition for rehearing will not be extended.

(l) Petition for Writ of Certiorari. Review of the judgment of the court of appeals may be sought by filing a petition for writ of certiorari in the Supreme Court in accordance with C.A.R. 51. The petition must be filed within 14 days after the expiration of the time for filing a petition for rehearing or the date of denial of a petition for rehearing by the court of appeals. The filing of the petition results in an automatic stay of proceedings in the court of appeals. Any cross-petition or opposition brief to a petition for writ of certiorari must be filed within 14 days after the filing of the petition. The petition for writ of certiorari, any cross-petition, and any opposition brief must be in the form prescribed by C.A.R. 53(a)-(c) and filed and served in accordance with C.A.R. 53(h).

(m) Issuance of Mandate. The mandate must be in the form prescribed by C.A.R. 41(a) and must issue 29 days after entry of the judgment. The timely filing of a petition for rehearing will stay the mandate until the court of appeals has ruled on the petition. If the petition is denied, the mandate must issue 14 days after entry of the order denying the petition. The mandate may also be stayed in accordance with C.A.R. 41.

(n) Filing and Service. All papers required or permitted by this rule must be filed and served in accordance with C.A.R. 25.

(o) Computation and Extension of Time. Computation and extension of any time period prescribed by this rule must be in accordance with C.A.R. 26.

(Entire rule added February 10, 2005, effective March 1, 2005; (a), (b)(3), (d), (g)(3)(E), (g)(3)(F), (h)(3)(C), and (h)(3)(D) amended and effective November 9, 2006; (b)(1), (b)(2), (e)(4), (e)(5), (f), (g)(1), (g)(2), (h)(1), (h)(2), (j)(2), (k), and (l) amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1(b); Amended and Adopted by the Court, En Banc,

May 23, 2016, effective July 1, 2016 for cases filed on or after July 1, 2016 b; Amended November 1, 2017, effective January 1, 2018; amended and adopted September 11, 2018, effective September 11, 2018.)

ANNOTATION

Law reviews. For article, "Implementing C.A.R. 3.4 to Expedite Appeals in Dependency and Neglect Cases", see 34 Colo. Law. 47 (June 2005). For article, "Dependency and Neglect Appeals Under C.A.R. 3.4 ", see 36 Colo. Law. 55 (October 2007).

Court of appeals has jurisdiction to address the constitutionality of this rule as promulgated by the Colorado supreme court. People ex rel. T.D., 140 P.3d 205 (Colo. App.), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

Expedited procedure under this rule does not violate procedural due process because it benefits parents by quickly correcting decisions in which their rights were terminated erroneously; benefits children, whose parents have had their rights terminated, by decreasing the time before they are either returned to their parents or permitted to be legally adopted; and furthers the state's interest in protecting children. People ex rel. T.D., 140 P.3d 205 (Colo. App.), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

Expedited process does not violate procedural due process by placing court of appeals in the role of an advocate on legal issues because it does not alter the court's responsibility to thoroughly examine the record on factual issues. People ex rel. T.D., 140 P.3d 205 (Colo. App.), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

This rule sufficiently protects parents in dependency and neglect cases against the risk of an erroneous deprivation of their appellate rights by (1) allowing appellate counsel for the parents a reasonable opportunity to review an unedited transcript and to raise possible issues for appeal, and (2) allowing the assigned division of the court of appeals to review the complete record and order supplemental briefing when appropriate. People ex rel. T.D., 140 P.3d 205 (Colo. App.), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

This rule does not violate plaintiff's constitutional right to equal protection because parents whose rights are terminated under

article 5 of the Colorado Children's Code are not similarly situated to parents whose rights are involuntarily terminated under article 3 of the code. This rule applies to parents subject to dependency and neglect proceedings under article 3 of the Colorado Children's Code. As such, the proceedings focus primarily on the protection and safety of the children, not on the custodial interests of the parent. Further, such a proceeding can be initiated only by the state. People ex rel. T.D., 140 P.3d 205 (Colo. App.), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

Constitutional right to effective assistance of counsel is not violated because of a lack of a complete record because this rule provides access to an unedited transcript for preparation of the petition on appeal and an opportunity to identify the issues on appeal. People ex rel. T.D., 140 P.3d 205 (Colo. App.), cert. denied, 549 U.S. 1020, 127 S. Ct. 564, 166 L. Ed. 2d 411, and 549 U.S. 1024, 127 S. Ct. 565, 166 L. Ed. 2d 419 (2006).

C.A.R. 2 permits an appellate court to expedite decisions and order proceedings in accordance with its direction even though this rule does not extend to permanent custody orders entered in dependency or neglect proceedings. People ex rel. K.A., 155 P.3d 558 (Colo. App. 2006).

The Colorado rules of civil procedure apply and govern the appropriate methods of service in dependency and neglect cases because neither the Colorado Children's Code nor the Colorado rules of juvenile procedure address the method by which a trial court may serve orders on parties. People ex rel. S.M.A.M.A., 172 P.3d 958 (Colo. App. 2007).

Three days must be added to the deadline for filing a notice of appeal pursuant to subsection (b) when the order appealed is served on the parties by delivery to attorney's courthouse mailbox, which constitutes service by mail. People ex rel. S.M.A.M.A., 172 P.3d 958 (Colo. App. 2007).

Appellant mother's consent is a substantive condition precedent to a valid notice of appeal. Mother's counsel was not empowered to file a notice of appeal without mother's signature or specific authorization, and her defective notice did not invoke the court's jurisdiction even overlooking the untimeliness of the notice. People ex rel. R.D., 259 P.3d 562 (Colo. App. 2011).

The language of subsection (b)(3) prohibiting extensions of time does not preclude enlarging or suspending the deadline for filing

a notice of appeal for good cause. An appellate court remains empowered to extend or suspend deadlines based on a showing of good cause. People ex rel. A.J., 143 P.3d 1143 (Colo. App. 2006).

Based on the "unique circumstances exception", court of appeals has the authority to extend the deadline for filing the notice of appeal in a dependency and neglect case. The "no extensions" provision in section (b) does not preclude application of the unique circumstances exception, because it is an exception to procedural rules limiting a court's authority to grant exceptions. Here, the trial court must bear some responsibility for the late filing because of an ambiguous ruling and subsequent written orders. People ex rel. A.J.H, 134 P.3d 528 (Colo. App. 2006).

Substitution of both parents' counsel appropriate. Applying the criminal standard, there was good cause for the substitution of both parents' counsel in dependency and neglect proceedings when the motions judge ordered supplemental briefing on the issue in Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493, and the substitution of mother's counsel after the announcement of A.L.L. v. People, 226 P.3d 1054 (Colo. 2010). People ex rel. C.Z., 262 P.3d 895 (Colo. App. 2010).

The good cause standard is the same standard recognized in criminal cases, not the standard for civil cases set forth in C.R.C.P. 121? §1-1(2)(b). People ex rel. C.Z., 262 P.3d 895 (Colo. App. 2010).

Matter is moot where guardian ad litem (GAL) failed to offer facts in supplemental brief demonstrating a current basis to terminate mother's parental rights. Although the GAL argued on appeal that the court improperly failed to terminate mother's rights, the child has been returned to the mother and all parties believed that the child should remain in the mother's custody. A matter is moot when the relief sought, if granted, would have no practical legal effect on the existing controversy. People ex rel. L.O.L., 197 P.3d 291 (Colo. App. 2008).

RULE 4. Appeal as of Right - When Taken

(a) Appeals in Civil Cases (Other than Appeals or Appellate Review Within C.A.R. 3.1, 3.2, 3.3 and 3.4). Except as provided in Rule 4(e), in a civil case in which an appeal is permitted by law as of right from a trial court to the appellate court, the notice of appeal required by C.A.R. 3 shall be filed with the appellate court with an advisory copy served on the clerk of the trial court within 49 days of the date of the entry of the judgment, decree, or order from which the party appeals. In appeals from district court review of agency actions, such notice of appeal shall be in addition to the statutory 45-day notice of intent to seek appellate review filed with the district court required by C.R.S. 24-4-106(9). If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal is filed, or within the time otherwise prescribed by this section (a), whichever period last expires.

The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion filed in the trial court by any party pursuant to the Colorado Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this section (a) commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: (1) Granting or denying a motion under C.R.C.P. 59 for judgment notwithstanding verdict; (2) granting or denying a motion under C.R.C.P. 59, to amend findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under C.R.C.P. 59, to alter or amend the judgment; (4) denying a motion for a new trial under C.R.C.P. 59; (5) expiration of a court granted extension of time to file motion(s) for post-trial relief under C.R.C.P. 59, where no motion is filed. The trial court shall continue to have jurisdiction to hear and decide a motion under C.R.C.P. 59 regardless of the filing of a notice of appeal, provided the C.R.C.P. 59 motion is timely filed under C.R.C.P. 59(a) and determined within the time specified in C.R.C.P. 59(j). During such time, all proceedings in the appellate court shall be stayed. A judgment or order is entered within the meaning of this section (a) when it is entered pursuant to C.R.C.P. 58. If notice of the entry of judgment, decree, or order is transmitted to the parties by mail or E-Service, the time for the filing of the notice of appeal shall commence from the date of the mailing or E-Service of the notice.

Upon a showing of excusable neglect, the appellate court may extend the time for filing the notice of appeal by a party for a period not to exceed 35 days from the expiration of the time otherwise prescribed by this section (a). Such an extension may be granted before or after the time otherwise prescribed by this section (a) has expired; but if a request for an extension is

made after such time has expired, it shall be made by motion with such notice as the court shall deem appropriate.

(b) Appeals in Criminal Cases.

(1) Except as provided in Rule 4(e), in a criminal case the notice of appeal by a defendant shall be filed in the appellate court and an advisory copy served on the clerk of the trial court within 49 days after the entry of the judgment or order appealed from. A notice of appeal filed after the announcement of a decision, sentence, or order but before entry of the judgment or order shall be treated as filed on the date of such entry. If a timely motion in arrest of judgment or for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 49 days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made within 14 days after entry of the judgment. A judgment or order is entered within the meaning of this section (b) when it is entered in the criminal docket. Upon a showing of excusable neglect the appellate court may, before or at any time after the time has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed 35 days from the expiration of the time otherwise prescribed by this section (b).

(2) Unless otherwise provided by statute or Colorado appellate rule, when an appeal by the state or the people is authorized by statute, the notice of appeal shall be filed in the Court of Appeals within 49 days after the entry of judgment or order appealed from. The Court of Appeals, after consideration of said appeal, shall issue a written decision answering the issues in the case and shall not dismiss the appeal as without precedential value. The final decision of the Court of Appeals is subject to petition for certiorari to the Supreme Court.

(3) Prosecutorial Appeals in Criminal Cases. An appeal by the state or the people from an order dismissing one or more but less than all counts of a charging document prior to trial, including a finding of no probable cause at a preliminary hearing, shall be filed in the court of appeals unless the order is based on a determination that a statute, municipal charter provision, or ordinance is unconstitutional, in which case the appeal shall be filed in the supreme court. Appeals of orders dismissing one or more but less than all counts of a charging document shall otherwise be conducted pursuant to the procedures set forth in Rule 4.1, except petitions for rehearing and certiorari shall be permitted, and mandates shall issue, as provided by these rules.

(c) Appellate Review of Felony Sentences.

(1) Availability of Review. Except in those cases provided for in subsection (e) of this Rule, a person upon whom sentence is imposed for conviction of a felony shall have the right to one appellate review of the propriety of the sentence, having regard to the nature of the offense, the character of the offender, the public interest, and the sufficiency and accuracy of the information on which the sentence was based.

(I) If the appeal review of conviction is sought in a case where there has been a trial and conviction on the merits, appellate review of the propriety of the sentence will be a part of and be treated in the same manner as the review of the conviction.

(II) If the appeal is to review a sentence following a plea of guilty or nolo contendere, or resentencing, where the imposition of sentence was the only issue before the court, then the following abbreviated procedure for appellate review of sentences will be utilized:

(A) The notice of appeal must be filed within 49 days from the date of the imposition of sentence. The notice shall be filed with the appellate court with an advisory copy served on the clerk of the trial court which imposed the sentence. The time for filing the notice of appeal may be extended by the appellate court.

(B) Except as provided by this Rule, the Colorado Appellate Rules governing criminal appeals shall apply to appellate review of sentences.

(d) Appeals of Cases in Which a Sentence of Death Has Been Imposed.

(1) Availability of Review. Whenever a sentence of death is imposed, the Supreme Court shall review the propriety of the sentence, having regard to the nature of the offense, the character and record of the offender, the public interest, and the manner in which the sentence was imposed, including the sufficiency and accuracy of the information upon which it was based.

If the Supreme Court determines that the sentence was imposed under the influence of passion, prejudice, or any other arbitrary factor, or that, as a matter of law, the sentence is not supported by the evidence, a sentence of death shall not thereafter be imposed.

(2) Procedure and Conditions.

(I) The trial court, at the time of imposition of a sentence of death, shall enter an order staying execution of the judgment and sentence until further order of the Supreme Court, and shall direct the clerk of the trial court to

mail to the Supreme Court, within 7 days of imposition of sentence, a copy of the judgment, sentence, and mittimus.

(II) The record, as described in subsection (3) of this Rule, shall be prepared in the same form as any other record to be presented to the Supreme Court and shall be transmitted by the clerk of the trial court within 42 days of imposition of sentence, or such additional time as may be allowed by the Supreme Court.

(3) Record on Appeal. In appeals under subsection (e) of this Rule, the following items shall be included in the record on appeal:

(I) The indictment or information upon which the sentence is based; a verbatim transcript of the entire sentencing proceeding; the instructions given by the trial court and tendered by the parties in the sentencing proceeding; all exhibits admitted or offered during the trial and at the sentencing proceeding; all verdict forms submitted to the jury; and the judgment, sentence, and mittimus.

(II) Such other portions of the record as may be designated under C.A.R. 10(b) or as may be ordered by the Supreme Court.

(e) Appeal by an Inmate Confined in an Institution. If an inmate confined in an institution files a notice of appeal in either a civil case or a criminal case, the notice of appeal is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule.

(Source: a amended August 23, 1984, effective January 1, 1985; b2 amended July 7, 1988, effective August 1, 1988; a amended and effective June 18, 1992; a and d amended March 17, 1994, effective July 1, 1994; c1I amended and effective April 7, 1994; a corrected and effective January 9, 1995; entire rule amended and adopted May 17, 2001, effective July 1, 2001; b1 corrected June 12, 2001, effective July 1, 2001; b3 added and adopted June 27, 2002, effective July 1, 2002; a amended and effective September 9, 2004; a amended and effective November 9, 2006; a amended and effective February 7, 2008; d2 amended and effective May 10, 2010; a, b1, b2, c1IIA, and d2 amended and adopted December 14, 2011, effective July 1, 2012.)

C.A.R. 4(a) provides for the notice of appeal to be filed with the appellate court and a copy to be served upon the trial court. Time for filing the notice of appeal is increased to 49 days.

C.A.R. 4(b) has been altered to make it conform more closely to C.A.R. 4(a).

The change in the title and deletion of subsection (d) of this rule became necessary because of repeal of C.R.S. 18-1-409 (2.1) and (2.2) and repeal of C.R.S. 18-1-409.5 effective July 1, 1981. In 1984 this rule was changed to make it conform more closely to C.A.R. 4(a) and (b).

Annotation

I. General Consideration.

Law reviews. For article, "Defects in Ineffective Assistance Standards Used By State Courts", see 50 U. Colo. L. Rev. 389 (1979). For article, "The Problem of Delay in the Colorado Court of Appeals", see 58 Den. L.J. 1 (1980). For article, "Colorado Felony Sentencing", see 11 Colo. Law. 1478 (1982).

Compliance with the rules of court is prerequisite to appellate jurisdiction, and actions undertaken to avoid application of those rules, whether by the parties or by the trial court, cannot operate to confer jurisdiction. Dill v. County Court, 37 Colo. App. 75, 541 P.2d 1272 (1975); Moore & Co. v. Williams, 657 P.2d 984 (Colo. App. 1982).

Although adherence to strict jurisdictional notions may sometimes create a needless waste of judicial resources. In re Ross, 670 P.2d 26 (Colo. App. 1983).

Rule is procedural requirement without jurisdictional significance. Trial court's preparation and transmission of findings with an order nunc pro tunc to date of original sentencing was valid because trial court did not lose jurisdiction by initial oversight. People v. Abeyta, 677 P.2d 393 (Colo. App. 1983).

New requirement that notice of appeal be filed with the appellate court with an advisory copy served on the clerk of the trial court is jurisdictional, and strict compliance with the rule is required. Therefore, a notice of appeal erroneously filed in the trial court was of no effect under the new rules, and the trial court was without authority to grant an extension of time to correctly file a notice of appeal. Collins v. Boulder Urban Renewal Auth., 684 P.2d 952 (Colo. App. 1984).

The timely filing of notice of appeal is a jurisdictional prerequisite to appellate review. Estep v. People, 753 P.2d 1241 (Colo. 1988); Hillen v. Colo. Comp. Ins. Auth., 883 P.2d 586 (Colo. App. 1994).

Reduction of charge. In reducing a charge, the court in effect dismisses the greater charge and substitutes a lesser one. Through such action, the court does not dismiss the case in its entirety; therefore, the appeal of the case is

governed by the procedures set forth in subsection (b)(3) of this rule and in C.A.R. 4.1, not subsection (b)(2), and must be filed within 10 days of the date of the order. People v. Severin, 122 P.3d 1073 (Colo. App. 2005).

Court does not pass upon plaintiff's claim that stay order was improperly entered where he did not formally protest that order by filing either a notice of appeal under this rule or a motion under C.A.R. 8. DiMarco v. Dept. of Rev., MVD, 857 P.2d 1349 (Colo. App. 1993).

This rule is inapplicable to review of orders of the industrial appeals panel. Picken v. Indus. Claim Appeals Office, 874 P.2d 485 (Colo. App. 1994).

Trial court may not correct jurisdictional defects in the appeal. Dill v. County Court, 37 Colo. App. 75, 541 P.2d 1272 (1975).

Rule on appellate review of criminal sentences controls over conflicting statute, ? §18-1-409, which had not been amended after rule was changed. People v. Arevalo, 835 P. 2d 552 (Colo. App. 1992).

However, ? §18-1-409 prevails over a conflicting supreme court rule in substantive matters. To the extent that subsection (c)(1) of this rule provides that every defendant may seek review of the propriety of his or her sentence, it conflicts with the substantive provisions of ? §18-1-409(1). People v. Prophet, 42 P.3d 61 (Colo. App. 2001).

A nunc pro tunc judgment may not be used to circumvent the time requirements of the rules of procedure. Dill v. County Court, 37 Colo. App. 75, 541 P.2d 1272 (1975).

Applied in Carr v. District Court, 157 Colo. 226, 402 P.2d 182 (1965); City & County of Denver v. Bd. of Adjustment, 31 Colo. App. 324, 505 P.2d 44 (1972); People v. Samora, 188 Colo. 74, 532 P.2d 946 (1975); People v. Martinez, 190 Colo. 507, 549 P.2d 758 (1976); People v. Hinchman, 40 Colo. App. 9, 574 P.2d 866 (1977); Emerick v. Greene, 40 Colo. App. 246, 575 P.2d 441 (1977); Schenk v. Indus. Comm'n, 40 Colo. App. 350, 579 P.2d 1171 (1978); People v. McKnight, 41 Colo. App. 372, 588 P.2d 886 (1978); People v. Reyes, 42 Colo. App. 73, 589 P.2d 1385 (1979); People v. Mikkleson, 42 Colo. App. 77, 593 P.2d 975 (1979); People v. Malacara, 199 Colo. 243, 606 P.2d 1300 (1980); Widener v. District Court, 200 Colo. 398, 615 P.2d 33 (1980); People v. Foster, 200 Colo. 283, 615 P.2d 652 (1980); People v. Martinez, 628 P.2d 608 (Colo. 1981); People v. Francis, 630 P.2d 82 (Colo. 1981); People v. Hunt, 632 P.2d 572 (Colo. 1981); People v. Byerley, 635 P.2d 542 (Colo. 1981); People v. District Court, 638 P.2d 65 (Colo. 1981); People v. Boivin, 632 P.2d 1038 (Colo. App. 1981); In re Van Camp, 632 P.2d 1062 (Colo. App. 1981); Danielson v. Kerbs AG., Inc., 646 P.2d 363 (Colo. 1982);

People v. Rafferty, 644 P.2d 102 (Colo. App. 1982); People v. Dennis, 649 P.2d 321 (Colo. 1982); People v. Cole, 648 P.2d 687 (Colo. App. 1982); People v. Peterson, 656 P.2d 1301 (Colo. 1983); Acme Delivery Serv., Inc. v. Samsonite Corp., 663 P.2d 621 (Colo. 1983); Church v. Am. Standard Ins. Co. of Wis., 742 P.2d 971 (Colo. App. 1987); People v. Harmon, 3 P.3d 480 (Colo. App. 2000); People v. Banuelos-Landa, 109 P.3d 1039 (Colo. App. 2004); Harris v. Reg'l Transp. Dist., 155 P.3d 583 (Colo. App. 2006).

II. Civil Cases.

Timely filing of a notice of appeal is mandatory and jurisdictional. Chapman v. Miller, 29 Colo. App. 8, 476 P.2d 763 (1970); Concelman v. Ray, 36 Colo. App. 181, 538 P.2d 1343 (1975); In re Foster, 39 Colo. App. 130, 564 P.2d 429 (1977).

Compliance with section (a) is mandatory. Failure to comply deprives the appellate court of jurisdiction and precludes a review of the merits. Bosworth Data Servs., Inc. v. Gloss, 41 Colo. App. 530, 587 P.2d 1201 (1978).

Time limitation contained in section (a) is jurisdictional. Federal Lumber Co. v. Hanley, 33 Colo. App. 18, 515 P.2d 480 (1973).

The filing of a notice of appeal is mandatory and a jurisdictional prerequisite for appellate review of a lower court decision. People v. Silvola, 198 Colo. 228, 597 P.2d 583 (1979).

Strict compliance with section (a) is essential. Laugesen v. Witkin Homes Inc., 29 Colo. App. 58, 479 P.2d 289 (1970).

Any appeal of the dismissal of a claim as barred by the Governmental Immunity Act, article 10 of title 24, C.R.S., must be sought immediately within the time limits specified in this rule, or it is barred. Buckles v. State, Div. of Wildlife, 952 P.2d 855 (Colo. App. 1998).

Jurisdictional defect created which warranted dismissal. Where trial court took no action with respect to appellant's posttrial motion within 60 days after that motion was filed, that motion was "deemed denied", pursuant to C.R.C.P. 59(j), so that appellant's failure to file notice of appeal within 45 days after the posttrial motion was "deemed denied" created a jurisdictional defect in the appeal which warranted dismissal under this rule. Baum v. State Bd. for Cmty. Colls., 715 P.2d 346 (Colo. App. 1986); Anderson v. Molitor, 738 P.2d 402 (Colo. App. 1987).

Lack of a proper order determining a C.R.C.P. 59 motion was not fatal to appeal where party appealed from underlying order of dissolution of

marriage, not from denial of the rule 59 motion. In re Christen, 899 P.2d 339 (Colo. App. 1995).

Temporary orders as to maintenance are reviewable as a final judgment even if there has not been a final judgment in the form of a decree of dissolution. In re Nussbeck, 899 P.2d 347 (Colo. App. 1995), rev'd on other grounds, 974 P.2d 493 (Colo. 1999).

Post-trial motions for attorney fees are subject to the provisions of C.R.C.P. 59 and the effect of such motions upon the time limitations of this rule are as specified in C.R.C.P. 59. Torrez v. Day, 725 P.2d 1184 (Colo. App. 1986).

Requirements of this rule must be met for appeals of judgments for attorney fees. The award of attorney fees in a case is sufficiently separate from an underlying judgment on the merits to require that a separate notice of appeal be filed within the time limits of this rule from the judgment awarding attorney fees independently of the judgment entered on the merits of the underlying case. If this is not done, the court of appeals is not vested with subject matter jurisdiction to determine issues related to the award of attorney fees. Dawes Agency v. Am. Prop. Mortg., 804 P.2d 255 (Colo. App. 1990).

Judgment awarding prejudgment interest is not final until the amount of such interest is reduced to a sum certain. Grand County Custom Homebuilding, LLC v. Bell, 148 P.3d 398 (Colo. App. 2006).

Timely filing of motion for reconsideration of a completed post-trial ruling on an attorney fees issue tolls the time for filing a notice of appeal under this rule until the court determines the motion or the motion is deemed denied after 60 days pursuant to C.R.C.P. 59(j). Jensen v. Runta, 80 P.3d 906 (Colo. App. 2003).

The court of appeals is not usually precluded from reviewing an appeal merely because the notice of appeal was premature. Bush v. Winker, 892 P.2d 328 (Colo. App. 1994).

Calculation of timeliness of notice of appeal. The timeliness of a notice of appeal is calculated from the date the judgment appealed from is entered on the register of actions. Moore & Co. v. Williams, 672 P.2d 999 (Colo. 1983).

Construction given "announced" within context of section (a) for purposes of resolving timeliness of notices of appeal. Oral ruling on posttrial motions in presence of parties and their counsel did not constitute "announcement" of trial court's judgment. Judgment was not "announced" until signing of the order in its final form thereby deferring commencement of the running of

the time to appeal until the parties were notified by mail of such action. City of Colo. Springs v. Timberland Assocs., 783 P.2d 287 (Colo. 1989).

For purposes of timeliness of notice of appeal, order of dismissal is final judgment and motion for reconsideration operated to suspend the running of time until the ruling thereon. Small v. General Motors, 694 P.2d 374 (Colo. App. 1984).

Failure to file timely notice of appeal requires dismissal. An appeal must be dismissed when appellant has failed to file a timely notice of appeal under section (a). Federal Lumber Co. v. Hanley, 33 Colo. App. 18, 515 P.2d 480 (1973).

Jurisdictionally defective notice insufficient. A notice of appeal which is jurisdictionally defective is not a "timely notice of appeal" as contemplated in section (a). Watered Down Farms v. Rowe, 39 Colo. App. 169, 566 P.2d 710 (1977), rev'd on other grounds, 195 Colo. 152, 576 P.2d 172 (1978).

Notice of appeal not timely filed. Earlier notice of appeal, which related to probate of will, did not provide notice of appeal of order vacating notices of lis pendens to estate property, and since no timely appeal was filed, court lacked jurisdiction over appeal. Matter of Estate of Anderson, 727 P.2d 867 (Colo. App. 1986).

Proponent's notice of appeal as to the probate court's November order denying a partial summary judgment was timely filed in March since the November court order adjudicated fewer than all of proponent's pending claims in the proceedings and, therefore, did not constitute a final judgment, but the court's intervening February order resolved the remaining issue pending between the parties. In re Estate of Scott, 119 P.3d 511 (Colo. App. 2004), aff'd, 136 P.3d 892 (Colo. 2006).

Notice of appeal timely filed when filed within 45 days of amended order. In trial involving title to a road segment, original order expressly deferred determination of road segment's width to a later date, and the notice of appeal was timely filed after trial court amended the order to incorporate the road segment's width. Camp Bird Colo., Inc. v. Bd. of County Comm'rs of Ouray, 215 P.3d 1277 (Colo. App. 2009).

Defendant's notice of appeal from automatic denial of motion to alter and amend judgment pursuant to C.R.C.P. 59(j) was untimely and prevents prosecution of the appeal. Sandoval v. Trinidad Area Health Ass'n, 752 P.2d 1062 (Colo. App. 1988).

When second motion to alter or amend not prerequisite to filing of notice. Where an appellant seeks no greater or different relief on appeal than that asked of the trial court in the motion directed to the original judgment, where appellant is not urging any new alleged errors arising from the amended judgment, and where the amended judgment is not the result of a post-judgment hearing involving controverted issues of fact, the appellant need not file another motion to alter or amend or for a new trial after entry of the amended judgment as a prerequisite to the filing of his notice of appeal. In re Foster, 39 Colo. App. 130, 564 P.2d 429 (1977).

Effect of filing motion for new trial. The running of the time for filing a notice of appeal is terminated upon the timely filing of a motion for new trial, and the time begins to run anew when that motion is denied. A subsequent motion for new trial that raises issues that either were or could have been raised in the movant's prior motion does not affect the running of the time for filing the notice of appeal. Wright Farms, Inc. v. Weninger, 669 P.2d 1054 (Colo. App. 1983); United Bank of Boulder, N.A. v. Buchanan, 836 P.2d 473 (Colo. App. 1992).

Denial of motion for new trial starts filing period. Until such time as the motion, for new trial is denied, plaintiff's time within which it may file an appeal in the supreme court does not even start to run. Commercial Credit Corp. v. Frederick, 164 Colo. 5, 431 P.2d 1016 (1967).

Where final order appealed from is denial of a C.R.C.P. 60(b) motion for relief from judgment, and C.R.C.P. 59 motion to reconsider such denial has been filed, time for filing notice of appeal runs from denial of C.R.C.P. 59 motion, not from the date of the underlying judgment. United Bank of Boulder, N.A. v. Buchanan, 836 P.2d 473 (Colo. App. 1992).

Final entry of judgment for purposes of timely notice of appeal under this rule based on denial of new trial motion is date on which court filed written judgment in fixed amount on special verdict. Vallejo v. Eldridge, 764 P.2d 417 (Colo. App. 1988).

Rule 60(b) motion is appealable independently of an underlying judgment, and, where the notice of appeal was timely as to the trial court's order denying defendant's motion to set aside the judgment dismissing the action, the appellate court has jurisdiction to consider it. Guevara v. Foxhoven, 928 P.2d 793 (Colo. App. 1996).

A notice of appeal must be filed within 45 days from the entry of an order granting or denying a motion filed pursuant to C.R.C.P. 59. Campbell v. McGill, 810 P.2d 199 (Colo. 1991).

When a party timely files a C.R.C.P. 59 motion, the running of the 45 days for the notice of appeal under section (a) of this rule is terminated and does not begin to run anew until either a ruling on the motion within 60 days or when the motion is deemed denied at the end of the 60-day period. Stone v. People, 895 P.2d 1154 (Colo. App. 1995).

If a C.R.C.P. 59 motion is timely filed, the time for filing a notice of appeal commences when the trial court determines that motion or when the motion is deemed denied under the rule. Guevara v. Foxhoven, 928 P.2d 793 (Colo. App. 1996).

Filing notice gives extra time to all parties. The timely filing of a notice of appeal by any party affords an additional 14 days to all other parties, regardless of whether the party subsequently appealing was an appellee in the initial appeal. Kitto v. Gilbert, 39 Colo. App. 374, 570 P.2d 544 (1977).

Effect of filing motion to alter or amend judgment. The filing of a motion to alter or amend a judgment tolls the running of the time for filing notice of appeal. Valenzuela v. Mercy Hosp., 34 Colo. App. 5, 521 P.2d 1287 (1974).

Amendment of judgment does not extend filing period. Generally where an appellant procures an amendment of a judgment, the time period in which to file an appeal will not be extended. In re Everhart, 636 P.2d 1321 (Colo. App. 1981); Mosley v. Indus. Claim Appeals Office, 78 P.3d 1150 (Colo. App. 2003).

Neither does petition to show cause. The filing of a petition to show cause in the supreme court within a 10-day period following entry of final judgment, coupled with the filing of a motion in a trial court to suspend proceedings, does not stay the time to file a motion for a new trial under C.R.C.P. 59 or the time to proceed under C.A.R. 11 or this rule. Walter v. Walter, 136 Colo. 405, 318 P.2d 221 (1957).

Nor does pendency of motion for attorney fees and costs. The pendency of such a motion does not preclude a judgment on the merits from becoming final or toll the running of the 45-day period for filing a notice of appeal, at least where attorney fees are sought pursuant to a statutory fee-shifting provision rather than as damages. Goodwin v. Homeland Cent. Ins. Co., 172 P.3d 938 (Colo. App. 2007).

Parties may not waive requirement of timely filing. Parties may not by their independent action amend or waive the jurisdictional requirement of timely filing of a notice of appeal under section (a). Concelman v. Ray, 36 Colo. App. 181, 538 P.2d 1343 (1975).

Court may extend the time for filing a notice of appeal upon a showing of excusable neglect only in cases that are appealed from a trial court. Section (a) does not apply to appeals from rulings of an administrative agency. Martinez v. Colo. State Pers. Bd., 28 P.3d 978 (Colo. App. 2001).

Upon showing of excusable neglect, trial court may extend the time for filing the notice of appeal for a period not to exceed 30 days. Chapman v. Miller, 29 Colo. App. 8, 476 P.2d 763 (1970).

Finding of excusable neglect is supported by the record and binding upon review. F.W. Woolworth Co. v. State Dept. of Rev., 699 P.2d 1 (Colo. App. 1984).

Reason for late filing critical in determination of excusable neglect. Although the number of days that a filing is late may be one factor in determining whether neglect is excusable for purposes of extending time to file notice of appeal, the critical question is the reason for the late filing. Bosworth Data Servs., Inc. v. Gloss, 41 Colo. App. 530, 587 P.2d 1201 (1978).

Negligence of counsel generally is not considered "excusable neglect" which would justify the late filing of a notice of appeal under section (a). Trujillo v. Indus. Comm'n, 648 P.2d 1094 (Colo. App. 1982).

Nor attorney's press of work. The press of work or other activities of an attorney do not constitute excusable neglect. Cox v. Adams, 171 Colo. 37, 464 P.2d 513 (1970); Laugesen v. Witkin Homes, Inc., 29 Colo. App. 58, 479 P.2d 289 (1970).

Miscounting days within which to file notice of appeal does not constitute excusable neglect. Bosworth Data Servs., Inc. v. Gloss, 41 Colo. App. 530, 587 P.2d 1201 (1978); Kronkow, Inc. v. Wood, 44 Colo. App. 462, 615 P.2d 71 (1980).

Reliance on post office's assurance of timely delivery of notice of appeal did not constitute excusable neglect. Ford v. Henderson, 691 P.2d 754 (Colo. 1984).

Reliance on office staff to make appropriate filings did not constitute excusable neglect. Hillen v. Colo. Comp. Ins. Auth., 883 P.2d 586 (Colo. App. 1994).

Doctrine of "unique circumstances" and finding of excusable neglect. When counsel erroneously filed motion for extension of time to file notice of appeal of an order terminating parental rights with trial court instead of appellate court within 45-day period and counsel relied on trial court's erroneous extension of deadline and filed notice of appeal after the 45-day period but

within the 30-day extension period for excusable neglect, court of appeals had jurisdiction to consider a request for late filing under "unique circumstances" doctrine and failure to find excusable neglect to justify extension of time was abuse of discretion. P.H. v. People in Interest of S.H., 814 P.2d 909 (Colo. 1991).

Refusal of extension was not abuse of discretion. Where there is no showing of excusable neglect, there is no abuse of discretion on the part of the trial court in its refusal to extend the time for filing the notice of appeal. Long v. Ross, 30 Colo. App. 436, 494 P.2d 128 (1972).

Forty-five-day time limit for filing appeal with court of appeals in tax assessment cases, rather than statutory time period, is applicable when appeal has first been filed with state board of assessment appeals and not in district court. Denver v. Bd. of Assessment Appeals, 748 P.2d 1306 (Colo. App. 1987).

"Unique circumstances" doctrine may be applied to allow the filing of notice of appeal in a kinship adoption proceeding governed by C.A.R. 4(a) beyond the 75-day jurisdictional deadline. Court shall consider the totality of the circumstances in decision to apply doctrine. In re C.A.B.L., 221 P.3d 433 (Colo. App. 2009).

III. Criminal Cases.

Appellate court may, for good cause shown, enlarge the time for filing under section (b). People v. Allen, 182 Colo. 395, 513 P.2d 1060 (1973); People v. Baker, 104 P.3d 893 (Colo. 2005).

Where public defender was notified of appointment to represent petitioner on last day on which petitioner could file late notice of appeal, court of appeals should have either allowed notice of appeal or given petitioner additional time to gather more supporting information rather than denying motion for out of time filing. Weason v. Colo. Court of Appeals, 731 P.2d 736 (Colo. 1987).

A motion filed after entry of the order challenged on appeal does not extend the time for the prosecution to file its notice past the 45 days allowed by this rule. People v. Retallack, 804 P.2d 279 (Colo. App. 1990).

But trial court cannot extend time for filing past 75 days. A trial court has no authority or jurisdiction to extend the time for filing of notice of appeal from criminal conviction past 60 days (now 75 days) after the entry of the judgment. People v. Allen, 182 Colo. 395, 513 P.2d 1060 (1973).

The excusable neglect provision does not apply to appeals by the people. People v. Gilmore, 97 P.3d 123 (Colo. App. 2003).

The civil cross-appeal rule that allows for sequential submissions does not apply in criminal cases. People v. Gilmore, 97 P.3d 123 (Colo. App. 2003).

An order granting a new trial is a final order pursuant to ? §16-12-102, therefore, prosecution must file its appeal within 45 days of the order. People v. Curren, 228 P.3d 253 (Colo. App. 2009).

Order granting motion for a new trial not final judgment for purposes of appeal, and therefore people's failure to file appeal within 45 days of such order did not render subsequent appeal untimely. People v. Campbell, 738 P.2d 1179 (Colo. 1987).

Alleged errors must be preserved by objection and motion. Proper procedure necessitates that alleged error, including errors of a constitutional nature, be preserved by raising same by objection during the trial and by motion for a new trial. People v. Sanchez, 180 Colo. 119, 503 P.2d 619 (1972).

Timely but defective notice was adequate to invoke appellate jurisdiction. People v. Bost, 770 P.2d 1209 (Colo. 1989).

Perfection of appeal divests trial court of jurisdiction. Unless otherwise specifically authorized by statute or rule, once an appeal has been perfected, the trial court has no jurisdiction to issue further orders in the case relative to the order or judgment appealed from. Consequently, should it be necessary for the trial court to act, other than in aid of the appeal or pursuant to specific statutory authorization, the proper course would be for a party to obtain a limited remand from the appellate court. People v. Dillon, 655 P.2d 841 (Colo. 1982).

Sentence imposed after revocation of probation is final judgment. Where the trial court has initially imposed sentence on a defendant and has suspended execution of the sentence and granted probation, which is thereafter revoked, the resulting sentence imposed after revocation of probation is the final judgment. People v. Jenkins, 40 Colo. App. 140, 575 P.2d 13 (1977).

As is reversal of order imposing costs. The final judgment for purposes of appeal was entered when trial court reversed its previous order imposing costs on the defendant, and therefore state's appeal taken more than 30 days after sentencing was proper. People v. Fisher, 189 Colo. 297, 539 P.2d 1258 (1975).

IV. Review of Sentences.

Misdemeanor sentence. There is no provision for appellate review of the propriety of a misdemeanor sentence. People v. Roberts, 668 P.2d 977 (Colo. App. 1983).

Sentencing by its very nature is a discretionary decision which requires the weighing of various factors and striking a fair accommodation between the defendant's need for rehabilitation or corrective treatment and society's interest in safety and deterrence. People v. Watkins, 200 Colo. 163, 613 P.2d 633 (1980).

Wide latitude will be given the trial court's final decision since it is in the best position to balance the many factors which must be considered in tailoring an appropriate sentence in each individual case. People v. Valencia, 630 P.2d 85 (Colo. 1981).

But discretion not unrestricted. The discretion implicit in the sentencing decision is not an unrestricted discretion devoid of reason or principle. People v. Watkins, 200 Colo. 163, 613 P.2d 633 (1980).

Sentencing decisions should reflect rational selection from various sentencing alternatives in a manner consistent with the dominant aims of the sentencing process. People v. Watkins, 200 Colo. 163, 613 P.2d 633 (1980).

Record to include reasons for imposition of sentence. Hereafter in felony convictions involving the imposition of a sentence to a correctional facility, the sentencing judge must state on the record the basic reasons for the imposition of sentence. People v. Watkins, 200 Colo. 163, 613 P.2d 633 (1980).

The statement of reasons that sentencing judge must state on record need not be lengthy, but should include the primary factual considerations bearing on the judge's sentencing decision. People v. Watkins, 200 Colo. 163, 613 P.2d 633 (1980).

Factors considered in sentencing. Some of the more common considerations significant to the sentencing process are: The gravity of the offense in terms of harm to person or property; the gravity of the offense in terms of the culpability requirement of the law; the defendant's history of prior criminal conduct; the degree of danger the defendant might present to the community if released forthwith; the likelihood of future criminality in the absence of corrective incarceration or treatment; the prospects for rehabilitation under some less drastic sentencing alternative, such as probation, and the likelihood of depreciating the seriousness of the offense

were a less drastic sentencing alternative chosen. People v. Watkins, 200 Colo. 163, 613 P.2d 633 (1980).

In reviewing the district court's imposition of sentence, the supreme court is to consider the following factors: The nature of the offense, the character of the offender, the public interest in safety and deterrence, and the sufficiency and accuracy of the information on which the sentence was based. People v. Mattas, 645 P.2d 254 (Colo. 1982).

An appellate court must consider the nature of the offense, the character of the offender, and the public interest in safety and deterrence in reviewing a sentence claimed to be excessive. People v. Valencia, 630 P.2d 85 (Colo. 1981).

Review of propriety of sentence limited. Neither the court of appeals nor the supreme court of Colorado has jurisdiction to review the propriety of a sentence except on direct appeal from the initial sentence, and then only under the limitations established in this rule and in ? §18-1-409 . Mikkleson v. People, 199 Colo. 319, 618 P.2d 1101 (1980).

Record to justify extended term sentence. Where a sentence is imposed for an extended term, the record must clearly justify the decision of the sentencing judge. People v. Valencia, 630 P.2d 85 (Colo. 1981).

Sentence cannot be modified absent abuse of discretion. In reviewing the record in a proceeding under this rule, the sentence imposed cannot be modified unless it appears to the appellate court that the trial judge abused his discretion in imposing the sentence. People v. Walker, 189 Colo. 545, 542 P.2d 1283 (1975).

Trial court does not err in failing to hold hearing. When a defendant does not raise a question or move for a new trial, but raises the question for the first time on appeal of conviction, the trial court does not err in failing to hold a hearing "sua sponte" to determine such. People v. Sanchez, 180 Colo. 119, 503 P.2d 619 (1972).

Invoking fifth amendment at codefendant's trial. Where a defendant is appealing his sentence and fears that his testimony in the trial of his codefendant might be used at a subsequent hearing to enhance the sentence should it be vacated, he may invoke his fifth amendment right against self-incrimination. People v. Villa, 671 P.2d 971 (Colo. App. 1983).

The language of subsection (b)(2) is plain and unambiguous and dictates that if an appeal by the People is authorized by statute, the court of appeals

must issue a written decision. People v. Jackson, 972 P.2d 698 (Colo. App. 1998).

RULE 4.1. Interlocutory Appeals in Criminal Cases

(a) Grounds. The state may file an interlocutory appeal in the Supreme Court from a ruling of a district court granting a motion under Crim. P. 41(e) and (g) and Crim. P. 41.1(i) made in advance of trial by the defendant for return of property and to suppress evidence or granting a motion to suppress an extra-judicial confession or admission; provided that the state certifies to the judge who granted such motion and to the Supreme Court that the appeal is not taken for purposes of delay and the evidence is a substantial part of the proof of the charge pending against the defendant.

(b) Limitation on Time of Issuance. An interlocutory appeal must be filed within 14 days after the entry of the order complained of. It shall not be a condition for the filing of such interlocutory appeal that a motion for a new trial or rehearing shall have been filed and denied in the trial court.

(c) How Filed. To file an interlocutory appeal the state, within the time fixed by this Rule, shall file the notice of appeal with the clerk of the appellate court with an advisory copy served on the clerk of the trial court.

(d) Record. The record for an interlocutory appeal shall consist of the information or indictment, the plea of the defendant or the defendants, the motions filed by the defendant or defendants on the grounds stated in section (a) above, the reporter's transcript of all testimony taken at the hearing on said motions and such exhibits or reasonable copies, facsimiles, or photographs thereof as the parties may designate (subject to the provisions in C.A.R. 10(c)(3) pertaining to exhibits of bulk), the order of court ruling on said motions together with the date, if one has been fixed, that the case is set for trial or a certificate by the clerk that the case has not been set for trial. After the filing of the record, such other exhibits or reasonable copies, facsimiles, or photographs thereof shall be transmitted by the clerk of the trial court to the appellate court as the appellate court may order. The record shall be filed within 14 days of the date of filing the notice of appeal.

(e) Appearances. The state in these proceedings shall be represented by the district attorney, and briefs shall be prepared by the district attorney's office and responsive briefs or pleadings served upon that office.

(f) Briefs. Within 14 days after the record has been filed in the Supreme Court, the state shall file its brief, and within 14 days thereafter, the appellee shall file the answer brief, and the state shall have 7 days after service of the answer brief to file any reply brief.

(g) Disposition of Cause. No oral argument shall be permitted except when ordered by the court. The decision of the court shall be by written opinion, copies of which shall be transmitted by the clerk of the court to the trial judge and to one attorney on each side of the case. No petition for rehearing shall be permitted. Remittiturs ha II accompany said opinion.

(h) Time. The time limits herein may only be enlarged by order of the appropriate court before the existing time limit has expired.

(Source: (b), (d), and (f) amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1(b); entire rule amended and effective June 23, 2014; (d) amended and adopted October 26, 2017, Amended November 1, 2017, effective January 1, 2018.)

ANNOTATION

Rule not violative of equal protection.

The provisions of this rule permitting only the prosecution to enter an interlocutory appeal are not violative of equal protection, since the prosecution is precluded from placing the defendant in double jeopardy after the final verdict has been reached, and its only meaningful avenue of appeal must be found in a prejudgment proceeding. People v. Traubert, 199 Colo. 322, 608 P.2d 342 (1980).

This rule requires filing of an interlocutory appeal within ten days after entry of an appealable order.

However, where there was no indication that entry of a motion to reconsider was an attempt to circumvent the appeals process or delay the proceedings, the prosecution complied with this rule by filing an appeal within ten days after the modified ruling. People v. Melton, 910 P.2d 672 (Colo. 1996).

In order to toll the time for filing an interlocutory appeal, a motion to reconsider a trial court order of suppression must be filed within ten days of the date of the order of suppression.

People v. Powers, 47 P.3d 686 (Colo. 2002).

This rule provides an appeal for the prosecution rather than defendant,

therefore, the court does not have jurisdiction to address any issues resolved by the trial court in favor of the prosecution. People v. Gothard, 185 P.3d 180 (Colo. 2008).

Issues raised by defendant are not normally included.

An interlocutary appeal by the people under this rule does not normally include issues raised by the defendant. People v. Barton, 673 P.2d 1005 (Colo. 1984).

The supreme court has no jurisdiction to address a ruling adverse to the defendant in an interlocutory appeal under this rule. People v. Oates, 698 P.2d 811 (Colo. 1985); People v. Griffin, 727 P.2d 55 (Colo. 1986); People v. Weston, 869 P.2d 1293 (Colo. 1994).

This rule does not interfere with defendant's rights to appeal his conviction

after a verdict has been reached. People v. Traubert, 199 Colo. 322, 608 P.2d 342 (1980).

This rule is designed as procedural device to facilitate review,

and does not represent a constitutional right on the part of either the defendant or the state. People v. Renfrow, 172 Colo. 399, 473 P.2d 957 (1970).

Reduction of charge.

In reducing a charge, the court in effect dismisses the greater charge and substitutes a lesser one. Through such action, the court does not dismiss the case in its entirety; therefore, the appeal of the case is governed by the procedures set forth in C.A.R. 4(b) (3) and in this rule, not C.A.R. 4(b)(2), and must be filed within 10 days of the date of the order. People v. Severin, 122 P.3d 1073 (Colo. App. 2005).

Interlocutory appeals may not be employed to obtained pretrial review

of issues not covered by this rule. People v. Dailey, 639 P.2d 1068 (Colo. 1982); People v. Cummings, 706 P.2d 766 (Colo. 1985); People v. Weston, 869 P.2d 1293 (Colo. 1994).

Interlocutory appeal rule may not be employed to "piggyback" issues not embraced by that rule for pretrial review. People v. Morrison, 196 Colo. 319, 583 P.2d 924 (1978).

Where a suppression order is based on conclusions that statements were the product of an illegal arrest and of a custodial interrogation not preceded by Miranda warnings,

a district court must make sufficient findings of fact and conclusions of law to identify each of the statements at issue and to permit appellate review of its rulings with regard to whether the statements must be suppressed. People v. Haurey, 859 P.2d 889 (Colo. 1993).

Appellate court has the responsibility

of ascertaining whether the trial court's legal conclusions are supported by sufficient evidence and whether the trial court applied the correct legal standard. People v. Brazzel, 18 P.3d 1285 (Colo. 2001).

Trial court's findings of fact are entitled to deference

by a reviewing court, but when the absence of factual findings regarding key contested issues hinders appellate review, or when unresolved evidentiary conflicts exist with regard to material facts, case must be remanded to the trial court for further fact-finding. People v. Brazzel, 18 P.3d 1285 (Colo. 2001).

Review of suppression hearings.

This rule is designed to review rulings of the trial court made upon suppression hearings under Crim. P. 41(e) and Crim. P. 41(g). People v. Thornburg, 173 Colo. 230, 477 P.2d 372 (1970); People v. Cobbin, 692 P.2d 1069 (Colo. 1984).

Interlocutory appeals are limited to motions to suppress, and it is contemplated that the motion be disposed of prior to trial. People v. Voss, 191 Colo. 338, 552 P.2d 1012 (1976).

And only from adverse rulings.

Interlocutory appeals under this rule may only be appealed from adverse rulings on Crim. P. 41 motion. People v. Fidler, 175 Colo. 90, 485 P.2d 725 (1971). See People v. McNulty, 173 Colo. 491, 480 P.2d 560 (1971).

Unless an adverse trial court ruling is within the scope of Crim. P. 41(e) and Crim. P. 41(g), it is not within an appellate court's jurisdiction on interlocutory appeal under this rule. People v. Patterson, 175 Colo. 19, 485 P.2d 494 (1971). See People v. Thornburg, 173 Colo. 230, 477 P.2d 372 (1970); People v. Braunthal, 31 P.3d 167 (Colo. 2001).

Only three circumstances for interlocutory appeal of a suppression order.

Review is proper where evidence was suppressed due to:

(1) An unlawful search and seizure;

(2) an involuntary confession or admission; or

(3) an improperly ordered or insufficiently supported, nontestimonial identification. People v. Braunthal, 31 P.3d 167 (Colo. 2001).

Prosecution's brief and the record do not support certification that defendant's statements form a substantial part of the evidence

where defendant's statements were made during transport as a part of a non-material, benign interchange meant to solace the defendant and where the officer did not immediately prepare any notes or reports documenting the statements. People v. MacCallum, 925 P.2d 758 (Colo. 1996).

Statements suppressed by trial court held to constitute substantial part of proof of charges

pending against defendant; therefore, prosecution was entitled to bring interlocutory appeal. People v. Mendoza-Rodriguez, 790 P.2d 810 (Colo. 1990).

Suppression order based upon sanctions was not reviewable under this rule.

However, the court could consider the issue on an interlocutory appeal under C.A.R. 21. People v. Casias, 59 P.3d 853 (Colo. 2002).

Supreme court will not expand jurisdiction.

The supreme court will not stray beyond the scope of its interlocutory appeal jurisdiction set forth in this rule and will not consider rulings issued in a preliminary hearing held in conjunction with a motion to suppress. People v. Singleton, 174 Colo. 138,482 P.2d 978 (1971).

If the evidence or statement suppressed is not a "substantial part" of the proof which may be offered against the defendant, the supreme court will not address the substantive issues raised by the interlocutory appeal. People v. Harding, 671 P.2d 975 (Colo. App. 1983).

Where review of the record provided on appeal convinced court that the defendant's statement, suppressed under Crim. P. 41(g) did not form a "substantial part" of the proof to be offered against the defendant, the court refused to address the substantive issues raised by the prosecution. People v. Valdez, 621 P.2d 332 (Colo. 1981).

An order granting a motion to sever a count for separate trial is not within scope of rule. People v. Wallace, 724 P.2d 670 (Colo. 1986).

Proceeding is interlocutory in nature if it intervenes

between the commencement and the final decision of a case. People v. Medina, 40 Colo. App. 490, 583 P.2d 293 (1978).

An appeal could not be interlocutory where it was from a final order

after trial. People v. Voss, 191 Colo. 338, 552 P.2d 1012 (1976).

Ruling granting a defendant's pretrial motion to suppress

is subject to interlocutory appeal under this rule. People v. Nunez, 658 P.2d 879 (Colo. 1983).

Lineup identification is question for trial, and not interlocutory appeal.

The question of whether eyewitness identification evidence was obtained from a lineup that was overly suggestive is a matter to be resolved at trial; it is not within the ambit of the interlocutory appeal rule since it is not a proper subject of a pretrial suppression hearing. People v. Thornburg, 173 Colo. 230, 477 P.2d 372 (1970).

Order suppressing statement which prosecution sought to use only for impeachment purposes if defendant elected to testify

is not subject to interlocutory appeal because it was not a substantial part of the prosecution's proof. People v. Garner, 736 P.2d 413 (Colo. 1987).

But suppression order was properly the subject of an interlocutory appeal under this rule

where the suppressed statements concerned a murder conspiracy, jointly fabricated alibi, and videotaped confession that constituted a substantial part of the proof of the pending charges. People v. Matheny, 46 P.3d 453 (Colo. 2002).

Court exercised its discretion to review district court's full pretrial order

even though order did not "neatly" fall within the scope of this rule. People v. Luna-Solis, 2013 CO 21, 298 P.3d 927.

A ruling limiting the scope of cross-examination of a witness in a criminal case is not appealable under this rule.

People v. Haurey, 859 P.2d 889 (Colo. 1993).

Record did not support the prosecution's certification

that statements were a substantial part of the evidence. People v. Mounts, 801 P.2d 1199 (Colo. 1990).

Interlocutory appeal unavailable in delinquency proceedings.

An interlocutory appeal is not available to either the state or the respondent in a delinquency proceeding under the Colorado children's code. People in Interest of P.L.V. v. P.L.V., 172 Colo. 269, 472 P.2d 127 (1970); People in Interest of G.D.K. v. G.D.K., 30 Colo. App. 54, 491 P.2d 81 (1971). See People in Interest of P.L.V., 176 Colo. 342, 490 P.2d 685 (1971).

Findings on second motion held sufficient to support ruling in earlier case.

Where in one case the district judge, in denying the motion to suppress, did not make sufficient findings, but in another case the findings upon denial of the motion to suppress were amply sufficient, since the findings in the second case were by the same court, although by a different judge, since the rulings by both judges were the same, and since the parties and the search - and in substantial effect the testimony - are identical, the supreme court is justified in considering the findings in the second case as governing the first case. It would be useless to remand the first case for findings. People v. Ramey, 174 Colo. 250,483 P.2d 374 (1971).

Applied in People v. McGahey, 179 Colo. 401, 500 P.2d 977 (1972); People v. District Court, 196 Colo. 401, 586 P.2d 31 (1978); People v. Lott, 197 Colo. 78, 589 P.2d 945 (1979); People v. Hillyard, 197 Colo. 83, 589 P.2d 939 (1979); People in Interest of M.R.J., 633 P.2d 474 (Colo. 1981); People v. Ferguson, 653 P.2d 725 (Colo. 1982); People v. Lindsey, 660 P.2d 502 (Colo. 1983); People v. Cobbin, 692 P.2d 1069 (Colo. 1984); People v. Lingo, 806 P.2d 949 (Colo. 1991); People v. Washington, 865 P.2d 145 (Colo. 1994); People v. Reyes, 956 P.2d 1254 (Colo. 1998); People v. Legler, 969 P.2d 691 (Colo. 1998); People v. Holmes, 981 P.2d 168 (Colo. 1999); People v. Winpigler, 8 P.3d 439 (Colo. 1999); People v. Crippen, 223 P.3d 114 (Colo. 2010).

RULE 4.2. Interlocutory Appeals in Civil Cases

(a) Discretionary Interlocutory Appeals. Upon certification by the trial court, or stipulation of all parties, the court of appeals may, in its discretion, allow an interlocutory appeal of an order in a civil action. This rule applies only to cases governed by C.R.S. 13-4-102.1 .

(b) Grounds for Granting Interlocutory Appeal. Grounds for certifying and allowing an interlocutory appeal are:

(1) Where immediate review may promote a more orderly disposition or establish a final disposition of the litigation; and

(2) The order involves a controlling and unresolved question of law. For purposes of this rule, an "unresolved question of law" is a question that has not been resolved by the Colorado Supreme Court or determined in a published decision of the Colorado Court of Appeals, or a question of federal law that has not been resolved by the United States Supreme Court.

(c) Procedure in the Trial Court. The party seeking to appeal shall move for certification or submit a stipulation signed by all parties within 14 days after the date of the order to be appealed, stating that the appeal is not being sought for purposes of delay. The trial court may, in its discretion, certify an order as immediately appealable, but if all parties stipulate, the trial court must forthwith certify the order. Denial of a motion for certification is not appealable.

(d) Procedure in the Appellate Court. If the trial court certifies an order for an interlocutory appeal, the party seeking an appeal shall file a petition to appeal with the clerk of the court of appeals with an advisory copy served on the clerk of the trial court within 14 days of the date of the trial court's certification.

(1) Docketing of Petition and Fees; Form of Papers. Upon the filing of a petition to appeal, appellant shall pay to the clerk of the court of appeals the applicable docket fee. All papers filed under this rule shall comply with C.A.R. 32.

(2) Number of Copies to be Filed and Served. An original of any petition or brief shall be filed. One set of supporting documents shall be filed.

(3) Content of Papers and Service.

(A) The petition shall contain a caption that complies with C.A.R. 3(d)(1) and C.A.R. 32.

(B) To enable the court to determine whether the petition should be granted, the petition shall disclose in sufficient detail the following:

(i) The identities of all parties and their status in the proceeding below;

(ii) The order being appealed;

(iii) The reasons why immediate review may promote a more orderly disposition or establish a final disposition of the litigation and why the order involves a controlling and unresolved question of law;

(iv) The issues presented;

(v) The facts necessary to understand the issues presented;

(vi) Argument and points of authority explaining why the petition to appeal should be granted and why the relief requested should be granted; and

(vii) A list of supporting documents, or an explanation of why supporting documents are not available.

(C) The petition shall include the names, addresses, email addresses and telephone and fax numbers, if any, of all parties to the proceeding below; or, if a party is represented by counsel, the attorney's name, address, email address and telephone and fax numbers.

(D) The petition shall be served upon each party and the court below.

(4) Supporting Documents. A petition shall be accompanied by a separate, indexed set of available supporting documents adequate to permit review. Some or all of the following documents may be necessary:

(A) The order being appealed;

(B) Documents and exhibits submitted in the proceeding below that are necessary for a complete understanding of the issues presented;

(C) A transcript of the proceeding leading to the order below.

(5) No Initial Response to Petition Allowed. Unless requested by the court of appeals, no response to the petition shall be filed prior to the court's determination of whether to grant or deny the petition.

(6) Briefs. If the court grants the petition to appeal, the petition to appeal shall serve as appellant's opening brief. The appellee shall file an answer brief and the appellant may file a reply brief according to a briefing schedule established by the court in its order granting the petition to appeal. The

petition and briefs shall comply with the limitations on length contained in C.A.R. 28(g).

(7) Oral Argument. Oral argument is governed by C.A.R. 34.

(8) Petition for Rehearing. In all proceedings under this Rule 4.2, where the court of appeals has issued an opinion on the merits of the interlocutory appeal, a petition for rehearing may be filed in accordance with the provisions of C.A.R. 40.

(e) Stay of Trial Court Proceedings.

(1) The filing of a petition under this rule does not stay any proceeding below or the running of any applicable time limit. If the appellant seeks temporary stay pending the court's determination of whether to grant the petition to appeal, a stay ordinarily shall be sought in the first instance from the trial court. If a request for stay below is impracticable or not promptly ruled upon or is denied, the appellant may file a separate motion for temporary stay in the court of appeals supported by accompanying materials justifying the requested stay.

(2) An order granting the petition to appeal by the court of appeals automatically stays all proceedings below until final determination of the interlocutory appeal in the court of appeals unless the court, sua sponte, or upon motion lifts such stay in whole or in part.

(f) Effect of Failure to Seek or Denial of Interlocutory Review. Failure to seek or obtain interlocutory review shall not limit the scope of review upon an appeal from entry of the final judgment.

(g) Supreme Court Review. Denial of a petition to appeal is not subject to certiorari review. A decision of the court of appeals on the merits shall be subject to certiorari review. No provision of this rule limits the jurisdiction of the Supreme Court under C.A.R. 21.

(h) All matters in the Court of Appeals under this rule shall be heard and determined by a special or regular division of three judges as assigned by the Chief Judge.

(Source: Entire rule added and effective January 13, 2011; (c) and IP(d) amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1(b); entire rule amended and effective June 23, 2014.)

ANNOTATION

Law reviews.

For article, "Interlocutory Appeals in Civil Cases Under C.A.R. 4.2", see 41 Colo. Law. 67 (April 2012). For article, "Knowing When to Change Trains: The Ins and Outs of Interlocutory Appeals", see 41 Colo. Law. 31 (June 2012).

Interlocutory resolution would not promote a more orderly disposition.

Where plaintiff petitioned for interlocutory review of district court's order that economic loss rule barred plaintiff's other claims against defendants, immediate review would not have avoided a trial. Therefore, interlocutory resolution of the economic loss question would not promote a more orderly disposition of the litigation. Wahrman v. Golden W. Realty, 313 P.3d 674 (Colo. App. 2011).

Trial court cannot certify sua sponte

an issue for interlocutory review. In Interest of M.K.D.A.L., 2014 COA 148,__P.3d__.

A trial court has no authority to extend the deadline contained in section (c).

This rule itself says nothing about extending the deadlines established therein. Further, a trial court lacks inherent authority to extend that deadline. Farm Deals, LLLP v. State, 2012 COA 6, 300 P.3d 921.

The 14-day deadline in section (d) is jurisdictional.

A party's failure to timely file a petition to appeal deprives the appellate court of jurisdiction to consider the appeal. Farm Deals, LLLP v. State, 2012 COA 6, 300 P.3d 921.

An appellate court may, for good cause, extend the time for filing under section (d) of this rule.

Pursuant to C.A.R. 26(b), an appellate court may, for good cause shown, enlarge time prescribed under the Colorado appellate rules. Farm Deals, LLLP v. State, 2012 COA 6, 300 P.3d 921.

Motion to trial court to reconsider disqualification order did not toll the provisions of section (c) requiring the filing of a motion or stipulation for certification by the trial court within 14 days after the date of the disqualification order.

The trial court does not have authority pursuant to C.R.C.P 6(b) to extend the 14-day deadline for filing a motion for certification of issues in the trial court. The department of human services' motion for reconsideration was not a C.R.C.P. 59 motion. Further, C.A.R. 26(b) does not apply because the failure to timely file was not the result of excusable neglect. People ex rel. A.M.C., 2014 COA 31,__P.3d__.

Generally, an issue of contract interpretation that applies well-settled principles is not a "question of law"

for purposes of this rule. Rich v. Ball Ranch P'ship, 2015 COA 6, 345 P.3d 980.

Applied in Kowalchikv. Brohl, 2012 COA 25, 277 P.3d 885; Triple Crown at Observatory Vill. Ass'n v. Vill. Homes of Colo., Inc., 2013 COA 144,__P.3d__.

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RULE 5. Entry of Appearance and Withdrawal

(a) Entry of Appearance. No attorney shall appear in any matter before the court until the attorney has entered an appearance by filing an Entry of Appearance or signing a pleading. An entry of appearance shall state (a) the identity of the party for whom the appearance is made; (b) the attorney's office address; (c) the attorney's telephone number; and (d) the attorney registration number.

(b) Withdrawal. An attorney may withdraw from a case only upon order of court. Such approval shall rest in the sound discretion of the court, and shall not be granted until the attorney seeking to withdraw has made reasonable efforts to give actual notice to the client:

(1) That the attorney wishes to withdraw;

(2) That the court retains jurisdiction;

(3) That the client has the burden of keeping the court informed where notices, pleadings or other papers may be served;

(4) That the client has the obligation to prepare for all appellate proceedings, or secure other counsel to so prepare;

(5) That if the client fails or refuses to meet these burdens, the court may impose appropriate sanctions;

(6) Of the dates of any proceedings and that the holding of such proceedings will not be affected by the withdrawal of counsel;

(7) If the client is not a natural person, that it must be represented by counsel in any appellate proceeding unless it is a closely held entity and first complies with section 13-1-127, C.R.S.;

(8) That process may be served upon the client at his last known address; and

(9) Of the client's right to object within 14 days of the date of the notice.

(c) Written Notification Certificate. The attorney seeking to withdraw shall prepare a notification certificate stating that the above notification requirements have been met and the manner by which such notification was given to the client, and setting forth the client's last known address and telephone number. The notification certificate shall be filed with the court and a copy mailed to the client and all other parties. The client and opposing counsel shall have 14 days prior to entry of an order permitting withdrawal

or such lesser time as the court may permit within which to file objections to the withdrawal. After order permitting withdrawal, the client shall be notified by the withdrawing attorney of the effective date of the withdrawal and all pleadings, notices or other papers may be served on the party directly by mail at the last known address of the party until new counsel enters an appearance.

(d) Entries of Appearance and Withdrawals by Members or Employees of Law Firms, Professional Corporations or Clinics. The entry of an appearance or withdrawal by an attorney who is a member or an employee of a law firm, professional corporation or clinic shall relieve other members or employees of the same law firm, professional corporation or clinic from the necessity of filing additional entries of appearance or withdrawal in the same litigation unless otherwise indicated.

(e) Notice of Limited Representation Entry of Appearance and Withdrawal. An attorney may undertake to provide limited representation to a pro se party involved in a civil appellate proceeding. Upon the request and with the consent of a pro se party, an attorney may make a limited appearance for the pro se party to file a notice of appeal and designation of transcripts in the court of appeals or the supreme court, to file or oppose a petition or cross-petition for a writ of certiorari in the supreme court, to respond to an order to show cause issued by the supreme court or the court of appeals, or to participate in one or more specified motion proceedings in either court, if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the proceeding(s) for which the attorney appears. At the conclusion of such proceeding(s), the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance in the appellate court in which the attorney appeared, a copy of which may be filed in any other court, except that an attorney filing a notice of appeal or petition or cross-petition for writ of certiorari is obligated, absent leave of court, to respond to any issues regarding the appellate court's jurisdiction. Service on an attorney who makes a limited appearance for a party shall be valid only in connection with the specific proceedings(s) for which the attorney appears. The provisions of this C.A.R. 5(e) shall not apply to an attorney who has filed an opening or answer brief pursuant to C.A.R. 31.

(f) Termination of Representation. When an attorney has entered an appearance, other than a limited appearance pursuant to C.A.R. 5(e), on behalf of a party in an appellate court without having previously represented that party in the matter in any other court, the attorney's representation of the party shall terminate at the conclusion of the proceedings in the appellate court in which the attorney has appeared, unless otherwise

directed by the appellate court or agreed to by the attorney and the party represented. Counsel may file a notice of such termination of representation in any other court.

(Source: Entire rule added August 30, 1985, effective January 1, 1986; b2 amended and effective April 7, 1994; b amended and effective April 5, 2010; b9 and c amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1 b; e and f adopted and effective October 11, 2012; Amended November 1, 2017, effective January 1, 2018.)

Comment

The purpose of C.A.R. 5(e) is to establish a procedure similar to that set forth in Colorado Rule of Civil Procedure 121 Section 1-1(5). This procedure provides assurance that an attorney who makes a limited appearance for a pro se party in a specified appellate case proceeding(s), at the request of and with the consent of the pro se party, can withdraw from the case upon filing a notice of completion of the limited appearance, without leave of court. The purpose of C.A.R. 5(f) is to make clear that when an attorney appears for a party, whom he or she has not previously represented, in an appellate court and the proceedings in that court have concluded, the attorney is not obligated to represent the party in any other proceeding on remand or in any review of the appellate court's decision by any other court. Nothing in this provision would prevent the attorney from entering a limited or general appearance on behalf of the party in another court (for example, on a writ of certiorari to the supreme court), if agreed to by the attorney and the party.

RULE 7. Bond for Costs on Appeal in Civil Cases

Unless an appellant is exempted by law, or has filed a supersedeas bond or other undertaking which includes security for the payment of costs on appeal, in civil cases a bond for costs on appeal or equivalent security shall be filed by the appellant in the trial court with the notice of appeal; but security shall not be required of an appellant who is not subject to costs. The bond or equivalent security shall be in the sum or value of $250 unless the trial court fixes a different amount. A bond for costs on appeal shall have sufficient surety, and it or any equivalent security shall be conditioned to secure the payment of costs if the appeal is finally dismissed or the judgment affirmed, or of such costs as the appellate court may direct if the judgment is modified. If a bond or equivalent security in the sum or value of $250 is given, no approval thereof is necessary. After a bond for costs on appeal is filed, an appellee may raise for determination by the clerk of the trial court objections to the form of the bond or to the sufficiency of the surety. The provisions of C.A.R. 8(b) apply to a surety upon a bond given pursuant to this Rule.

Annotation

Law reviews. For article, "Bonds in Colorado Courts: A Primer for Practitioners", see 34 Colo. Law. 59 (March 2005).

An indigent plaintiff should be allowed to proceed on appeal under this rule without payment of a cost bond. In re Delahoussaye, 924 P.2d 1210 (Colo. App. 1996).

This rule does not apply to an appeal filed directly from an administrative agency. For the purposes of this rule, an administrative hearing is not a "civil case". Anheuser Busch, Inc. v. Indus. Claim Appeals Office, 28 P.3d 969 (Colo. App. 2001).

Applied in Caldwell v. Armstrong, 642 P.2d 47 (Colo. App. 1981).

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RULE 8. Stay or Injunction Pending Appeal

(a) Motions for Stay.

(1) Initial Motion in District Court. A party must ordinarily move first in the district court for the following relief:

(A) a stay of the judgment or order of a district court pending appeal;

(B) approval of a supersedeas bond;

(C) an order suspending, modifying, restoring, or granting an injunction while an appeal is pending.

(2) Motion in Appellate Court; Conditions on Relief. A motion for relief under Rule 8(a)(1) may be made to the appellate court or to an appellate justice or judge.

(A) any such motion must:

(i) show that moving first in the district court would be impracticable, or

(ii) show that the district court has denied an application, or has failed to afford the relief requested, and state the reasons given by the district court for its action.

(B) The motion must also include:

(i) the reasons for granting the relief requested and the facts relied on;

(ii) originals or copies of affidavits or other sworn statements if the facts are in dispute; and

(iii) relevant parts of the record.

(C) The moving party must give reasonable notice of the motion to all parties.

(D) A motion under this Rule 8(a)(2) must be filed with the clerk but in exceptional cases where such filing would be impracticable due to the requirements of time, the motion may be made to and considered by a single justice or judge.

(E) Except as provided in Rule 8(c), the appellate court may condition relief on a party's filing a bond or other appropriate security in the district court.

(b) Proceedings Against Sureties. If a party gives security in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the district court and irrevocably appoints the district court clerk as the surety's agent on whom any documents affecting the surety's liability on the bond or undertaking may be served. On motion, the surety's liability may be enforced in the district court without the necessity of an independent action. The motion and any notice that the district court prescribes may be served on the district court clerk, who must mail a copy to each surety whose address is known.

(c) When Bond Not Required. The appellate court may, in its discretion, dispense with or limit the amount of bond when the appellant is an executor, administrator, conservator, or guardian of an estate and has given sufficient bond as such. The appellate court shall not require the following to furnish bond:

(1) the state;

(2) the county commissioners of the various counties;

(3) cities;

(4) towns;

(5) school districts;

(6) charitable, educational, and reformatory institutions under the patronage or control of the state; and

(7) public officials when suing or defending in their official capacities for the benefit of the public.

(d) Bond; Release of Lien or of Notice of Lis Pendens. If a money judgment has been made a lien upon real estate, the lien will be released when a bond is given. The clerk of the court that granted a stay will issue a certificate that the judgment has been stayed. The certificate may be recorded with the recorder of the county in which the real estate is situated. The certificate may also be served upon any officer holding an execution. Upon such service, all proceedings under such execution must be discontinued, and the officer must return the same in to the issuing court together with the certificate served on the officer. The return must indicate what the officer has done under the execution.

Annotation

I. General Consideration.

Law reviews. For article, "Supreme Court Proceedings: Rules 111-119 ", see 23 Rocky Mtn. L. Rev. 618 (1951). For article, "Appellate Procedure and the New Supreme Court Rules", see 30 Dicta 1 (1953). For article, "Some Observations on Colorado Appellate Practice", see 34 Dicta 363 (1957).

This rule must be observed, and the supreme court will grant the application for supersedeas only after compliance with the rule. Alsup v. Alsup, 76 Colo. 260, 230 P. 796 (1924).

Trial court's jurisdiction usually lost upon perfection of appeal. Under normal appellate procedures a trial court loses its jurisdiction over a case as soon as an appeal is perfected in an appellate court. Hylton v. City of Colo. Springs, 32 Colo. App. 9, 505 P.2d 26 (1973).

But jurisdiction reinvested upon appellate court's decision. When an appellate court announces its decision to affirm, reverse, remand, or modify then a trial court is automatically reinvested with jurisdiction. Hylton v. City of Colo. Springs, 32 Colo. App. 9, 505 P.2d 26 (1973).

No power to stay writ of habeas corpus. A court has no power to stay proceedings upon an order of discharge of a prisoner upon a writ of habeas corpus. Geer v. Alaniz, 137 Colo. 432, 326 P.2d 71 (1958).

Court does not pass upon plaintiff's claim that the stay order was improperly entered when he did not formally protest that order by filing either a notice of appeal under C.A.R. 4 or a motion under this rule. DiMarco v. Dept. of Rev., MVD, 857 P.2d 1349 (Colo. App. 1993).

Although a habeas corpus proceeding is a civil action, this rule and Rule 62, C.R.C.P., do not apply, and stays of execution are not appropriate in such a proceeding. Geer v. Alaniz, 137 Colo. 432, 326 P.2d 71 (1958).

Applied in Bernstein v. Goldberg, 81 Colo. 39, 253 P. 477 (1927); Shotking v. Atchison, T. & S.F.R.R., 124 Colo. 141, 235 P.2d 990 (1951); Williams v. Guaranty Nat'l Ins. Co., 152 Colo. 457, 382 P.2d 802 (1963).

II. Application for Stay or Injunction.

"Supersedeas" defined. Supersedeas is merely an auxiliary process designed to supersede the enforcement of the judgment of the court below brought up on appeal for review. Monks v. Hemphill, 119 Colo. 378, 203 P.2d 503 (1949).

Appeal may be had without supersedeas. The appeal and supersedeas are two separate things, and the appeal can be sustained without a supersedeas. Monks v. Hemphill, 119 Colo. 378, 203 P.2d 503 (1949).

But stay of execution must be sought by supersedeas. Where a stay of execution is desired by appellant, such relief must be sought by application for supersedeas. Alden Sign Co. v. Roblee, 119 Colo. 409, 203 P.2d 915 (1949).

Record must be complete before supersedeas will be granted. While the record must be complete before an application for supersedeas will be granted, in a case involving many parties and many causes of action and counterclaims, if it is complete so far as concerns those controversies in which error is assigned, it will be sufficient. Murray v. Stuart, 77 Colo. 167, 234 P. 1113 (1925).

Supersedeas not granted until application made therefor. Whether or not a supersedeas should be granted will not be considered until an application is made for the writ. Ward v. Ward, 89 Colo. 396, 3 P.2d 415 (1931).

Trial court may issue a stay either before or after a notice of appeal is filed. Odd Fellows Bldg. & Inv. Co. v. City of Englewood, 667 P.2d 1358 (Colo. 1983).

To determine whether to stay an order denying or granting an injunction, a court must consider four factors: (1) Whether the stay applicant has made a strong showing that he or she is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. Romero v. City of Fountain, __ P.3d __ (Colo. App. 2011).

The probability of success that must be demonstrated is inversely proportional to the amount of irreparable injury a plaintiff will suffer absent the stay. More of one excuses less of the other. Romero v. City of Fountain, __ P.3d __ (Colo. App. 2011).

Supersedeas not granted to stay execution for costs. Where a supersedeas would serve only to stay an execution for costs application for the writ will be denied. Hunter v. Stapleton, 77 Colo. 456, 236 P. 1013 (1925).

Stay of proceedings ordered. Zaharia v. County Court ex rel. County of Jefferson, 673 P.2d 378 (Colo. App. 1983).

III. Bond; Sureties; When Bond Not Required.

Law reviews. For article, "Bonds in Colorado Courts: A Primer for Practitioners", see 34 Colo. Law. 59 (March 2005).

Trial court erred in entering an order staying all proceedings relative to enforcement of family support order without requiring appellant to file supersedeas bond. Muck v. Arapahoe County Dist. Court, 814 P.2d 869 (Colo. 1991).

Charitable institution may execute supersedeas bond as principal. Buchhalter v. Solomon, 78 Colo. 227, 241 P. 718 (1925), appeal dismissed, 273 U.S. 640, 47 S. Ct. 106, 71 L. Ed. 818 (1926).

Bond in form of cost bond not within rule. A bond in the form prescribed by ? §13-16-101 for a cost bond is not a supersedeas bond and is not within this rule. Fifer v. Fifer, 120 Colo. 10, 206 P.2d 336 (1949).

Sureties subject themselves to judgment. In entering into the bond the sureties agreed, in effect, to abide by the law permitting the entry of judgment. Buchhalter v. Solomon, 78 Colo. 227, 241 P. 718 (1925), appeal dismissed, 273 U.S. 640, 47 S. Ct. 106, 71 L. Ed. 818 (1926).

Burden to show cause why the execution should not issue. In a proceeding by scire facias to obtain execution upon a judgment on a supersedeas bond, the burden is upon the surety to show cause why the execution should not issue. Bosworth v. Garwood, 79 Colo. 391, 246 P. 555 (1926).

Corporation held not under patronage or control of state. Buchhalter v. Solomon, 78 Colo. 227, 241 P. 718 (1925), appeal dismissed, 273 U.S. 640, 47 S. Ct. 106, 71 L. Ed. 818 (1926).

RULE 8.1. Stays in Criminal Cases

(a) Stay of Execution.

(1) Death. A sentence of death shall be stayed upon the filing of a notice of appeal.

(2) Imprisonment. A sentence of imprisonment shall be stayed if a notice of appeal is filed and a defendant elects not to commence service of the sentence or is admitted to bail. The sentencing court shall, upon written notice of the defendant for a stay and stating that he intends to seek review, stay a sentence of imprisonment but for not more than sixty days if the defendant is not admitted to bail.

(3) Fine. A sentence to pay a fine or a fine and costs may be stayed by the trial court upon such terms as the court deems proper if a notice of appeal is filed. The court may require the defendant to deposit the whole or any part of the fine and costs in the registry of the trial court or to give bond for the payment thereof, or to submit to an examination of assets, and it may make an appropriate order to restrain the defendant from dissipating his assets.

(4) Probation. An order placing the defendant on probation shall remain in effect pending review by an appellate court unless the court grants a stay of probation.

(b) Bail.

Admission to bail pending the determination of review as provided in Rule 46, Crim. P.

(c) Application for Relief Pending Review.

If an application is made to an appellate court, or justice or judge thereof, for bail pending review or for an extension of time for filing the record or for any other relief which might have been granted by the trial court, the application shall be upon notice and shall show that application to the court below or a judge thereof is not practicable or that application has been made and denied, with the reasons given for the denial, or that the lower court action on the application did not afford the relief to which the applicant considers himself entitled.

(Source: a4 amended and effective January 26, 1995.)

Annotation

Defendant who elects not to commence service of his sentence cannot receive credit for time spent in jail pending disposition of an appeal. People v. Scott, 176 Colo. 86, 489 P.2d 198 (1971). See People v. Falgout, 176 Colo. 94, 489 P.2d 195 (1971).

Once the choice has been made, the defendant is bound by his election not to commence service of his sentence. People v. Scott, 176 Colo. 86, 489 P.2d 198 (1971).

Once probationary period has expired and an order terminating defendant's probation is entered, the prosecution cannot rely on the notice of appeal filed by defendant at the start of the probationary period as grounds that defendant's probation was stayed and that he never commenced his probation. People v. Chesnick, 797 P.2d 812 (Colo. App. 1990).

Subsection 8.1(a)(4) automatically stays a probation order when a notice of appeal is filed, and the trial court lacked jurisdiction to revoke defendant's probation. Defendant did not waive the right to a stay of the probation order by participating in the probation program. People v. Taylor, 876 P.2d 130 (Colo. App. 1994) (decided prior to 1995 amendment to subsection (a)(4)).

No automatic stay of probation order pending appeal. Under subsection (a)(4) of this rule, as amended, the trial court retains jurisdiction to modify and terminate probation during the pendency of an appeal. People v. Widhalm, 991 P.2d 291 (Colo. App. 1999).

Applied in People v. District Court, 191 Colo. 558, 554 P.2d 1105 (1976).

RULE 9. Release in Criminal Cases

(a) Appeals from Orders Respecting Release Entered Prior to a Judgment of Conviction. An appeal authorized by law from an order refusing or imposing conditions of release shall be determined promptly. Upon entry of an order refusing or imposing conditions of release, the trial court shall state in writing the reasons for the action taken. The appeal shall be heard without the necessity of briefs after reasonable notice to the appellee upon such papers, affidavits, and portions of the record as the parties shall present. An appellate court, or justice or judge thereof, may order the release of the appellant pending the appeal.

(b) Release Pending Appeal from a Judgment of Conviction. Application for release after a judgment of conviction shall be made in the first instance in the trial court. If the trial court refuses release pending appeal, or imposes conditions of release, the court shall state in writing the reasons for the action taken. Thereafter, if an appeal is pending, a motion for release, or for modification of the conditions of release, pending review may be made to an appellate court, or justice or judge thereof. The motion shall be determined promptly upon such papers, affidavits, and portions of the record as the parties shall present and after reasonable notice to the appellee. An appellate court, or justice or judge thereof, may order the release of the appellant pending disposition of the motion.

Annotation

The trial court retains jurisdiction to grant or deny an appeal bond even after the defendant has filed a notice of appeal. The trial court retains jurisdiction to act with respect to matters that are not relative to or do not affect the order or judgment on appeal. Since the granting or denial of an appeal bond has no impact or bearing upon the underlying conviction or related issues pending on appeal, the trial court retains jurisdiction. People v. Stewart, 26 P.3d 17 (Colo. App. 2000), rev'd on other grounds, 55 P.3d 107 (Colo. 2002).

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RULE 10. Record on Appeal

(a) Composition of the Record on Appeal. The record on appeal in all cases consists of:

(1) All documents filed in the trial court case as of the date of filing of a notice of appeal or any amended notice of appeal; and

(A) Transcripts designated by counsel as set forth in section (d); or

(B) In limited circumstances, such as when the transcript is unavailable, a statement of the evidence or proceedings certified by the trial court as set forth in section (e).

(2) If a timely filed motion pursuant to C.R.C.P. 59 has been filed, the record must also include that motion, any responses, and any order on the C.R.C.P. 59 motion.

(b) Format of the Record

(1) Electronic Record. If all or part of the record is maintained in electronic format by the trial court, the clerk of the trial court is authorized to transmit the record electronically in accordance with procedures established by the appellate court.

(2) Paper Record. If all or part of the record is transmitted in paper format, the original papers in the record must be submitted. The paper-filed portion of the record must be properly paginated and fully indexed and must be prepared and bound in accordance with procedures established by the appellate court.

(c) Transmission

(1) Complete Record. The clerk of the trial court must transmit the record to the clerk of the appellate court when it is complete. If the record includes any transcripts, the clerk of the trial court will not transmit the record to the clerk of the appellate court until transcripts are available.

(2) Time. The record on appeal must be transmitted to the appellate court within 63 days (9 weeks) after the date of filing of the notice of appeal unless the time is shortened or extended by an order of the appellate court.

(A) For good cause shown, the appellate court may extend the time for transmitting the record. A request for extension must be made by the clerk of the trial court or the clerk of the trial court's designee within the time originally prescribed or as previously extended.

(B) Any request for extension of the period of time based upon a court reporter's inability to complete the transcript must be supported by an affidavit of the reporter specifying why the transcript has not yet been prepared and the date by which the transcript will be completed. If the reason stated in a court reporter's affidavit for the reporter's inability to complete the record is the failure of the designating party to make adequate arrangement for payment of the transcripts, the designating party must file a response to the affidavit with the appellate court within 7 days.

(C) The appellate court may direct the trial court to expedite the preparation and transmittal of the record on appeal and, upon motion or of its own initiative, take other appropriate action regarding preparation and completion of the record.

(3) Oversized Exhibits. Documents of unusual bulk or weight and physical exhibits will not be transmitted by the clerk of the trial court unless directed to do so by the appellate court.

(4) Sexually Exploitative Material. Transmission of sexually exploitative material will be in accordance with Chief Justice Directive 16-03.

(d) Designation of Transcripts.

(1) If appellant intends to include transcripts of any hearings or trial included in the record on appeal, the appellant must file a designation of transcripts with the trial court and an advisory copy with the appellate court within 7 days of the date of filing the appellant's notice of appeal.

(2) Form 8 must be used to file any designation of transcripts. Any party designating transcripts must comply with the policies adopted by the appellate and trial courts for designating transcripts.

(3) The appellant must include in the record transcripts of all proceedings necessary for considering and deciding the issues on appeal. Unless the entire transcript is to be included, the appellant must include in the designation of transcript a description of the part of the transcript that the appellant intends to include in the record and a statement of the issues to be presented on appeal. The appellee may, within 14 days after the notice of appeal is filed, file with the trial court and an advisory copy with the appellate court its own designation of transcripts if the appellee deems additional transcripts or parts thereof necessary.

(e) Statement of the Evidence or Proceedings. Upon the agreement of the parties, or in cases where a transcript of the evidence or proceedings at a

hearing or trial is unavailable, the parties may file a statement of the evidence or proceedings in lieu of designating transcripts with the trial court, and the trial court must certify a statement of the evidence or proceedings in lieu of a transcript.

(f) Supplementing the Record on Appeal.

(1) Before Record is Transmitted. If any material part of the trial court record is omitted or missing from the trial court's record or is misstated therein by error or accident before the record is transmitted to the appellate court, the parties, by stipulation, or the trial court may direct that the omission or misstatement be corrected.

(2) After Record is Transmitted. If any material part of the trial court record is omitted or missing from the record by error or accident or is misstated therein after the record is transmitted to the appellate court, the appellate court, on motion or of its own initiative, may order that the supplemental record be certified and transmitted. Form 9 must be used by any party requesting to supplement the record after the record has been filed in the appellate court.

(g) Settling the Record on Appeal.

(1) If any difference arises as to whether the record truly discloses what occurred in the trial court or a portion of the record is not in the possession of the trial court, the difference must be submitted to and settled by the trial court. The party moving to settle the record must file a motion to stay the appellate court proceedings in the appellate court while the trial court considers the motion to settle the record.

(2) All other questions as to the form and content of the record must be presented to the appellate court.

(Source: Amended and effective June 18, 1992; a2 and b amended and adopted October 30, 1997, effective January 1, 1998; a3 and b amended and adopted April 27, 1998, effective July 1, 1998; a4 and a5 amended and effective September 7, 2006; b and c amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1b; Adopted November 1, 2017, effective January 1, 2018; amended and adopted June 7, 2018, effective July 1, 2018.)

Comment:

2018

[1] The rule contains the substance of former C.A.R. 11, Transmission of Record. With the adoption of the 2018 revisions, C.A.R. 11 has been deleted from the Colorado Appellate Rules

[2] The amendments are designed to provide better organization and to create a more comprehensive records rule. With the 2018 revisions, designation of the record, found in prior versions of C.A.R. 10, has been deleted from the rule.

[3] Two new forms, Designation of Transcripts (Form 8) and Motion to Supplement the Record (Form 9) were adopted with the rule change.

Annotation

I. General Consideration.

Law reviews. For article, "Supreme Court Proceedings: Rules 111-119 ", see 23 Rocky Mtn. L. Rev. 618 (1951). For article, "Appellate Procedure and the New Supreme Court Rules", see 30 Dicta 1 (1953). For article, "Some Observations on Colorado Appellate Practice", see 34 Dicta 363 (1957). For note, "Colorado Appellate Procedure", see 40 U. Colo. L. Rev. 551 (1968). For article, "The Problem of Delay in the Colorado Court of Appeals", see 58 Den. L.J. 1 (1980).

This rule is not inherently constitutionally invalid. Almarez v. Carpenter, 347 F. Supp. 597 (D. Colo. 1972).

Intent of this rule, in dealing with the preparation of transcripts, is to insure that the appellate court will be given sufficient information to arrive at a just and reasoned decision. City of Aurora v. Webb, 41 Colo. App. 11, 585 P.2d 288 (1978); People in Interest of J.L.P., 870 P.2d 1252 (Colo. App. 1994).

For three-part test to determine whether a new trial is warranted as relief for an inadequate or missing court record, see Knoll v. Allstate Fire & Cas. Ins., 216 P.3d 615 (Colo. App. 2009).

Trial court to supervise preparation of record. The intention of this rule is that the trial court shall supervise the preparation of the record on appeal as designated by the party seeking same. Cont'l Air Lines v. City & County of Denver, 129 Colo. 1, 266 P.2d 400 (1954).

Appellant must overcome adverse judgment by record. A judgment entered by a court of general jurisdiction is presumed to be correct. A litigant suffering an adverse judgment has the burden of overcoming this presumption, and the supreme court must look to the record alone to

determine whether the trial court acted properly in the premises. Laessig v. May D & F, 157 Colo. 260, 402 P.2d 183 (1965).

Appellant's duty to obtain record. The party prosecuting an appeal shall do any and all things necessary under this rule to obtain the record on appeal. Cont'l Air Lines v. City & County of Denver, 129 Colo. 1, 266 P.2d 400 (1954).

It is the appellant's duty to designate portions of record he deems necessary for appeal, and to see that the record is transmitted, and the appellant will not be permitted to take advantage of his own failure to designate the pertinent portions of the transcript as part of the record on appeal. Till v. People, 196 Colo. 126, 581 P.2d 299 (1978); People v. Tippett, 733 P.2d 1183 (Colo. 1987).

It is the responsibility of an appellant to designate the record on appeal or such parts thereof as he deems necessary for his appeal and to ensure that the record is transmitted to the appellate court. People v. Velarde, 200 Colo. 374, 616 P.2d 104 (1980); People v. Rollins, 759 P.2d 816 (Colo. App. 1988).

Duty rests upon counsel to present a complete record in cases brought to the supreme court. Nutter v. Wright, 132 Colo. 304, 287 P.2d 655 (1955).

Appeal subject to dismissal for failure to comply with rule. Where a record on review fails to conform with this rule, the appeal may be dismissed either on motion or the court's own initiative. Williams v. Williams, 110 Colo. 473, 135 P.2d 1016 (1943); George W. Clayton Coll. v. District Court, 110 Colo. 365, 135 P.2d 138 (1943).

A reviewing court may of its own motion dismiss a proceeding where the record is confused or incomplete. Hinshaw v. Dyer, 166 Colo. 394, 443 P.2d 992 (1968).

But court has discretion to pass on questions presented. Although a record on appeal may not comply with this rule, the supreme court may, in its discretion, elect to pass upon questions presented in order that further delay and expense to the parties may be avoided. Williams v. Williams, 110 Colo. 473, 135 P.2d 1016 (1943).

Appellant who does not correctly anticipate appellee's and court's conceptions of what should be included in a record should not forfeit his case. City of Aurora v. Webb, 41 Colo. App. 11, 585 P.2d 288 (1978).

Presumption that trial court's findings are supported by evidence. An appellate court must presume that the trial court's findings and conclusions are supported by the evidence where the appellant has failed to provide a

complete record on appeal. People v. Morgan, 199 Colo. 237, 606 P.2d 1296 (1980); People v. Alberico, 817 P.2d 573 (Colo. App. 1991).

Where no transcript of evidence considered by lower court is made part of record on appeal and there is no showing to contrary, an appellate court must presume that findings are supported by evidence presented to and considered by court. People v. Gallegos, 179 Colo. 211, 499 P.2d 315 (1972).

Where the record does not contain any of the trial court's instructions, a reviewing court will presume that an instruction given by the trial court correctly and clearly stated the law and that defendant's objection is that the evidence does not support the giving of the instruction. Nunn v. People, 177 Colo. 87, 493 P.2d 6 (1972).

Claim not raised in trial court will not be considered on appeal. Cmty. Mgt. Ass'n v. Tousley, 32 Colo. App. 33, 505 P.2d 1314 (1973).

An issue not before the trial court in the motion for new trial will not be considered on appeal. Cady v. City of Arvada, 31 Colo. App. 85, 499 P.2d 1203 (1972).

Ineffective assistance of counsel claim procedurally barred where appellant failed to specially designate on appeal any and all exhibits that were necessary to a resolution of the claim. Bunton v. Atherton, 613 F.3d 973 (10th Cir. 2010).

Defendant cannot bottom error upon occurrence in a portion of the trial which he has specifically agreed is not to be reported, for there is no way for an appellate court to review the alleged error. Taylor v. People, 176 Colo. 316, 490 P.2d 292 (1971).

Issue must be raised by parties, not "amicus curiae". Where issue is not raised by parties to appeal, but is raised in brief of "amicus curiae" issue will not be considered by appellate court. Eugene Cervi & Co. v. Russell, 31 Colo. App. 525, 506 P.2d 748 (1972), aff'd, 184 Colo. 282, 519 P.2d 1189 (1974).

Error cannot be asserted on prosecution's evidence alone. Where upon trial court's denial of defendant's motion for acquittal at close of people's case, defendant proceeds to offer evidence warranting submission of case to jury, defendant cannot assert error on people's evidence alone. People v. Olinger, 180 Colo. 58, 502 P.2d 79 (1972).

Applied in People ex rel. Dunbar v. South Platte Water Conservancy Dist., 139 Colo. 503, 343 P.2d 812 (1959); Hinshaw v. Dept. of Welfare, 157 Colo. 447, 403 P.2d 206 (1965); Schroeder v. Bd. of County Comm'rs, 152 Colo. 313, 381 P.2d 820 (1963); Threadgill v. Capra, 161 Colo. 453, 423 P.2d 318

(1967); In re People in Interest of A.R.S., 31 Colo. App. 268, 502 P.2d 92 (1972); People v. Slender Wrap, Inc., 36 Colo. App. 11, 536 P.2d 850 (1975); Tucker v. Shoemaker, 190 Colo. 267, 546 P.2d 951 (1976); Lemier v. Real Estate Comm'n, 38 Colo. App. 489, 558 P.2d 591 (1976); C.M. v. People in Interest of J.M., 198 Colo. 436, 601 P.2d 1364 (1979); Augustin v. Barnes, 626 P.2d 625 (Colo. 1981); In re Edilson, 637 P.2d 362 (Colo. 1981).

II. Composition of Record.

A. In General.

Purpose of the notice of appeal is to require the clerk of the court in which the judgment complained of is entered to certify the record for review. Hull v. Denver Tramway Corp., 97 Colo. 523, 50 P.2d 791 (1935); Wheeler Kelly Hagny Trust Co. v. Williamson, 111 Colo. 515, 143 P.2d 685 (1943).

This rule retains a vestige of the bill of exceptions procedure not contained in the federal rules, for section (a) requires certification of the reporter's transcript by the trial judge, but Federal Rule of Appellate Procedure 10(a) has no such requirement. Almarez v. Carpenter, 347 F. Supp. 597 (D. Colo. 1972).

The right to an appeal is not denied by the absence of written findings of fact or conclusions of law in the record. Neither C.R.C.P. 52(a) nor this rule, requires written findings of fact and conclusions of law. Dunbar v. District Court, 131 Colo. 483, 283 P.2d 182 (1955).

Trial court's findings held adequate for purpose of appellate review. In re People in Interest of D.S., 31 Colo. App. 300, 502 P.2d 95 (1972).

No requirement that appellate record be all inclusive. This rule does not require that every folio with any conceivable relationship to an issue raised on appeal be designated as part of the appellate record. Rather, this rule gives the appellant the discretion to determine what is necessary, and the appellant himself may, if it appears he has not included enough, supplement the record; or an appellee who feels that the designated record is lacking in some essential respect may file and serve on the appellant a designation of additional parts of the record to be included. City of Aurora v. Webb, 41 Colo. App. 11, 585 P.2d 288 (1978).

Certification of the record is an official act of the inferior tribunal. Civil Serv. Comm'n v. Doyle, 174 Colo. 149, 483 P.2d 380 (1971).

And is not necessarily contingent upon certification of the transcript of the proceedings by a certified shorthand reporter. Civil Serv. Comm'n v. Doyle, 174 Colo. 149, 483 P.2d 380 (1971).

Judicial notice may generally not be taken of municipal ordinances or resolutions, and thus, it is a party's responsibility to introduce into the record copies of municipal ordinances or resolutions on which reliance is placed. Concrete Contractors v. City of Arvada, 621 P.2d 320 (Colo. 1981).

Where the district court considered the provisions of a city's charter, a municipal ordinance, and a municipal resolution in reaching its decision, the court of appeals abused its discretion in failing to ensure that those provisions of municipal law were made a part of the record in the case. Concrete Contractors v. City of Arvada, 621 P.2d 320 (Colo. 1981).

B. Judgment.

"Judgment" construed. To constitute a judgment there must be an express adjudication to that effect, but, subject to the requirements of statute or court rule or practice, no particular form or verbal formula is required in a court proceeding to render its order a judgment, provided the rights of the parties may be ascertained therefrom. Jones v. Galbasini, 134 Colo. 64, 299 P.2d 503 (1956).

Inclusion of the judgment in the record is mandatory. J. & R. A. Savageau, Inc. v. Larsen, 117 Colo. 229, 185 P.2d 1012 (1947); Horlbeck v. Walther, 131 Colo. 36, 279 P.2d 434 (1955). French v. Haarhues, 132 Colo. 261, 287 P.2d 278 (1955); Nutter v. Wright, 132 Colo. 304, 287 P.2d 655 (1955); Abbott v. Poynter, 153 Colo. 147, 385 P.2d 120 (1963).

Failure to include judgment requires dismissal. Without a compliance with this rule requiring the inclusion of the judgment in the record, there is nothing for this court to review; consequently, an order of dismissal should be entered. J. & R. A. Savageau, Inc. v. Larsen, 117 Colo. 229, 185 P.2d 1012 (1947); Horlbeck v. Walther, 131 Colo. 36, 279 P.2d 434 (1955).

Unless a final judgment appears in the record, the appeal will be dismissed. Sutley v. Davis, 131 Colo. 75, 279 P.2d 848 (1955); French v. Haarhues, 132 Colo. 261, 287 P.2d 278 (1955); Nutter v. Wright, 132 Colo. 304, 287 P.2d 655 (1955).

Where the record did not disclose any final judgment entered in the court below in violation of this rule, there was nothing presented for review. Howard v. Am. Law Book Co., 121 Colo. 5, 212 P.2d 1006 (1949).

Litigant has duty to ensure record contains proper judgment. The entry of judgment upon the court's order is a ministerial duty of the clerk, but if a litigant desires a review on appeal, it is his duty to see that the record on appeal is properly prepared and contains a final judgment; otherwise

dismissal will follow. French v. Haarhues, 132 Colo. 216, 287 P.2d 278 (1955); Nutter v. Wright, 132 Colo. 304, 287 P.2d 655 (1955).

It is the duty of one who seeks review in the supreme court to see to it that an actual judgment has been pronounced by the trial court and entered by the clerk and that such judgment appears in the record on appeal. Jones v. Galbasini, 134 Colo. 64, 299 P.2d 503 (1956); Abbott v. Poynter, 153 Colo. 147, 385 P.2d 120 (1963).

Ruling is not substitute for judgment. A ruling by the trial court at the close of plaintiff's evidence granting a motion to dismiss and dispensing with the motion for new trial does not rise to the dignity of a judgment, and its inclusion in the record is not a substitute for the requirement of this rule that the record must include the judgment to be reviewed. Jones v. Galbasini, 134 Colo. 64, 299 P.2d 503 (1956); Abbott v. Poynter, 153 Colo. 147, 385 P.2d 120 (1963).

Where the designation of record on error requests that the record include the judgment entered and the direction for entry of the same judgment, the record contains the "order and judgment" and the order to the clerk of the court for entry of judgment, and this rule requires no more. Flournoy v. McComas, 175 Colo. 526, 488 P.2d 1104 (1971).

C. Reporter's Transcript.

Compliance with rule imperative. Compliance with the rules in the preparation, certification, and lodging of the transcript is imperative if it is desired to make it a part of the record on appeal. Freeman v. Cross, 134 Colo. 437, 305 P.2d 759 (1957).

Transcript is not an absolute necessity in the reviewing court. Almarez v. Carpenter, 173 Colo. 284, 477 P.2d 792 (1970).

Because it is only part of record. The reporter's transcript is not the record on appeal, but only a part thereof. Cont'l Air Lines v. City & County of Denver, 129 Colo. 1, 266 P.2d 400 (1954).

Transcript is not, by definition, a writ, process, or proceeding. Almarez v. Carpenter, 173 Colo. 284, 477 P.2d 792 (1970).

Only relevant portions of the trial proceedings need be included in the record, as may be necessary to present the issues on appeal. Almarez v. Carpenter, 173 Colo. 284, 477 P.2d 792 (1970); Almarez v. Carpenter, 347 F. Supp. 597 (D. Colo. 1972).

Transcript must be certified by the judge. Hudson v. Am. Founders Life Ins. Co., 151 Colo. 54, 377 P.2d 391 (1962).

Authentication is judicial act. In the authentication of the full transcript, the trial judge acts as a judge under the solemnity of his official oath, and is presumed to have faithfully and honestly performed his duty. Hudson v. Am. Founders Life Ins. Co., 151 Colo. 54, 377 P.2d 391 (1962).

It is presumed that a court acts under the solemnity of its oath in determining the authenticity of the transcript. Churning v. Staples, 628 P.2d 180 (Colo. App. 1981).

When certified transcript considered true. A transcript of the record as originally prepared by the reporter which is authenticated by a certificate signed by the trial judge, and transmitted to the supreme court under the seal of the clerk of the trial court, is to be considered true as if the parties had agreed to it. Hudson v. Am. Founders Life Ins. Co., 151 Colo. 54, 377 P.2d 391 (1962).

Imperfection in a reporter's transcript cannot be cured by guesswork or by indulging in inferences or presumptions. Hinshaw v. Dyer, 166 Colo. 394, 443 P.2d 992 (1968).

Uncertified transcript of evidence filed with reviewing court is not properly before it. Stuckman v. Kasal, 158 Colo. 232, 405 P.2d 948 (1965).

Uncertified transcript stricken. Rechnitz v. Rechnitz, 135 Colo. 165, 309 P.2d 200 (1957).

Lacking transcript, support of findings presumed. There being no reporter's transcript properly before the supreme court for consideration due to untimely filing, the regularity of the judgment and support of the findings of fact by the evidence must be presumed. Bonham v. City of Aurora, 133 Colo. 276, 294 P.2d 267 (1956).

Where a transcript of the evidence not filed pursuant to this rule cannot be considered because of the trial judge's justifiable refusal to certify it, the regularity of the judgment and support of it in evidence must be presumed. Stuckman v. Kasal, 158 Colo. 232, 405 P.2d 948 (1965).

In the absence of a transcript, the supreme court is bound to presume that the findings and conclusions of the trial court are correct and that the evidence presented supports the judgment. Cox v. Adams, 171 Colo. 37, 464 P.2d 513 (1970); Furer v. Allied Steel Co., 174 Colo. 171, 483 P.2d 212 (1971).

Unless there is before the supreme court a certified transcript of the proceedings, the supreme court is unable to state that the trial court abused its discretion or that it was arbitrary and capricious. Rechnitz v. Rechnitz, 135 Colo. 165, 309 P.2d 200 (1957).

Where there is no transcript before the court on appeal, the regularity of the trial court's judgment and the competency of the evidence upon which that judgment is based must be presumed. Oman v. Morris, 28 Colo. App. 124, 471 P.2d 430 (1970).

Where no transcript is provided on appeal the court must look to the record alone to determine whether the trial court acted properly. Statements made in the briefs of litigants cannot supply that which must appear in a certified record. Loomis v. Seely, 677 P.2d 400 (Colo. App. 1983).

Reconstruction of the record in the trial court is not appropriate when the precise language of the testimony is critical. People v. Killpack, 793 P.2d 642 (Colo. App. 1990).

Where defendant's argument on appeal is ascertainable from the existing record and the record is sufficient for appellate review, a complete transcript is unnecessary for purposes of reconstructing the record for one of the days during trial. People v. Jackson, 98 P.3d 940 (Colo. App. 2004).

The statements of counsel may not substitute for that which must appear of record. Subsequent Injury Fund v. Gallegos, 746 P.2d 71 (Colo. App. 1987).

Litigant must make his own arrangements with the reporter if he desires a transcript. Almarez v. Carpenter, 173 Colo. 284, 477 P.2d 792 (1970).

Transcript fees may not be waived by court. The preparation of a transcript by a reporter of his notes is a service which is not covered by his salary. Hence, the fees for such service are not payable to the court and the court cannot waive them. Almarez v. Carpenter, 173 Colo. 284, 477 P.2d 792 (1970).

Free transcript need not be provided when the furnishing of a transcript would be a vain and useless gesture. Snavely v. Shannon, 182 Colo. 223, 511 P.2d 905 (1973).

Since the provisions of subsections (c) and (d) provide for a constitutionally permissible alternative method of proceeding on appeal where no reporter's transcript is available, there is no deprivation of due process or equal protection because indigents cannot obtain a cost-free reporter's transcript. Almarez v. Carpenter, 347 F. Supp. 597 (D. Colo. 1972).

And denial does not preclude appellate remedy. The denial of a request for a free transcript does not deny an indigent litigant any appellate remedy. Almarez v. Carpenter, 173 Colo. 284, 477 P.2d 792 (1970).

Or deny constitutional right. By virtue of the waiver of costs provided by ? §13-16-103, and the alternative methods of furnishing a trial court record provided by this rule, courts of justice, both trial and appellate, are "open" and available to the indigent litigant, and there is no denial of any constitutional right embraced within the language or interpretation of ? §6 of art. II, Colo. Const.Almarez v. Carpenter, 173 Colo. 284, 477 P.2d 792 (1970).

D. Alternatives to Transcript; Agreed Statement.

Reporter's transcript is not only means provided by sections (a) through (e) of this rule for preserving and presenting to the appellate courts alleged error involving evidentiary or factual issues. Almarez v. Carpenter, 347 F. Supp. 597 (D. Colo. 1972).

Requirements in circumstances in which stenographic transcipt unavailable. Appellant must prepare a statement from recollection that is first submitted to trial court for approval. If it is necessary to add to record parts of evidence or proceedings that were not recorded by the reporter, the provisions of section (c) must be followed. Where there was no compliance with this rule, the appellate court has an inadequate basis to evaluate the parties' claims and the trial court's ruling. Halliburton v. Pub. Serv. Co., 804 P.2d 213 (Colo. App. 1990); In re McSoud, 131 P.3d 1208 (Colo. App. 2006); Knoll v. Allstate Fire & Cas. Ins., 216 P.3d 619 (Colo. App. 2009).

Nothing in section (c) prohibits a trial court from using its own notes or recollection in record reconstruction. People v. Jackson, 98 P.3d 940 (Colo. App. 2004).

The trial court in doing so in an impartial manner eliminates any need for the trial judge to testify before a different judge regarding the reconstruction to maintain impartiality. People v. Jackson, 98 P.3d 940 (Colo. App. 2004).

Duty to follow procedures of this rule if no transcript available. An appellant is required to take the necessary steps to provide an adequate record for review. In those circumstances in which a stenographic transcript is not available, section (c) provides that the appellant should prepare a statement of the evidence or proceedings from the best available means, serve the statement upon opposing counsel for comments and changes, and then submit the final statement to the trial court for settlement, approval, and inclusion in the record on appeal. In the event the parties are unable to

reach agreement concerning the contents of this statement, section (d) provides a mechanism for resolution of these differences. People v. Conley, 804 P.2d 240 (Colo. App. 1990).

Sections (c), (d), and (e) were promulgated specifically to reduce the cost of appellate review to the litigants and to conserve review time by the court itself. Almarez v. Carpenter, 173 Colo. 284, 477 P.2d 792 (1970); Almarez v. Carpenter, 347 F. Supp. 597 (D. Colo. 1972).

Section (e) of this rule insures adequate consideration of any issue involving evidentiary or factual material. Almarez v. Carpenter, 173 Colo. 284, 477 P.2d 792 (1970).

Statements made in briefs insufficient to establish record. Statements made in briefs of litigants cannot supply what must appear from a certified record or an agreed statement. Laessig v. May D & F, 157 Colo. 260, 402 P.2d 183 (1965); Hinshaw v. Dyer, 166 Colo. 394, 443 P.2d 992 (1968); McCall v. Meyers, 94 P.3d 1271 (Colo. App. 2004).

Although this rule does not on its face apply to appellate review of an administrative agency decision, the underlying principle is applicable to such review. Earl v. District Court, 719 P.2d 321 (Colo. 1986); Schaffer v. District Court, 719 P.2d 1088 (Colo. 1986).

III. Correction or Modification of Record.

Certification to the transcript of the proceedings is final. Hudson v. Am. Founders Life Ins. Co., 151 Colo. 54, 377 P.2d 391 (1962).

This is true where the objectors produced no evidence or sworn testimony contradicting the transcript as finally certified and approved by the trial judge during the lengthy hearing on their objections. Hudson v. Am. Founders Life Ins. Co., 151 Colo. 54, 377 P.2d 391 (1962).

Inaccuracies in certified transcript were not prejudicial. Although each of 98 inaccuracies in the certified transcript does alter the particular sentence somewhat, reviewing all of the changes elicited at the evidentiary hearing before the trial court, the supreme court concluded that reasonable men, considering the transcript in its entirety, would be compelled to find that the content of the transcript is not materially altered. Since this evidence showed no errors of any substance and since appellee did not show that the corrected record was in any manner false or untrue, he was not prejudiced by the changes and the transcript is a fair and accurate record of the civil service commission's proceedings which may be reviewed. Civil Serv. Comm'n v. Doyle, 174 Colo. 149, 483 P.2d 380 (1971).

Although the juvenile court was not the proper forum to resolve a motion to narrow the record on appeal which had been designated pursuant to this rule, any error arising from the limitation imposed by the trial court was, under the circumstances, harmless error. People in Interest of J.L.P., 870 P.2d 1252 (Colo. App. 1994).

Nothing in the plain language of this rule precludes an appellate court from considering a motion to correct a misstatement in the record after an opinion has been announced. It was reasonable for the trial court to correct the record and an injustice would occur here if an appeal were decided on the basis of an incorrect record. People v. Wolfe, 9 P.3d 1137 (Colo. App. 1999).

Court rejected defendant's argument that People's attempt to correct the record was barred by doctrine of laches and waiver. Trial court properly concluded that the interest in finality of the opinion was outweighed by the importance of ensuring an accurate result on appeal. People v. Wolfe, 9 P.3d 1137 (Colo. App. 1999).

For transmission of transcript to appellate court, see C.A.R. 11; for inclusion of cost of reporter's transcript in taxable costs of appeal, see C.A.R. 39.

RULE 10.1. Court of Appeals Accelerated Docket

(Repealed September 23, 1983, effective January 1, 1984.)

RULE 11. Transmission of Record [Repealed]

Repealed October 26, 2017, effective January 1, 2018.

(Source:(b) and (d) amended and adopted April 27, 1998, effective July 1, 1998;(b) amended and effective September 7, 2006;(a), (a) comment, and (d) comment amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1(b); repealed October 26, 2017, effective January 1, 2018.)

ANNOTATION

I. General Consideration.

II. Transmission of Record.

III. Enlargement of Time.

Law reviews.

For article, "The Problem of Delay in the Colorado Court of Appeals", see 58 Den. L.J. 1 (1980).

Supreme court requires strict compliance with this rule

providing the time within which a reporter's transcript must be lodged. Cox v. Adams, 171 Colo. 37, 464 P.2d 513 (1970).

Compliance with the rules in the preparation, certification and lodging of the reporter's transcript is imperative if it is desired to make it a part of the record on error. Smith v. Woodall, 129 Colo. 435, 270 P.2d 746 (1954).

This rule must be interpreted to give it a practical effect.

Pueblo v. Mace, 130 Colo. 162, 273 P.2d 1015 (1954).

Applied in People v. Boivin, 632 P.2d 1038 (Colo. App. 1981).

Duties of appellant in appellate and trial courts.

A litigant desiring a review of his case upon appeal is confronted with the accomplishment of two projects: One in the supreme court and the other in the trial court. In the supreme court he must make certain that the notice of appeal is timely filed and that his record on appeal is filed within the time prescribed by this rule, or such enlargement thereof as may be fixed. In the trial court, where preparation of the record on appeal is under the jurisdiction of the trial court in manner as provided by C.A.R. 10, he must

see to it that the reporter's transcript, if he desires that it be included in the record on appeal, is prepared and lodged within the time fixed therefor by said C.A.R. 10 and this rule, or within such extended period as may be granted by appropriate court order. Cont'l Air Lines v. City & County of Denver, 129 Colo. 1, 266 P.2d 400 (1954).

Appellant's duty to designate portions of record he deems necessary

for appeal, and to see that the record is transmitted, and the appellant will not be permitted to take advantage of his own failure to designate the pertinent portions of the transcript as part of the record on appeal. Till v. People, 196 Colo. 126, 581 P.2d 299 (1978).

Transcript may not be filed only when "convenient".

Transcripts, like briefs, may not be filed whenever or wherever counsel may find it convenient. Smith v. Woodall, 129 Colo. 435, 270 P.2d 746 (1954); Freeman v. Cross, 134 Colo. 437, 305 P.2d 759 (1957).

Transcript stricken for inexcusable delay in transmission.

Cont'l Air Lines v. City & County of Denver, 129 Colo. 1, 266 P.2d 400 (1954); Freeman v. Cross, 134 Colo. 437, 305 P.2d 759 (1957); Furer v. Allied Steel Co., 174 Colo. 171, 483 P.2d 212 (1971).

Where transcript of testimony is not certified

to either the court of appeals or to the supreme court, the findings made by the trial court are binding upon the supreme court. Hobbs v. Smith, 177 Colo. 299, 493 P.2d 1352 (1972).

Petition to show cause does not stay time to proceed.

The filing of a petition to show cause in the supreme court within a 10-day period following entry of final judgment, coupled with the filing of a motion in a trial court to suspend proceedings, does not stay the time to file a motion for a new trial under Rule 59, C.R.C.P., or stay the time to proceed under C.A.R. 4 and this rule. Walter v. Walter, 136 Colo. 405, 318 P.2d 221 (1957) (decided prior to 1983 amendment).

Enlargement of time primarily a function of the trial court.

While the supreme court has the inherent power to enlarge the time within which a reporter's transcript may be lodged, this function lies primarily and especially within the province and jurisdiction of the trial court. Smith v.

Woodall, 129 Colo. 435, 270 P.2d 746 (1954) (decided prior to 1983 amendment).

Granting of extension rests in discretion of court.

The granting of an extension of the period allowed under section (a) of this rule for the filing of a reporter's transcript rests within the sound discretion of the trial court, and the action taken will not be disturbed on review in the absence of a clear showing of abuse of that discretion. Mitchell v. Espinosa, 125 Colo. 267, 243 P.2d 412 (1952) (decided prior to 1983 amendment).

Effective date of final judgment in the trial court does not terminate the authority of the judge

of that court. This rule extends the authority of the trial court to order extensions of time. King v. Williams, 131 Colo. 286, 281 P.2d 163 (1955) (decided prior to 1983 amendment).

Failure to apply for enlargement under C.R.C.P. 6 rarely excusable.

Under C.R.C.P. 6(b)(1), enlargements of time are so readily obtainable where application is made therefor within apt time that there is rarely an occasion where failure to do so would appear to be excusable. Smith v. Woodall, 129 Colo. 435, 270 P.2d 746 (1954).

The press of work or other activities of an attorney does not constitute excusable neglect.

Cox v. Adams, 171 Colo. 37, 464 P.2d 513 (1970); Laugesen v. Witkins Homes, Inc., 29 Colo. App. 58, 479 P.2d 289 (1970).

RULE 12. Docketing the Appeal and Fees; Proceedings in Forma Pauperis; Filing of the Record

(a) Docketing the Appeal; Fees of Clerk. At the time of the filing of the notice of appeal or the time of filing any documents with an appellate court before the filing of the notice of appeal, the appellant shall pay to the clerk of the appellate court the docket fee as required by section 13-4-112(1) and the clerk shall enter the appeal upon the docket. If an appellant is authorized to prosecute the appeal without prepayment of fees, the clerk shall enter the appeal on the docket at the written request of that party. The party appealing shall docket the case as nearly as possible under the title given to the action in the trial court, with the appellant identified as such, but if such title does not contain the name of the appellant, the appellant's name, identified as appellant, shall be added to the title. Unless necessary to show the relationship of the parties, such caption shall not include the names of parties not involved in the appeal. The docket fee for an appellee as required by section 13-4-112(1) shall be paid upon the entry of appearance of the appellee. After an initial appellant or appellee has paid the docket fee, any additional appellants, appellees or cross-appellants entering an appearance by an attorney who is not already of record in the case, shall also pay the docket fee as required by section 13-4-112(1). A cross-appellant shall pay the docket fee amount at the time the cross-appeal is filed. Extension of time shall not be granted for paying docket fees.

(b) Leave to Proceed on Appeal in Forma Pauperis from Trial Court to Appellate Court. A party to an action in a trial court who desires to proceed on appeal in forma pauperis shall file in the trial court a motion for leave so to proceed, together with an affidavit showing an inability to pay fees and costs or to give security, a belief that the party is entitled to redress, and a statement of the issues which the party intends to present on appeal. If the motion is granted, the party may proceed without further application to the appellate court and without prepayment of fees or costs in either court or the giving of security. If the motion is denied, the trial court shall state in writing the reasons for the denial.

Notwithstanding the provisions of the preceding paragraph, a party who has been permitted to proceed in an action in the trial court in forma pauperis, or who has been permitted to proceed there as one who is financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization unless, before or after the notice of appeal is filed, the trial court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed, in which event the trial court shall state in writing the reasons for such certification or finding. A party proceeding under this subparagraph (b) shall attach a copy of the trial court's order granting or denying leave to

proceed in forma pauperis in the trial court with the appendix to the notice of appeal.

(c) Leave to Proceed on Appeal or Review in Forma Pauperis in Administrative Agency Proceedings. A party to a proceeding before an administrative agency, board, commission, or officer who desires to proceed on appeal or review in the appellate court in forma pauperis shall file in the said court a motion for leave so to proceed, together with the affidavit prescribed by the first paragraph of section (a) of this Rule.

(d) Form of Briefs and Other Papers. Parties allowed to proceed in forma pauperis may file briefs and other papers in typewritten form, and may request that the appeal be heard on the original record without the necessity of reproducing parts thereof in any form.

(e) Filing of the Record. Upon receipt of the record, the clerk shall file the record. The clerk shall immediately give notice to all parties of the date on which the record was filed.

(f) Deleted September 23, 1983, effective January 1, 1984.

(Source: a amended August 30, 1985, effective January 1, 1986; b amended May 15, 1986, effective November 1, 1986; a and e amended and effective February 7, 2008; Amended November 1, 2017, effective January 1, 2018.)

Comment to (a): This revision calls for the payment of appellant's docket fee when the notice of appeal is filed, or, at the time of filing of the initial documents with the appellate court. It also eliminates designation of parties form.

Comment to (e): This change is necessary because "docketing" has been eliminated.

Annotation

Law reviews. For article, "Supreme Court Proceedings: Rules 111-119 ", see 23 Rocky Mtn. L. Rev. 618 (1951). For article, "Appellate Procedure and the New Supreme Court Rules", see 30 Dicta 1 (1953). For note, "Colorado Appellate Procedure", see 40 U. Colo. L. Rev. 551 (1968). For article, "The Problem of Delay in the Colorado Court of Appeals", see 58 Den. L.J. 1 (1980).

Failure to comply with rule will cause dismissal. Where appellants fail to comply with this rule in that they do not file designation of parties or pay docket fee within time fixed for transmission of record, failing to do so for approximately 90 days thereafter, where appellants fail to show good cause

for noncompliance, where appellee moves for dismissal based thereon, and where 60-day extension of time for transmission of record has been granted, appeal will be dismissed. Gonzales v. Petriken, 31 Colo. App. 415, 502 P.2d 1110 (1972).

Failure to comply with rule may be waived by failure to file objection, but where sufficient and timely objection is made and there is no adequate excuse for failure to comply, it is an appellate court's duty to enforce this rule. Gonzales v. Petriken, 31 Colo. App. 415, 502 P.2d 1110 (1972).

Leave to proceed in forma pauperis granted. In re Petition of Griffin, 152 Colo. 347, 382 P.2d 202 (1963); In re Petition of Pigg, 152 Colo. 500, 384 P.2d 267 (1963).

Supreme court will not consider unintelligible petitions and motions which have no legal significance and which do not meet the requirements of established procedures in appellate practice, in view of the right of an indigent defendant to have counsel appointed to prosecute an appeal. In re Petition of Griffin, 152 Colo. 347, 382 P.2d 202 (1963).

Issue cannot be reviewed on appeal when the record does not contain a transcript of the testimony taken in the trial court. Buder v. Reynolds, 175 Colo. 28, 486 P.2d 432 (1971).

When a reporter fails within 60 days to file a reporter's transcript or seek an extension of time, the trial court will order that the transcript be stricken from the record on error. Buder v. Reynolds, 175 Colo. 28, 486 P.2d 432 (1971).

Determination of indigency lies within the discretion of the trial court. A party who proceeded as an indigent in the trial court may proceed as an indigent on appeal without further authorization unless the court finds, in writing, that the party is no longer entitled to so proceed. The trial court may order the production of any documents or evidence it deems necessary to determine continuing indigency. People in Interest of M.N., 950 P.2d 674 (Colo. App. 1997).

Because trial court had previously permitted defendant to proceed in forma pauperis on direct appeal, it was unnecessary for defendant to reapply to the trial court to proceed in forma pauperis on his motion for postconviction relief; thus trial court's failure to address defendant's motion to proceed in forma pauperis on appeal contemporaneously with his motion for postconviction relief was not error. People v. Boyd, 23 P.3d 1242 (Colo. App. 2001).

Applied in Denbow v. District Court, 652 P.2d 1065 (Colo. 1982).

For current rule concerning dismissal for failure to timely docket, see C.A.R. 38(a); for waiver of costs incurred by poor persons, see ? §13-16-103, C.R.S.

RULE 21. Procedure in Original Proceedings

(a) Original Jurisdiction Under the Constitution.

(1) This rule applies only to the original jurisdiction of the supreme court to issue writs as provided in Section 3 of Article VI of the Colorado Constitution and to the exercise of the supreme court's general superintending authority over all courts as provided in Section 2 of Article VI of the Colorado Constitution. Relief under this rule is extraordinary in nature and is a matter wholly within the discretion of the supreme court. Such relief will be granted only when no other adequate remedy, including relief available by appeal or under C.R.C.P. 106, is available.

(2) Petitions to the supreme court in the nature of mandamus, certiorari, habeas corpus, quo warranto, injunction, prohibition and other forms of writs cognizable under the common law are subject to this rule. The petitioner need not designate a specific form of writ when seeking relief under this rule.

(b) How Sought; Proposed Respondents.

Petitioner must file a petition for a rule to show cause specifying the relief sought and must request the court to issue to one or more proposed respondents a rule to show cause why the relief requested should not be granted. The proposed respondent(s) should be the real party (or parties) in interest.

(c) Docketing of Petition and Fees; Form of Pleadings.

Upon the filing of a petition for a rule to show cause, petitioner must pay to the clerk of the supreme court the docket fee of $225.00. All documents filed under this rule must comply with C.A.R. 32.

(d) Content of Petition and Service.

(1) The petition must be titled, "In Re Caption of Underlying Proceeding." If there is no underlying proceeding, the petition must be titled, "In Re [Petitioner v. Proposed Respondent]."

(2) The petitioner has the burden of showing that the court should issue a rule to show cause. To enable the court to determine whether a rule to show case should be issued, the petition must disclose in sufficient detail the following:

(A) the identity of the petitioner and of the proposed respondent(s), together with, if applicable, their party status in the underlying proceeding (e.g., plaintiff, defendant, etc.);

(B) the identity of the court or other underlying tribunal, the case name and case number or other identification of the underlying proceeding, if any, and identification of any other related proceeding;

(C) the identity of the persons or entities against whom relief is sought;

(D) the ruling, action, or failure to act complained of and the relief being sought;

(E) the reasons why no other adequate remedy is available;

(F) the issues presented;

(G) the facts necessary to understand the issues presented;

(H) argument and points of authority explaining why the court should issue a rule to show cause and grant the relief requested; and

(I) a list of supporting documents, or an explanation of why supporting documents are not available.

(3) The petition must include the names, addresses, telephone numbers, e-mail addresses (if any), and fax numbers (if any) of all parties to the underlying proceeding; or, if a party is represented by counsel, the attorney's name, address, telephone number, e-mail address (if any), and fax number (if any).

(4) The petition must be served upon each party and proposed respondent and, if applicable, upon the lower court or tribunal.

(e) Supporting Documents. A petition must be accompanied by a separate, indexed set of available supporting documents adequate to permit review. In cases involving an underlying proceeding, the following documents must be included:

(1) the order or judgment from which relief is sought if applicable;

(2) documents and exhibits submitted in the underlying proceeding that are necessary for a complete understanding of the issues presented;

(3) a transcript of the proceeding leading to the underlying order or judgment if available.

(f) Stay; Jurisdiction.

(1) The filing of a petition under this rule does not stay any underlying proceeding or the running of any applicable time limit. If the petitioner

seeks a temporary stay in connection with the petition pending the court's determination whether to issue a rule to show cause, a stay ordinarily must be sought in the first instance from the lower court or tribunal. If a request for stay below is impracticable, not promptly ruled upon, or is denied, the petitioner may file a separate motion for a temporary stay in the supreme court supported by accompanying materials justifying the requested stay.

(2) Issuance of a rule to show cause by the supreme court automatically stays all underlying proceedings until final determination of the original proceeding in the supreme court unless the court, acting on its own, or upon motion, lifts the stay in whole or in part.

(g) No Initial Responsive Pleading to Petition Allowed. Unless requested by the supreme court, no responsive pleading to the petition may be filed prior to the court's determination of whether to issue a rule to show cause.

(h) Denial; Rule to Show Cause.

(1) The court in its discretion may issue a rule to show cause or deny the petition without explanation and without an answer by any respondent.

(2) The clerk, by first class mail, will serve the rule to show cause on all persons ordered or invited by the court to respond and, if applicable, on the judge or other officer in the underlying proceeding.

(i) Response to Rule to Show Cause.

(1) The court in its discretion may invite or order any person in the underlying proceeding to respond to the rule to show cause within a fixed time, and may invite amicus curiae participation. Any person in the underlying proceeding may request permission to respond to the rule to show cause but may not respond unless invited or ordered to do so by the court. Those ordered by the court to respond are the respondent.

(2) The response to any order of the court must conform with C.A.R. 28(g) and 32. Any responses submitted by amicus curiae must comply with C.A.R. 29.

(3) Two or more respondents may respond jointly.

(j) Reply to Response to Rule to Show Cause. The petitioner may submit a reply brief within the time fixed by the court. Any reply must conform with C.A.R. 28(g) and 32.

(k) No Oral Argument. There will be no oral argument unless ordered by the court.

(l) Opinion Discretionary. The court, upon review, in its discretion may discharge the rule or make it absolute, in whole or in part, with or without opinion.

(m) Petition for Rehearing. In all proceedings under this rule, where the supreme court has issued an opinion discharging a rule or making a rule absolute, a petition for rehearing may be filed in accordance with the provisions of C.A.R. 40(c)(2).

(Source: Entire rule repealed and readopted November 19, 1998, effective January 1, 1999; d amended and adopted June 27, 2002, effective July 1, 2002; c amended and adopted February 27, 2003, effective March 3, 2003; amended and adopted June 7, 2018, effective July 1, 2018.)

Annotation

I. General Consideration.

Law reviews. For article, "Supreme Court Proceedings: Rules 111-119 ", see 23 Rocky Mtn. L. Rev. 618 (1951). For note, "Habeas Corpus in Colorado for the Convicted Criminal", see 30 Rocky Mt. L. Rev. 145 (1958). For article, "One Year Review of Civil Procedure and Appeals", see 37 Dicta 21 (1960). For note, "One Year Review of Colorado Law-1964", see 42 Den. L. Ctr. J. 140 (1965). For note, "Colorado Appellate Procedure", see 40 U. Colo. L. Rev. 551 (1968). For note, "Civil Procedure Application of 'Indispensable Party' Provision of Colo. R. Civ. P. 19 -the 'Procedural Phantom' Still Stalks in Colorado", see 46 U. Colo. L. Rev. 609 (1974-75). For comment, "Reporter's Privilege: Pankratz v. District Court", see 58 Den. L.J. 681 (1981). For article, "A Summary of Colorado Supreme Court Internal Operating Procedures", see 11 Colo. Law. 356 (1982). For article, "Original Proceedings in the Colorado Supreme Court", see 12 Colo. Law. 413 (1983).

Annotator's note. For other annotations concerning original jurisdiction of supreme court, see Const. Colo., art. VI, sec. 3.

Purpose of original proceedings. Original proceedings are authorized to test whether the trial court is proceeding without or in excess of its jurisdiction and to review a serious abuse of discretion where an appellate remedy would not be adequate. Margolis v. District Court, 638 P.2d 297 (Colo. 1981); People v. District Court, Arapahoe County, 868 P.2d 400 (Colo. 1994); Vail/Arrowhead, Inc. v. District Court, 954 P.2d 608 (Colo. 1998); Kourlis v. District Court, 930 P.2d 1329 (Colo. 1997); Hawkinson v. Biddle, 880 P.2d

748 (Colo. 1994); Semental v. Denver County Court, 978 P.2d 668 (Colo. 1999).

The general function of a writ of prohibition is to enjoin an excessive or improper assumption of jurisdiction. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

An original proceeding is an appropriate way to challenge a district court ruling allegedly in excess of the court's jurisdiction. Chavez v. District Court, 648 P.2d 658 (Colo. 1982).

An original proceeding pursuant to this rule is not a substitute for an appeal and is limited to an inquiry into whether the trial court exceeded its jurisdiction or abused its discretion. Hayes v. District Court, 854 P.2d 1240 (Colo. 1993); Lambdin v. District Ct. of Arapahoe Cty., 903 P.2d 1126 (Colo. 1995); Pearson v. District Court, 18th Jud. Dist., 924 P.2d 512 (Colo. 1996).

An original proceeding is appropriate to prevent an excess of jurisdiction by a lower court when no other remedy would be adequate. Paul v. People, 105 P.3d 628 (Colo. 2005).

Original and remedial writs are the common-law writs. Lucas v. District Court, 140 Colo. 510, 345 P.2d 1064 (1959); Leonhart v. District Court, 138 Colo. 1, 329 P.2d 781 (1958).

But present authority to entertain original and remedial writs is conferred by the constitution. Lucas v. District Court, 140 Colo. 510, 345 P.2d 1064 (1959).

Colorado supreme court's original jurisdiction has its source in ? §3 of art. VI, Colo. Const.; its exercise is discretionary and governed by the circumstances of the case. Sanchez v. District Court, 624 P.2d 1314 (Colo. 1981).

C.R.C.P. 106 and this rule are to be construed together. Solliday v. District Court, 135 Colo. 489, 313 P.2d 1000 (1957).

Prohibition is not available where party has adequate remedies at law, or where it will supersede the functions of an appeal. Fitzgerald v. District Court, 177 Colo. 29, 493 P.2d 27 (1972).

Where a municipal court has jurisdiction over the defendants and the subject matter of the action, and an adequate remedy at law is available, original proceedings in prohibition will not be entertained. Douglas v. Municipal Court, 151 Colo. 358, 377 P.2d 738 (1963).

Court will not consider issues not presented below. The orderly administration of justice requires that parties first present all evidence and arguments to the trial court. Simply stated, the supreme court will not consider issues and evidence presented for the first time in original proceedings. Panos Inv. Co. v. District Court, 662 P.2d 180 (Colo. 1983).

Petitioner responsible for providing substantiating record. A petitioner seeking prohibition has the responsibility of providing the supreme court with a record that will substantiate the request for extraordinary relief. Mitchell v. District Court ex rel. Eighth Judicial Dist., 672 P.2d 997 (Colo. 1983).

In the absence of a compelling need, this rule may not serve as a substitute for an adequate appellate remedy that a party simply fails to exercise. C.A.R. 3.4 provides adequate process for appellants to the court of appeals in dependancy and neglect cases. People ex rel. A.H., 216 P.3d 581 (Colo. 2009).

Original writ disfavored where appeal available. There is a general policy which disfavors the use of an original writ where an appeal would be an appropriate remedy. Weaver Constr. Co. v. District Court, 190 Colo. 227, 545 P.2d 1042 (1976).

Absent a showing that appellate review would not afford adequate relief, relief by original proceedings is disfavored. Coquina Oil Corp. v. District Court, 623 P.2d 40 (Colo. 1981).

In contempt proceedings to enforce an order, the validity of the questioned order can be challenged and defendants will be afforded full opportunity to justify their failure or refusal to comply therewith. If, by any judgment entered by the trial court in those proceedings, the parties feel aggrieved, their remedy by appeal is speedy and altogether adequate for the protection of their rights, and there is no occasion for invoking the original jurisdiction of the supreme court. Valas v. District Court, 130 Colo. 21, 273 P.2d 1017 (1954); Meaker v. District Court, 134 Colo. 151, 300 P.2d 805 (1956).

But to be used where appeal inadequate. Where an appeal is not a plain, speedy, and adequate remedy, one may be entitled to an original writ of prohibition. Weaver Constr. Co. v. District Court, 190 Colo. 227, 545 P.2d 1042 (1976).

A proceeding under this rule is appropriate to review a serious abuse of discretion where an appellate remedy would not be adequate. Halliburton v. County Court ex rel. City & County of Denver, 672 P.2d 1006 (Colo. 1983); Direct Sales Tire Co. v. District Court, 686 P.2d 1316 (Colo. 1984).

Where the damage that may result from the court's abuse of discretion cannot be cured on appeal, mandamus will lie to ensure observance of the rules of civil procedure. Tyler v. District Court, 193 Colo. 31, 561 P.2d 1260 (1977).

Although the questions involved upon which the relief in original jurisdiction is asked may be reviewed on appeal, that is not conclusive against the right as to relief if in the judgment of the court, such remedies are not plain, speedy, and adequate. People ex rel. Lackey v. District Court, 30 Colo. 123, 69 P. 597 (1902); People ex rel. L'Abbe v. District Court, 26 Colo. 386, 58 P. 604, 46 L.R.A. 850 (1899).

A writ in the nature of prohibition is an extraordinary remedy and should be granted only in cases where the party seeking relief does not have an adequate remedy on appeal. Valas v. District Court, 130 Colo. 21, 273 P.2d 1017 (1954); Meaker v. District Court, 134 Colo. 151, 300 P.2d 805 (1956).

Original proceedings are only applicable to those matters in which an adequate remedy is not available on appeal. DeLong v. District Court, 151 Colo. 364, 377 P.2d 737 (1963).

Original jurisdiction under this rule will be invoked where appellate remedies are inadequate. People v. District Court, 664 P.2d 247 (Colo. 1983); Hawkinson v. Biddle, 880 P.2d 748 (Colo. 1994); Kourlis v. District Court, El Paso County, 930 P.2d 1329 (Colo. 1997).

The exercise of original jurisdiction is appropriate where a pre-trial ruling will place a party at a significant disadvantage in litigating the merits of the controversy and conventional appellate remedies are inadequate. Mitchell v. Wilmore, 981 P.2d 172 (Colo. 1999).

A trial court's decision to vacate a jury-imposed death verdict is a matter of public importance invoking original jurisdiction. People v. Harlan, 109 P.3d 616 (Colo. 2005).

Original jurisdiction may be exercised to entertain an interlocutory appeal that was improperly brought pursuant to another rule. People v. Braunthal, 31 P.3d 167 (Colo. 2001).

Prohibition is an appropriate remedy when the trial court has abused its discretion and where an appellate remedy would not be adequate and in this case the supreme court exercised original jurisdiction to address issues of significance not yet examined. City and County of Denver v. District Court, 939 P.2d 1353 (Colo. 1997).

Original jurisdiction is proper under this rule, prior to dismissal of the underlying action or appeal, on issue of sanctions. While the court of appeals is not without jurisdiction to determine the issue of propriety of sanctions issued by a settlement conference judge, the appellate remedy under such circumstances would not assist petitioner who is under order to comply or risk contempt. Halaby, McCrea & Cross v. Hoffman, 831 P.2d 902 (Colo. 1992).

Original jurisdiction under this rule is proper when appellate review of trial court's evidentiary ruling would not afford adequate relief since jeopardy will have attached and the defendant cannot be retried. People v. District Court of El Paso County, 869 P.2d 1281 (Colo. 1994).

Appeal held adequate remedy. The mere fact that a new trial may be necessary to correct an improper denial of a third-party complaint does not in itself render an appeal inadequate as a remedy for the third-party plaintiff. Pub. Serv. Co. v. District Court, 638 P.2d 772 (Colo. 1981).

Original writs cannot supersede the ordinary functions of an appeal. People ex rel. City & County of Denver v. District Court, 81 Colo. 163, 255 P. 447 (1927); White v. District Court, 695 P.2d 1133 (Colo. 1984).

Original proceedings may not be employed as a substitute for an appeal. Douglas v. Municipal Court, 151 Colo. 358, 377 P.2d 738 (1963); DeLong v. District Court, 151 Colo. 364, 377 P.2d 737 (1963); Coquina Oil Corp. v. District Court, 623 P.2d 40 (Colo. 1981).

Prohibition may not be used in lieu of an appeal. Prinster v. District Court, 137 Colo. 393, 325 P.2d 938 (1958); Leonhart v. District Court, 138 Colo. 1, 329 P.2d 781 (1958); Town of Vail v. District Court, 163 Colo. 305, 430 P.2d 477 (1967); First Nat'l Bank v. District Court, 164 Colo. 9, 432 P.2d 1 (1967); Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977); Lincoln First Bank v. District Court, 628 P.2d 615 (Colo. 1981).

Prohibition cannot be converted into, or made to serve the purpose of, an appeal, or writ of review to undo what already has been done. Prinster v. District Court, 137 Colo. 393, 325 P.2d 938 (1958).

Original jurisdiction may not be utilized to avoid the requirements of finality of judgments and orders set forth in C.A.R. 1. Groendyke Transp., Inc. v. District Court, 140 Colo. 190, 343 P.2d 535 (1959).

Prohibition is preventive, rather than corrective, remedy, and usually issues only to prevent the commission of a future act, rather than to undo an act

already performed. People ex rel. Long v. District Court, 28 Colo. 161, 63 P. 321 (1900); Stiger v. District Court, 188 Colo. 407, 535 P.2d 508 (1975).

A writ of prohibition is designed to restrain rather than remedy an abuse of jurisdiction. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977).

The remedy of prohibition is primarily preventive or restraining, not corrective, and only incidentally remedial in the sense of giving relief to the parties. Prinster v. District Court, 137 Colo. 393, 325 P.2d 938 (1958); Leonhart v. District Court, 138 Colo. 1, 329 P.2d 781 (1958).

The office of the writ of prohibition is preventive in that it restrains excessive or improper assumption of jurisdiction by a tribunal possessing judicial or quasi-judicial powers. City of Aurora v. Congregation Beth Medrosh Hagodol, 140 Colo. 462, 345 P.2d 385 (1959).

Relief in the nature of prohibition is discretionary with the supreme court. People ex rel. L'Abbe v. District Court, 26 Colo. 386, 58 P. 604, 46 L.R.A. 850 (1899); People ex rel. Bonfils v. District Court, 29 Colo. 83, 66 P. 1068 (1901); People ex rel. Barnum v. District Court, 74 Colo. 48, 218 P. 912 (1923); People ex rel. Zalinger v. County Court, 77 Colo. 172, 235 P. 370 (1925); Meaker v. District Court, 134 Colo. 151, 300 P.2d 805 (1956); Stull v. District Court, 135 Colo. 86, 308 P.2d 1006 (1957); Leonhart v. District Court, 138 Colo. 1, 329 P.2d 781 (1958); City of Aurora v. Congregation Beth Medrosh Hagodol, 140 Colo. 462, 345 P.2d 385 (1959); Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977); Coquina Oil Corp. v. District Court, 623 P.2d 40 (Colo. 1981); White v. District Court, 695 P.2d 1133 (Colo. 1984); Halaby, McCrea & Cross v. Hoffman, 831 P.2d 902 (Colo. 1992); People v. District Court, Arapahoe County, 868 P.2d 400 (Colo. 1994); Pearson v. District Court, 18th Jud. Dist., 924 P.2d 512 (Colo. 1996).

It is a supervisory power. Prohibition is a power conferred by the constitution by means of which, when necessary, supervisory control may be exercised over inferior tribunals, acting without or in excess of their jurisdiction. People ex rel. Lackey v. District Court, 30 Colo. 123, 69 P. 597 (1902).

And prohibition not granted unless the inferior court has no jurisdiction to act. People ex rel. Barnum v. District Court, 74 Colo. 48, 218 P. 912 (1923); People ex rel. Zalinger v. County Court, 77 Colo. 172, 235 P. 370 (1925); People ex rel. City & County of Denver v. District Court, 81 Colo. 163, 255 P. 447 (1927); Stull v. District Court, 135 Colo. 86, 308 P.2d 1006 (1957); Hampton v. District Court, 199 Colo. 104, 605 P.2d 54 (1980).

When prohibition proper remedy. Relief in the nature of prohibition is a proper remedy only in those cases where the district court is proceeding without or in excess of its jurisdiction or has abused its discretion in exercising its functions. City of Colo. Springs v. District Court, 184 Colo. 177, 519 P.2d 325 (1974); People v. Gallagher, 194 Colo. 121, 570 P.2d 236 (1977); Prudential Prop. & Cas. Ins. Co. of Am. v. District Court, 617 P.2d 556 (Colo. 1980); Lincoln First Bank v. District Court, 628 P.2d 615 (Colo. 1981); Marks v. District Court, 643 P.2d 741 (Colo.), cert. denied, 458 U.S. 1107102 S. Ct. 3486, 73 L. Ed. 2d 1368 (1982); People v. District Court, 825 P.2d 1000 (Colo. 1992); Beckord v. District Court, 698 P.2d 1323 (Colo. 1985); Halaby, McCrea & Cross v. Hoffman, 831 P.2d 902 (Colo. 1992).

Relief in the nature of prohibition is appropriate where the district court is proceeding without or in excess of its jurisdiction, or has abused its discretion. Tyler v. District Court, 193 Colo. 31, 561 P.2d 1260 (1977); Marquez v. District Court, 200 Colo. 55, 613 P.2d 1302 (1980).

An aggrieved party may petition the supreme court for relief in the nature of prohibition when an inferior tribunal has allegedly exceeded its jurisdiction. Solliday v. District Court, 135 Colo. 489, 313 P.2d 1000 (1957).

An order in the nature of prohibition should be entertained where it is apparent that no judgment in favor of the plaintiff in the court below could be affirmed for want of jurisdiction over the person of the defendant. Carlson v. District Court, 116 Colo. 330, 180 P.2d 525 (1947); Kellner v. District Court, 127 Colo. 320, 256 P.2d 887 (1953).

Relief in the nature of prohibition in an original proceeding is proper where a trial court is proceeding, or threatens to proceed, without jurisdiction. Andrews v. Lull, 139 Colo. 536, 341 P.2d 475 (1959).

Although a district court may have jurisdiction of a case, prohibition still may lie upon a clear showing that the court has grossly abused its discretion and that an appeal would not provide an adequate remedy. Western Food Plan, Inc. v. District Court, 198 Colo. 251, 598 P.2d 1038 (1979).

Mandamus proper remedy where court has abused its discretion. Relief in the nature of mandamus under this rule is a proper remedy in a case in which a district court has abused its discretion in exercising its functions. Gonzales v. District Court, 198 Colo. 505, 602 P.2d 857 (1979).

A writ in the nature of mandamus will issue only upon a showing that the trial court has abused its discretion and that the damage sustained as a result of the abuse of discretion cannot be remedied on appeal. Pub. Serv. Co. v. District Court, 638 P.2d 772 (Colo. 1981).

The issuance of a writ to mandate the vacation of the reference order to a master is necessary to protect the rights of the petitioner where the court is proceeding in excess of its power, for to await the final judgment based on the master's report would be too late, any appeal at that point a futile act, the expenditure of both time and money would already have occurred, and there would then be no way to undo what had already been erroneously done. Gelfond v. District Court, 180 Colo. 95, 504 P.2d 673 (1972).

Prohibition will not issue when the petitioner has failed to act with reasonable promptness. James v. James, 95 Colo. 1, 32 P.2d 821 (1934).

Nor where attention of lower court must be directed to jurisdiction question. Prohibition will not issue where the attention of the inferior tribunal has not been called to its alleged lack of jurisdiction, since one summoned can appear specially in the court or quasi-judicial agency to move that process be quashed as to him. City of Thornton v. Pub. Utils. Comm'n, 154 Colo. 431, 391 P.2d 374 (1964).

The attention of the trial court must be called to any lack of jurisdiction before a writ of prohibition will issue from the supreme court. Town of Vail v. District Court, 163 Colo. 305, 430 P.2d 477 (1967); LeGrange v. District Court, 657 P.2d 454 (Colo. 1983).

Nor to prevent court from proceeding to final conclusion. Prohibition will not issue to restrain a trial court having jurisdiction of the parties and of the subject matter from proceeding to a final conclusion. Prinster v. District Court, 137 Colo. 393, 325 P.2d 938 (1958); Leonhart v. District Court, 138 Colo. 1, 329 P.2d 781 (1958); Town of Vail v. District Court, 163 Colo. 305, 430 P.2d 477 (1967); First Nat'l Bank v. District Court, 164 Colo. 9, 432 P.2d 1 (1967).

Nor to restrain court from error in case properly before it. Prohibition may never be used to restrain a trial court from committing error in deciding a question properly before it. Prinster v. District Court, 137 Colo. 393, 325 P.2d 938 (1958); Leonhart v. District Court, 138 Colo. 1, 329 P.2d 781 (1958); Town of Vail v. District Court, 163 Colo. 305, 430 P.2d 477 (1967); First Nat'l Bank v. District Court, 164 Colo. 9, 432 P.2d 1 (1967).

If an inferior court has jurisdiction of the subject, a mistaken exercise of that jurisdiction or of its acknowledged powers will not justify a resort to the extraordinary remedy of prohibition; there must be excess of jurisdiction, and not mere error in the exercise of a conceded jurisdiction. Leonhart v. District Court, 138 Colo. 1, 329 P.2d 781 (1958).

Mere error, irregularity, or mistake in the proceedings of a court having jurisdiction does not justify a resort to the extraordinary remedy by prohibition. Prinster v. District Court, 137 Colo. 393, 325 P.2d 938 (1958).

A writ of prohibition does not correct mere error. Vaughn v. District Court, 192 Colo. 348, 559 P.2d 222 (1977); Alspaugh v. District Court, 190 Colo. 282, 545 P.2d 1362 (1976).

The writ of prohibition cannot be sued for appealing cases on the installment plan and it will not be issued on account of irregularities where the trial court had both jurisdiction of the subject matter and of the person of a defendant. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

Questions on the merits of the case may be reviewed only by appeal; the supreme court will not use its constitutional supervisory power to prevent error in a trial court. Toll v. City & County of Denver, 139 Colo. 462, 340 P.2d 862 (1959).

And will not issue when lower court may properly and fully determine question. The supreme court will not exercise original jurisdiction when the question may be properly submitted and determined and the rights of the petitioner fully protected and enforced in the lower court. Rogers v. Best, 115 Colo. 245, 171 P.2d 769 (1946); Kemper v. District Court, 131 Colo. 325, 281 P.2d 512 (1955); Medberry v. Patterson, 174 F. Supp. 720 (D. Colo.), cert. denied, 358 U.S. 932, 79 S. Ct. 320, 3 L. Ed. 2d 304 (1959).

Review limited to questions of jurisdiction and abuse of discretion. Under this rule, the authority of the supreme court extends no further than to determine whether a trial court exceeds its jurisdiction or abuses its discretion. Toll v. City & County of Denver, 139 Colo. 462, 340 P.2d 862 (1959); People v. Martinez, 24 P.3d 629 (Colo. 2001).

When a writ of prohibition is presented to the supreme court, its only inquiry is whether the inferior judicial tribunal is exercising a jurisdiction it does not possess, or, having jurisdiction over the subject matter and the parties, has exceeded its legitimate powers. City of Aurora v. Congregation Beth Medrosh Hagodol, 140 Colo. 462, 345 P.2d 385 (1959); City of Colo. Springs v. District Court, 184 Colo. 177, 519 P.2d 325 (1974).

And court may not adjudicate rights of non-parties. Where parties who enjoyed favorable ruling in a trial court are not parties in prohibition proceedings in the supreme court, the court is in no position to adjudicate their rights. Prinster v. District Court, 137 Colo. 393, 325 P.2d 938 (1958).

But court may prevent future proceedings or enter proper order. Where an unauthorized act of an inferior tribunal has been performed, and something remains to be done to give full effect to the judgment in a matter beyond the lower court's jurisdiction, prohibition may be granted to prevent such further action and also to undo what has already been done by directing the lower court to set aside its order and enter a proper order. People ex rel. Long v. District Court, 28 Colo. 161, 63 P. 321 (1900).

When more than preventive relief available. Ordinarily, relief only lies to prevent the lower court from proceeding further with the cause, but where this would not give the relator the relief to which he is entitled, it may direct that all proceedings had in excess of jurisdiction be quashed and the order entered which should have been. People ex rel. Lackey v. District Court, 30 Colo. 123, 69 P. 597 (1902).

Application must show prima facie circumstances justifying jurisdiction. A party seeking to invoke the original jurisdiction of the supreme court under this rule, must be able to show, prima facie at least, circumstances justifying the exercise of such jurisdiction. Groendyke Transp., Inc. v. District Court, 140 Colo. 190, 343 P.2d 535 (1959).

And failure to do so is fatal defect. The application to invoke original jurisdiction is fatally defective in that there is no allegation that sets forth the circumstances which rendered it necessary or proper that the supreme court exercise its original jurisdiction. Rogers v. Best, 115 Colo. 245, 171 P.2d 769 (1946); Medberry v. Patterson, 174 F. Supp. 720 (D. Colo.), cert. denied, 358 U.S. 932, 79 S. Ct. 320, 3 L. Ed. 2d 304 (1959).

Burden is on petitioner. In an original proceeding pursuant to this rule, the burden is on the petitioner to clearly establish that the respondent trial court is proceeding without or in excess of its jurisdiction, or has seriously abused its discretion. Brewer v. District Court, 655 P.2d 819 (Colo. 1982); Miller v. District Court, 737 P.2d 834 (Colo. 1987).

Lower court and judge are indispensable parties. In an application to the appellate tribunal for relief against an inferior court, the court and judge thereof are indispensable parties. James v. James, 95 Colo. 1, 32 P.2d 821 (1934).

In a proceeding seeking a writ of mandamus, the district court and the district court judge, acting in his capacity as judge, should be named as the appropriate respondents. Wesson v. Bowling, 199 Colo. 30, 604 P.2d 23 (1979).

No time limit on filing specified. This rule does not specify any time limit on filing. Application of the doctrine of laches may bar consideration of original proceedings by the supreme court; nevertheless, a three-month delay may not be unreasonable. Nolan v. District Court, 195 Colo. 6, 575 P.2d 9 (1978).

This rule tolls statutory speedy trial period. People v. Jamerson, 198 Colo. 92, 596 P.2d 764 (1979); People v. Beyette, 711 P.2d 1263 (Colo. 1986).

Although proceeding not technically interlocutory appeal. Section 18-1-405 and Crim. P. 48 exclude, from the computation of the time in which a defendant shall be brought to trial the period of delay caused by an interlocutory appeal, but an original proceeding under this rule is, technically speaking, not an interlocutory appeal. People v. Medina, 40 Colo. App. 490, 583 P.2d 293 (1978).

No authority for issuing writs of prohibition against attorney general. Although this rule provides for prohibition against district courts in appropriate circumstances, it expresses no authority for issuing such writs against the attorney general. Western Food Plan, Inc. v. District Court, 198 Colo. 251, 598 P.2d 1038 (1979).

Applied in Berger v. People, 123 Colo. 403, 231 P.2d 799, cert. denied, 342 U.S. 837, 77 S. Ct. 62, 96 L. Ed. 633 (1951); Colo. State Bd. of Exam'rs of Architects v. District Court, 126 Colo. 340, 249 P.2d 146 (1952); Caldwell v. District Court, 128 Colo. 498, 266 P.2d 771 (1953); Farrell v. District Court, 135 Colo. 329, 311 P.2d 410 (1957); Garrimore v. Justice Court, 143 Colo. 403, 355 P.2d 116 (1960); Scheer v. District Court, 147 Colo. 265, 363 P.2d 1059 (1961); Colo. State Council of Carpenters v. District Court, 155 Colo. 54, 392 P.2d 601 (1964); Schwader v. District Court, 172 Colo. 474, 474 P.2d 607 (1970); People ex rel. Heckers v. District Court, 170 Colo. 533, 463 P.2d 310 (1970); People ex rel. Dunbar v. District Court, 180 Colo. 107, 502 P.2d 420 (1972); City & County of Denver v. Juvenile Court, 182 Colo. 157, 511 P.2d 898 (1973); People v. Spencer, 185 Colo. 377, 524 P.2d 1084 (1974); Jacobucci v. District Court, 189 Colo. 380, 541 P.2d 667 (1975); City of Louisville v. District Court, 190 Colo. 33, 543 P.2d 67 (1975); Clinic Masters, Inc. v. District Court, 192 Colo. 120, 556 P.2d 473 (1976); Shon v. District Court, 199 Colo. 90, 605 P.2d 472 (1980); Barnes v. District Court, 199 Colo. 310, 607 P.2d 1008 (1980); Barker v. District Court, 199 Colo. 416, 609 P.2d 628 (1980); In re Henne, 620 P.2d 62 (Colo. App. 1980); People v. Jones, 631 P.2d 1132 (Colo. 1981); Sandefer v. District Court, 635 P.2d 547 (Colo. 1981); People v. Clerkin, 638 P.2d 808 (Colo. App. 1981); Cavanaugh v. State, Dept. of Soc. Servs., 644 P.2d 1 (Colo. 1982); Continental Title Co. v. District Court, 645 P.2d 1310 (Colo. 1982); Pleasant v. Tihonovich, 647 P.2d 236 (Colo. 1982); Faris v. Rothenberg, 648 P.2d 1089 (Colo. 1982); People v. Anderson, 649 P.2d 720 (Colo. App. 1982); Greenwell v. Gill, 660 P.2d 1305

(Colo. App. 1982); Pignatiello v. District Court, 659 P.2d 683 (Colo. 1983); People v. Smith, 984 P.2d 50 (Colo. 1999); People v. Villapando, 984 P.2d 51 (Colo. 1999).

II. Illustrative Cases.

Trial court found proceeding without jurisdiction. Carlson v. District Court, 116 Colo. 330, 180 P.2d 525 (1947); Kellner v. District Court, 127 Colo. 320, 256 P.2d 887 (1953); Warwick v. District Court, 129 Colo. 300, 269 P.2d 704 (1954); Stull v. District Court, 135 Colo. 86, 308 P.2d 1006 (1957).

Question of constitutionality is matter to be raised by appeal, and not by a petition for prohibition. Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958).

Supreme court's discharge of a rule to show cause improvidently granted has no substantive significance and does not indicate approval or disapproval of trial court ruling, and, thus, trial court erred in using such discharge as a basis for dismissing criminal charges against a defendant. People v. McGraine, 679 P.2d 1084 (Colo. 1984).

But prohibition proper to prevent prosecution barred by statute of limitations. An original proceeding in prohibition is proper to prevent a trial judge from proceeding with a prosecution on an indictment which showed on its face that the indictment had not been returned within the time fixed by statute, as a court may not proceed contrary to the inhibitions contained in the statute of limitations. Markiewicz v. Black, 138 Colo. 128, 330 P.2d 539, 75 A.L.R.2d 678 (1958).

Where a trial court is without jurisdiction to try defendant under an indictment showing on its face that prosecution is barred by the statute of limitations, prohibition is the proper remedy for relief. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

Or to prevent double jeopardy. Where it appears that defendants were in jeopardy and that a court is about to place them in jeopardy a second time for the same offense, prohibition is the proper proceeding to protect defendants in their constitutional right against being twice put in jeopardy for the same offense. Markiewicz v. Black, 138 Colo. 128, 330 P.2d 539, 75 A.L.R.2d 678 (1958).

This rule is an appropriate method for a defendant to challenge an erroneous ruling on probable cause. Habeas corpus relief is generally not available unless other relief is unavailable. Blevins v. Tihonovich, 728 P.2d 732 (Colo. 1986).

This rule provides an appropriate procedural mechanism, absent any other adequate remedy, to mandate compliance by the department of corrections with trial court sentencing orders. People v. Dixon, 133 P.3d 1176 (Colo. 2006).

Original proceeding could have been filed to test preliminary hearing finding probable cause. White v. MacFarlane, 713 P.2d 366 (Colo. 1986).

Exercise of original jurisdiction proper to prevent confusion among prosecutors and uncertainty of defendants where pre-trial ruling declared death penalty statute to be unconstitutional. People v. Young, 814 P.2d 834 (Colo. 1991).

Exercise of original jurisdiction proper to resolve question of juvenile court's authority to order department of institutions not to send youths to out-of-state facility. McDonnell v. Juvenile Court, 864 P.2d 565 (Colo. 1993).

Supreme court had original jurisdiction to determine whether trial court exceeded its jurisdiction or seriously abused its discretion in not allowing petitioner to proceed in forma pauperis. Magistrate's denial of motion did not constitute reversible error or prejudice to petitioner where magistrate determined petitioner's subsequent claims, and denied relief. Hawkinson v. Biddle, 880 P.2d 748 (Colo. 1994).

Exercise of jurisdiction under this rule proper to review trial court's ruling denying plaintiffs' request to proceed without filing cost bond since ruling had an obvious impact on the ability to litigate claims. Walcott v. District Ct., 2nd Jud. Dist., 924 P.2d 163 (Colo. 1996).

Exercise of jurisdiction proper under this rule, where the trial court abused its discretion in discharging defendant from the department of corrections and where appeal would be inadequate to remedy defendant's immediate and improper release from the department. People v. Miller, 25 P.3d 1230 (Colo. 2000).

Exercise of original jurisdiction proper to address the district courts staying of an employee's Wage Claim Act claim against an employer pending conclusion of arbitration proceedings when appellate review of the arbiter's final decision would not have been an adequate remedy because the underlying issue of the right to pursue compensation through the Colorado court system would not be resolved. Lambdin v. District Ct. of Arapahoe Cty., 903 P.2d 1126 (Colo. 1995).

Or where court lacks subject matter jurisdiction. Prohibition is applicable to restrain a trial court from proceeding with a criminal trial when it has no

jurisdiction over the subject matter. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

Or personal jurisdiction. Prohibition is the proper remedy to invoke in a civil action where a district court is proceeding without jurisdiction of the person of a defendant. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

Where a court lacked jurisdiction to determine a party's right to custody in a habeas corpus proceeding, prohibition is a proper remedy to challenge a custody order from that court. Lopez v. Smith, 146 Colo. 180, 360 P.2d 967 (1961); Brouwer v. District Court, 169 Colo. 303, 455 P.2d 207 (1969).

Where an application is made to a licensing authority for a retail liquor license and the license is duly issued, the district court does not have jurisdiction to reverse the findings of the licensing authority and revoke the license in review proceedings if the licensee is not made a party. The petitioner-licensee, not being a party to the review proceedings, has no remedy by appeal and properly sought relief by invoking the original jurisdiction of the supreme court. Short v. District Court, 147 Colo. 52, 362 P.2d 406 (1961).

Writ of mandamus will issue to insure full observance with the rules of civil procedure. In a proper case, a writ of mandamus will issue to insure the full observance of the rules of civil procedure, and, in such a case, it must be shown that the damage to petitioner cannot be cured by appeal and that judicial discretion has been abused. Curtis, Inc. v. District Court, 186 Colo. 226, 526 P.2d 1335 (1974).

Pretrial discovery may be proper subject for original writ. Matters relating to pretrial discovery are ordinarily within the trial court's discretion and are reviewable only by appeal rather than in an original proceeding; however, if it is shown that judicial discretion has been grossly abused and that damage to the petitioners could not be cured by appeal, an original writ in the nature of prohibition may issue. Chicago Cutlery Co. v. District Court, 194 Colo. 10, 568 P.2d 464 (1977).

When a procedural ruling will have a significant effect on a party's ability to litigate the merits of the controversy and the damage to a party could not be cured on appeal, an original proceeding is an appropriate remedy to challenge a trial court's order relating to matters of pretrial discovery. Kerwin v. District Court 649 P.2d 1086 (Colo. 1982).

Although matters of pretrial discovery are ordinarily within the discretion of the trial court, they are not exempted from extraordinary relief under

appropriate circumstances. Sanchez v. District Court, 624 P.2d 1314 (Colo. 1981).

Although orders relating to pretrial discovery are interlocutory in nature and normally not reviewable in an original proceeding, the supreme court has not hesitated to exercise its original jurisdiction when a discovery order places a party at an unwarranted disadvantage in litigating the merits of his claim. Caldwell v. District Court, 644 P.2d 26 (Colo. 1982).

Where the trial court's order both prevented the plaintiff from accessing the sole source of factual information for which she demonstrated substantial need and departed significantly from the court's precedent in mandating that plaintiff waive medical record privileges, the court properly exercised its jurisdiction. Cardenas v. Jerath, 180 P.3d 415 (Colo. 2008).

As may be denial of amendment of complaint. Denial of petitioner's motion to amend his complaint was a ruling justifying the supreme court's exercise of original jurisdiction. Varner v. District Court, 618 P.2d 1388 (Colo. 1980).

And pretrial rulings on issues involving admissibility of evidence and imposition of sanctions against prosecution in criminal cases are claims which are properly before the supreme court for a decision on the merits in an original proceeding. People v. District Court, 664 P.2d 247 (Colo. 1983); People v. Casias, 59 P.3d 853 (Colo. 2002).

Relief was appropriate under this rule where the trial court's ruling barring introduction of DNA evidence would impair the prosecution's ability to present its case and double jeopardy would bar a retrial if the defendant were acquitted. The supreme court held that the trial court erred in refusing to admit the DNA evidence and that exclusion of the evidence was an abuse of discretion. People v. Shreck, 22 P.3d 68 (Colo. 2001).

And reviewing an erroneous discovery order that could place an unnecessary burden on the prosecution that is not mandated by the rules. People v. Vlassis, 247 P.3d 196 (Colo. 2011).

And psychiatric examination ordered in violation of C.R.C.P. 35(a). Petitioner's allegations that respondent court exceeded its jurisdiction and abused its discretion by ordering a psychiatric examination in violation of C.R.C.P. 35(a) presented a proper case for exercise of the supreme court's original jurisdiction. Post-judgment appeal obviously cannot reverse the possible adverse consequences of a pretrial psychiatric examination of petitioner. Tyler v. District Court, 193 Colo. 31, 561 P.2d 1260 (1977).

And denial of intervention of right. In cases in which an order denies the right to intervene, situations may arise (e.g., where intervention is a matter of right) where the determination in the action may bind the intervenors and where the denial can be considered as a final order affecting the rights of the persons seeking to intervene. In such instances an order denying intervention may justify invoking the original jurisdiction of the supreme court to prevent a denial or miscarriage of justice. Groendyke Transp., Inc. v. District Court, 140 Colo. 190, 343 P.2d 535 (1959).

And improper consolidation of actions. Contention that district court had no power under ? §38-22-111(1) to consolidate one action which was pending with another action which had been dismissed without prejudice, and thus was proceeding without in personam jurisdiction, was a proper matter to be resolved in a proceeding for a writ of mandamus. Columbia Sav. & Loan Ass'n v. District Court, 186 Colo. 212, 526 P.2d 661 (1974).

And question of improper venue. The supreme court may consider the question of improper venue on an original writ in view of the importance of determining the question raised and of preventing the delay and expense of a retrial. Jameson v. District Court, 115 Colo. 298, 172 P.2d 449 (1946); Bd. of County Comm'rs v. District Court, 632 P.2d 1017 (Colo. 1981).

In an action on contract, it appearing that defendant was entitled to have the case tried in the county of his residence, relief is allowed against the trial in another county. People ex rel. Barnum v. District Court, 74 Colo. 121, 218 P. 1047 (1923).

And denial of dismissal for failure to grant speedy trial. Where a trial court has denied his motion for dismissal for failure to grant a speedy trial, a criminal defendant may seek a writ of prohibition. Hampton v. District Court, 199 Colo. 104, 605 P.2d 54 (1980).

Relief in the nature of prohibition under this rule is an appropriate remedy when a district court is proceeding without jurisdiction to try a defendant in violation of his right to a speedy trial. Marquez v. District Court, 200 Colo. 55, 613 P.2d 1302 (1980).

And protection of judgment lienor. An appeal following a trial on the merits may not be an adequate remedy for a judgment lienor whose priority might be destroyed by the sale of the encumbered property by a judgment creditor whose rights attached subsequent to the default judgment; thus, an original proceeding is proper. Weaver Constr. Co. v. District Court, 190 Colo. 227, 545 P.2d 1042 (1976).

And review of order for temporary possession in condemnation proceeding. Because an order for temporary possession in a condemnation proceeding is interlocutory, and review must be by an original proceeding. Larson v. Chase Pipe Line Co., 183 Colo. 76, 514 P.2d 1316 (1973).

And failure to provide transcript of preliminary hearing to indigent. Failure to provide a transcript of a preliminary hearing at the request of an indigent defendant in a criminal case, when the transcript is necessary for an effective defense, is an abuse of discretion by the district court and is subject to review by the supreme court on an original writ. Gonzales v. District Court, 198 Colo. 505, 602 P.2d 857 (1979).

And failure to provide transcript of preliminary hearing to indigent. Failure to provide a transcript of a preliminary hearing at the request of an indigent defendant in a criminal case, when the transcript is necessary for an effective defense, is an abuse of discretAnd question of reasonableness of bail. The proper remedy to the question of the reasonableness of the amount set as bail is by way of original proceedings in the supreme court. Balltrip v. People, 157 Colo. 108, 401 P.2d 259 (1965).ion by the district court and is subject to review by the supreme court on an original writ. Gonzales v. District Court, 198 Colo. 505, 602 P.2d 857 (1979).

Supreme court has jurisdiction to review trial court's order on attorney fees for a court-appointed attorney as an independent original proceeding, but, if there is an appeal on some aspect of the underlying action, the attorney fees issue may be raised in such appeal without the necessity of bringing the independent original proceeding. Bye v. District Court, 701 P.2d 56 (Colo. 1985).

Supreme court has jurisdiction to review controversy over sanctions, because it implicates entirely different legal theory than underlying action, is collateral to the merits of that action, and involves parties which are different than the parties to the underlying action. Halaby, McCrea & Cross v. Hoffman, 831 P.2d 902 (Colo. 1992).

But order granting intervention not reviewable on original writ. An order of a trial court granting intervention under C.R.C.P. 24 is not reviewable by the supreme court in an action invoking the court's original jurisdiction under this rule. Groendyke Transp., Inc. v. District Court, 140 Colo. 190, 343 P.2d 535 (1959).

Nor application to set aside default judgment. The only proper procedure to secure review of a trial court's order granting or denying an application to set aside a default judgment is by appeal after final judgment. Weaver Constr. Co. v. District Court, 190 Colo. 227, 545 P.2d 1042 (1976).

The only proper procedure to secure review of a trial court's order granting an application to set aside a default judgment is by writ of error after final judgment, not prohibition. Stiger v. District Court, 188 Colo. 407, 535 P.2d 508 (1975).

And prohibition not usable to limit hearing by regulatory commission. Where the jurisdiction of the public utilities commission was invoked by the utility when it filed its application, the commission scheduled a hearing, and notice was directed to be given to those whom the commission envisioned might be interested, the supreme court certainly cannot enjoin the hearing or direct the scope thereof in order to prevent error, nor can it limit the parties to whom notice should be given; thus, a petition for prohibition is premature. City of Thornton v. Pub. Utils. Comm'n, 154 Colo. 431, 391 P.2d 374 (1964).

Revocation of conditional plea agreement in criminal proceeding by district court, which retains jurisdiction over agreement at least until the express condition has been satisfied, goes beyond the scope of supreme court review cognizable under this rule. White v. District Court, 695 P.2d 1133 (Colo. 1984).

Supreme court has no original jurisdiction to issue a writ of prohibition against an independent regulatory commission like the public utilities commission. Intermountain R.E.A. v. Pub. Utils. Comm'n, 723 P.2d 142 (Colo. 1986).

Supreme court has jurisdiction to review a defendant's sentence if the trial court's sentence is illegal. People v. District Court, 673 P.2d 991 (Colo. 1983).

Supreme court has jurisdiction to review the court of appeals' stay of the Colorado state board of medical examiners' suspension of a doctor's license to practice medicine. Bd. of Med. Exam'rs v. Court of Appeals, 920 P.2d 807 (Colo. 1996).

Interlocutory review granted to address the propriety of the trial court's orders for mediation, where trial court ordered mediation despite petitioner's claims of physical and psychological abuse by husband and appellate review would not prevent the harm petitioner sought to avoid. Pearson v. District Court, 18th Jud. Dist., 924 P.2d 512 (Colo. 1996).

Prohibition generally improper where new trial ordered. Relief in the nature of prohibition is not a proper remedy in cases where the trial court orders a new trial, unless the trial court's decision to grant or deny the new trial

reflects a clear showing of an abuse of discretion. People in Interest of P.N., 663 P.2d 253 (Colo. 1983).

Issuance of injunctive orders without complying with rules of civil procedure. Stull v. District Court, 135 Colo. 86, 308 P.2d 1006 (1957).

The court may set aside a lower court order allowing a person or entity to operate without a license when the lower tribunal has abused its discretion or acted outside of its jurisdiction to defeat exercise of the agency's authority delegated to it by the legislature. Due regard for the agency's role in carrying out the legislative design is at the heart of the court's inquiry in this regard. Kourlis v. District Court, El Paso County, 930 P.2d 1329 (Colo. 1997).

Rule to show cause issued why Boulder county district court should not grant the petitioners' motion for a change of venue and held that the district court erroneously denied the petitioners' motion for change of venue under C.R.C.P. 98(b)(2). Executive Dir. v. District Ct. for Boulder County, 923 P.2d 885 (Colo. 1996).

Rule to show cause made absolute where district court issued case management order that required the trial to be set within 30 days; the date of issuance of the order extended the deadline for setting of trial by 30 days. Becker v. District Ct. for Arapahoe County, 969 P.2d 700 (Colo. 1998).

Rule to show cause made absolute where trial court refused plaintiffs' uncontested motions to postpone the deadline for disclosure of expert testimony and to continue the trial. Parties were in agreement to wait for the NTSB's plane crash investigative report instead of hiring expert investigators on short notice. Burchett v. S. Denver Windustrial, 42 P.3d 19 (Colo. 2002).

Given the liberal interpretation afforded to procedural rules, district court abused its discretion by dismissing petitioner's motion for transfer as untimely filed under C.R.C.P. 520(b) and appellate remedy would be inadequate. Accordingly, court makes the rule to show cause absolute and directs direct court to grant petitioner's motion for transfer to county court. Semental v. Denver County Court, 978 P.2d 668 (Colo. 1999).

For relief available in the nature of remedial writs in the district court generally, see C.R.C.P. 106; for jurisdiction of supreme court to issue remedial and original writs in general, see ? §3 of art. VI, Colo. Const.

RULE 21.1. Certification of Questions of Law

(a) Power to Answer. The supreme court may answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States, a United States District Court, or other federal court, when requested by the certifying court, if there is involved in any proceeding before it questions of law of this state which may be determinative of the cause then pending in the certifying court and as to which it appears to the certifying court that there is no controlling precedent in the decisions of the supreme court.

(b) Method of Invoking. This rule may be invoked by an order of any of the courts referred to in section (a) upon said court's own motion or upon the motion of any party in which the certified question arose.

(c) Contents of Certification Order. A certification order must set forth:

(1) The questions of law to be answered; and

(2) A statement of all facts relevant to the questions certified and showing fully the nature of the controversy in which the questions arose.

(d) Preparation of Certification Order. The certifying court must prepare the certification order, which must be signed by the judge presiding at the hearing, and the clerk of the certifying court must forward the certification order under its official seal to the supreme court. The supreme court may require the original or copies of all or of any portion of the record before the certifying court to be filed under the certification order, if, in the opinion of the supreme court, the record or a portion thereof may be necessary in answering the certified questions.

(e) Fees and Costs of Certification. Fees and costs of certification are the same as in civil appeals docketed before the supreme court and will be equally divided between the parties unless otherwise ordered by the certifying court in its order of certification.

(f) Briefs and Argument. If the supreme court agrees to answer the questions certified to it, the court will notify all parties. The parties may not file any briefs unless ordered to do so by the court. If ordered to file briefs, the plaintiff in the trial court, or the appealing party in the appellate court must file its opening brief within 42 days from the date of receipt of the notice, and the opposing party or parties must file an answer brief within 35 days from service of the opening brief. A reply brief may be filed within 21 days of the service of the answer brief. Briefs must comply with the form and

service requirements of C.A.R. 28, 31, and 32. Oral arguments may be allowed as provided in C.A.R. 34.

(g) Opinion. The written opinion of the supreme court stating the law governing the questions certified will be sent by the clerk under the seal of the supreme court to the certifying court and to the parties.

(Source: f amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1 b; amended and adopted June 7, 2018, effective July 1, 2018.)

Annotation

Utilization of rule to obtain binding opinion from Colorado supreme court. See Imel v. United States, 375 F. Supp. 1102 (D. Colo. 1973), aff'd, 523 F.2d In re A-B Cattle Co. v. United States, 196 Colo. 539, 589 P.2d 57 (1978); Moore v. McFarlane, 642 P.2d 496 (Colo. 1982).

Applied in Imel v. United States, 523 F.2d 853 (10th Cir. 1975); United States v. United Banks, 542 F.2d 819 (10th Cir. 1976); People v. District Court, 196 Colo. 401, 586 P.2d 31 (1978); In re Question Concerning State Judicial Review, 199 Colo. 463, 610 P.2d 1340 (1980); City & County of Denver v. Bergland, 517 F. Supp. 155 (D. Colo. 1981); Keller v. A.O. Smith Harvestore Prods., 819 P.2d 69 (Colo. 1991); Leonard v. McMorris, 63 P.3d 323 (Colo. 2003); Hoery v. United States, 64 P.3d 214 (Colo. 2003).

RULE 24. Proceedings in Forma Pauperis

(See C. A.R. 12(b).)

RULE 25. Filing and Service

(a) Filing. Documents required or permitted to be filed in the appellate court must be filed with the clerk. Filing may be accomplished by e-filing pursuant to C.A.R. 30, by mail addressed to the clerk, or by hand delivery to the clerk's office. The date of filing of documents is the date they are received by the clerk regardless of method of filing.

(b) Inmate Filings. Documents filed by an inmate confined to an institution will be deemed filed when filed in accordance with C.A.R. 25(b). Documents filed by an inmate confined in an institution are timely filed with the court if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule.

(c) Service of all Documents Required. Copies of all documents filed by any party and not required by these rules to be served by the clerk must, at or before the time of filing, be served by a party or person acting for that party on all other parties to the appeal or review. Service on a party represented by counsel must be made on counsel.

(d) Manner of Service. Service may be personal or by mail or E-Service. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. E-Service is complete upon the time and date of transmission by the E-Service provider.

(e) Proof of Service. Documents presented for filing must contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the person served, certified by the person who made service. Proof of service may appear on or be affixed to the documents filed. The clerk may permit documents to be filed without acknowledgment or proof of service but shall require such to be filed promptly thereafter.

(Source: Entire rule amended and adopted May 17, 2001, effective July 1, 2001; d amended and effective February 7, 2008.)

Annotation

With respect to the service of process requirement of ? § 8-53-119(3), service upon the attorney general constitutes service upon industrial commission (now industrial claim appeals office). Butkovich v. Indus. Comm'n, 723 P.2d 1306 (Colo. 1985).

Applied in In re Lowery v. Indus. Comm'n, 666 P.2d 562 (Colo. 1983).

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RULE 26. Computation and Extension of Time

(a) Computation of Time. In computing any period of time prescribed or allowed by these Rules the day of the act, event, or default from which the designated period of time begins to run shall not be included. Thereafter, every day shall be counted including holidays, Saturdays and Sundays. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. As used in these Rules, "legal holiday" includes the first day of January, observed as New Year's Day; the third Monday in January, observed as Martin Luther King Day; the third Monday in February, observed as Washington-Lincoln Day; the last Monday in May, observed as Memorial Day; the fourth day of July, observed as Independence Day; the first Monday in September, observed as Labor Day; the second Monday in October, observed as Columbus Day; the 11th day of November, observed as Veteran's Day; the fourth Thursday in November, observed as Thanksgiving Day; the twenty-fifth day of December, observed as Christmas Day, and any other day except Saturday or Sunday when the court is closed.

(b) Enlargement of Time. The appellate court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the court may not enlarge the time for filing a notice of appeal beyond that prescribed in C.A.R. 4(a). Nor may the court enlarge the time prescribed by law for filing a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review, or a notice of appeal from, an order of an administrative agency, board, commission, or officer of the State of Colorado, except as specifically authorized by law.

(c) Repealed.

(Source: a amended and effective August 4, 1994; a amended and adopted June 27, 2002, effective July 1, 2002; a amended and effective and committee comment added and effective January 12, 2006; a amended and c repealed and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1 b; comment added and adopted June 21, 2012, effective July 1, 2012.)

Committee Comment

The rule as amended conforms to C.R.C.P. 6(a).

Comment

After the particular effective date, time computation in most situations is intended to incorporate the Rule of Seven. Under the Rule of Seven, a day is a day, and because calendars are divided into 7-day week intervals, groupings of days are in 7-day or multiples of 7-day intervals. Groupings of less than 7 days have been left as they were because such small numbers do not interfere with the underlying concept. Details of the Rule of Seven reform are set forth in an article by Richard P. Holme, 41 Colo. Lawyer, Vol. 1, P 33 (January 2012).

Time computation is sometimes "forward," meaning starting the count at a particular stated event such as date of filing and counting forward to the deadline date. Counting "backward" means counting backward from the event to reach the deadline date such as a stated number of days being allowed before the commencement of trial . In determining the effective date of the Rule of Seven time computation/time interval amendments having a statutory basis, said amendments take effect on July 1, 2012 and regardless of whether time intervals are counted forward or backward, both the time computation start date and deadline date must be after June 30, 2012. Further, the time computation/time interval amendments do not apply to modify the settings of any dates or time intervals set by an order of a court entered before July 1, 2012.

Annotation

Law reviews. For article, "The Problem of Delay in the Colorado Court of Appeals", see 58 Den. L.J. 1 (1980). For article, "'Rule of Seven' for Trial Lawyers: Calculating Litigation Deadlines", see 41 Colo. Law. 33 (January 2012).

Appellate court cannot enlarge the time for filing notice of appeal in civil cases beyond that prescribed in Rule 4(a), C.A.R.Chapman v. Miller, 29 Colo. App. 8, 476 P.2d 763 (1970).

The provisions of section (b) of this rule prohibit an appellate court from enlarging the time for filing a notice of appeal under C.A.R. (4)(a). People v. Allen, 182 Colo. 395, 513 P.2d 1060 (1973).

Filing appeal within time set by statute vests court of appeals with jurisdiction and the court itself cannot enlarge time set by statute. Denver v. Bd. of Assessment Appeals, 748 P.2d 1306 (Colo. App. 1987).

New requirement that notice of appeal be filed with the appellate court is jurisdictional and strict compliance with the rule is required. Therefore, a notice of appeal erroneously filed in the trial court was of no effect under the new rules, and trial court was without authority to grant an extension of

time to correctly file a notice of appeal. Collins v. Boulder Urban Renewal Auth., 684 P.2d 952 (Colo. App. 1984).

But can enlarge time in criminal cases. An appellate court may, for good cause shown, enlarge the time for filing under C.A.R. (4)(a). People v. Allen, 182 Colo. 395, 513 P.2d 1060 (1973).

Although counsel's neglect in timely filing a notice of appeal is inexcusable, the court should consider whether other factors, such as the potential prejudice the appellee may suffer from a late filing, the interests of judicial economy, and the propriety of requiring the defendant to pursue other remedies to redress his counsel's neglect, weigh heavily in favor of permitting the late filing. Estep v. People, 753 P.2d 1241 (Colo. 1988).

Estep v. People factors equally important in a juvenile case when appellate review of a judgment of delinquency entered by a magistrate is foreclosed by counsel's failure to file a timely petition for district court review pursuant to ? §19-1-108(5). People ex rel. M.A.M., 167 P.3d 169 (Colo. App. 2007) (decided prior to 2007 repeal of ? §19-1-108(5)).

A knowing and intentional failure to file an appeal does not constitute good cause for extending the filing time pursuant to section (b). People v. Gilmore, 97 P.3d 123 (Colo. App. 2003).

Judicial economy may constitute excusable neglect under section (b) only when accepting the appeal prevents the case from going back to the trial court on a new motion. People v. Gilmore, 97 P.3d 123 (Colo. App. 2003).

Section (c) is inapplicable as extension of time limit for petition for rehearing set forth in C.A.R. (40)(a). Garrett v. Garrett, 30 Colo. App. 167, 505 P.2d 39 (1971).

Application for time extension must generally be made before time prescribed expires. The application for extension, except on the happening of an unforeseen contingency, must be made before the time to take the step for which further time is asked has expired. La Junta & Lamar Canal Co. v. Fort Lyon Canal Co., 25 Colo. 515, 55 P. 728 motion to set aside order dismissing appeal granted, 25 Colo. 513, 55 P. 729 (1898).

Otherwise, right to perform act lost. Under C.R.C.P. 6 and C.A.R. 31, a right to file an answer brief is lost where no request for extension of time is made within the time limit the brief was due, except upon a showing that failure to act was the result of excusable neglect. Fraka v. Malernee, 129 Colo. 87, 267 P.2d 651 (1954).

Time extension granted where good cause shown. When the required steps in each case cannot be taken within the time limited, on good cause shown such time may be extended. La Junta & Lamar Canal Co. v. Fort Lyon Canal Co., 25 Colo. 515, 55 P. 728, motion to set aside order dismissing appeal granted, 25 Colo. 513, 55 P. 729 (1898).

When an appellant pleads for an enlargement of time under this rule solely on the basis that his counsel neglected to file the notice of appeal, such neglect constitutes "good cause" only if it satisfies the excusable neglect standard set forth in Farmers Ins. Group (507 P.2d 865). Estep v. People, 753 P.2d 1241 (Colo. 1988).

The determination of whether good cause exists for enlargement of time pursuant to this rule for the late filing of a notice of appeal is within the broad discretion of the court of appeals, but such discretion cannot be exercised in a manner that is manifestly arbitrary, unreasonable, or unfair. Estep v. People, 753 P.2d 1241 (Colo. 1988).

Stipulations fixing or extending time disregarded unless expressly approved. Parties cannot by stipulation or agreement fix or extend the time for filing briefs in the supreme court contrary to the rules, and, unless such agreements are approved by the court, they will be disregarded. Wilson v. People, 25 Colo. 375, 55 P. 721 (1898); La Junta & Lamar Canal Co. v. Fort Lyon Canal Co., 25 Colo. 515, 55 P. 728, motion to set aside order dismissing appeal granted, 25 Colo. 513, 55 P. 729 (1898); Estep v. People, 753 P.2d 1241 (Colo. 1988).

The time for filing an appeal to a decision of the title board is five days after the board denies the motion for rehearing and not five days from the date the secretary of state certifies the documents requested for appeal. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998).

The requirement that an appeal be filed within five days from the board's denial of a motion for rehearing is to be construed in conjunction with this rule, thus limiting the computation of five days to exclude Saturday and Sunday. Matter of Title, Ballot Title for 1997-98 No. 62, 961 P.2d 1077 (Colo. 1998).

General rule on time computation does not affect specific time limits imposed by statute. A party to a proceeding who received notice of the industrial claim appeals office's order by mail, and who did not file an appeal within 20 days after the date of the certificate of mailing of the order as required by the applicable statute, was not entitled to the additional three days allowed by this rule for service by mail. Indus. Claim Appeals Office v. Zarlingo, 57 P.3d 736 (Colo. 2002).

Applied in Widener v. District Court, 200 Colo. 398, 615 P.2d 33 (1980); People v. Boivin, 632 P.2d 1038 (Colo. App. 1981); Cline v. Farmers Ins. Exch., 792 P.2d 305 (Colo. App. 1990); Garcia v. Medved Chevrolet, Inc., 240 P.3d 371 (Colo. App. 2009), aff'd, 263 P.3d 92 (Colo. 2011).

RULE 27. Motions

(a) In General.

(1) Application for Relief. An application for an order or other relief must be made by filing a motion, unless these rules prescribe another form.

(2) Content and Service of Motion.

(A) Grounds and Relief Sought. A motion must state with particularity the grounds for the motion, the relief sought, and the legal argument necessary to support it.

(B) Accompanying Documents. Any affidavit or other documents necessary to support a motion must be filed with the motion, including documents required by a specific provision of these rules governing such a motion.

(C) Documents Barred. The following documents are barred:

(i) a separate brief;

(ii) a separate notice of motion; and

(iii) a proposed order.

(D) Service. The motion must be served on all other parties pursuant to Rule 25. A motion to consolidate an appeal with another appeal must be served on all parties in both appeals.

(3) Response to Motion.

(A) Time to File. Any party may file a response in opposition to a motion, other than a motion for a procedural order pursuant to section (b) of this rule. The response must be filed within 7 days after service of the motion unless the court shortens or extends the time. In its discretion, the court may act on a motion authorized by Rule 8, 8.1, 9, or 41 before the 7 day period runs.

(B) Cross-Motion for Affirmative Relief. A response may include a cross-motion for affirmative relief. The time to respond to the new motion for affirmative relief is governed by Rule 27(a)(3)(A). The title of the response must alert the court to the request for relief.

(b) Determination of Stipulated Motions and Motions for Procedural Orders.

The court may act on a stipulated motion signed by all parties or a motion for a procedural orders, including motion under Rule

26(b), at any time without awaiting a response. Any party adversely affected by the court's action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion specifically requesting that relief must be filed.

(c) Power of a Single Justice or Judge to Decide a Motion. In addition to the authority expressly conferred by these rules or by law, a single justice or judge may act alone on non-dispositive motions and on voluntary or uncontested dispositive motions. The appellate court may provide by rule or by order that only the court or a division of the court may act on any motion or class of motions. The court or a division of the court may review the action of a single justice or judge.

(d) Form of Motions. All documents and pleadings relating to motions must comply with Rule 32.

(e) No Oral Argument. A motion will be decided without oral argument unless the court orders otherwise.

(Source: d amended August 30, 1985, effective January 1, 1986; a amended and adopted April 4, 1996, effective July 1, 1996; entire rule amended and adopted February 24, 2005, effective July 1, 2005; a amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1 b; amended effective January 7, 2015.)

Annotation

Law reviews. For article, "Motions Practice in the Court of Appeals", see 23 Colo. Law. 1797 (1994). For article, "Amendments to Appellate Rules Concerning Type Size and Word Count", see 34 Colo. Law. 27 (June 2005).

RULE 28. Briefs

(a) Appellant's Brief. The appellant's brief must be entitled "opening brief" and must contain the following under appropriate headings and in the order indicated:

(1) a certificate of compliance as required by C.A.R. 32(h);

(2) a table of contents, with page references;

(3) a table of authorities - cases (alphabetically arranged), statutes, and other authorities --with references to the pages of the brief where they are cited;

(4) a statement of the issues presented for review;

(5) a concise statement identifying the nature of the case, the relevant facts and procedural history, and the ruling, judgment, or order presented for review, with appropriate references to the record (see C.A.R. 28 (e));

(6) a summary of the arguments, which must:

(A) contain a succinct, clear, and accurate statement of the arguments made in the body of the brief;

(B) articulate the major points of reasoning employed as to each issue presented for review; and

(C) not merely repeat the argument headings or issues presented for review;

(7) the arguments which must contain:

(A) under a separate heading placed before the discussion of each issue, statements of the applicable standard of review with citation to authority, whether the issue was preserved, and if preserved, the precise location in the record where the issue was raised and where the court ruled; and

(B) appellant's contentions and reasoning, with citations to the authorities and parts of the record on which the appellant relies;

(8) a short conclusion stating the precise relief sought; and

(9) any request for attorney fees.

(b) Appellee's Brief. The appellee's answer brief must be entitled "answer brief" and must conform to the requirements of C.A.R. 28 (a) except that a statement of the issues or of the case need not be made unless the appellee is

dissatisfied with the appellant's statement. For each issue, the answer brief must, under a separate heading placed before the discussion of the issue, state whether the appellee agrees with the appellant's statements concerning the standard of review with citation to authority and preservation for appeal, and if not, why not. The answer brief must also contain any request for attorney fees or state any opposition to attorney fees requested in the opening brief.

(c) Reply Brief. The appellant may file a brief, which must be entitled "reply brief" in reply to the answer brief. A reply brief must comply with C.A.R. 28(a)(l)-(3), and must state any opposition to attorney fees requested in the answer brief. No further briefs may be filed except with leave of court.

(d) References in Briefs to Parties. Parties should minimize use of the terms "appellant" and "appellee." Parties should use the designations used in the lower court or agency proceeding, the parties' actual names or initials, or descriptive terms such as "the employee," "the injured person," or "the taxpayer."

(e) References to the Record. Reference to the record and to material appearing in an addendum to the brief should generally follow the format detailed in the "Court of Appeals Policy on Citation to the Record." Record references, including abbreviations, must be clear and readily identifiable.

(f) Reproduction of Statutes, Rules, Regulations, etc. If the court's determination of the issues presented requires the study of regulations, ordinances, or any statutes or rules not currently in effect or not generally available in an electronic format, the relevant parts may be reproduced in an addendum at the end of the brief.

(g) Length of Briefs.

(1) An opening brief and an answer brief must contain no more than 9,500 words. A reply brief must contain no more than 5,700 words. Headings, footnotes, and quotations count toward the word limitations. The caption, table of contents, table of authorities, certificate of compliance, certificate of service, and signature block do not count toward the word limit.

(2) A self-represented party who does not have access to a word-processing system must file a typewritten or legibly handwritten opening or answer brief of not more than 30 double-spaced and single-sided pages, or a reply brief of no more than 18 double-spaced and single-sided pages. Such a brief must otherwise comply with C.A.R. 32.

(3) A party may file a motion to exceed the word limitation explaining the reasons why additional words are necessary. The motion must be filed with the brief.

(h) Briefs in Cases Involving Multiple Appellants or Appellees. In cases involving more than one appellant or appellee, including consolidated cases, any number of appellants or appellees may join in a single brief, and any party may adopt by reference any part of another's brief, but a party may not both file a separate brief and incorporate by reference the brief of another party. Parties may also join in reply briefs. In cases involving a single appellant or appellee with multiple opposing parties, the single party must file a single brief in response to multiple opposing parties' briefs. Except by permission of the court, such a brief is restricted to the page and word limits set forth in C.A.R. 28(g), regardless of the cumulative page and word counts of the opposing parties' briefs. Multiple parties represented by the same counsel must file a joint brief.

(i) Citation of Supplemental Authorities. If pertinent and significant new authority comes to a party's attention after the party's brief has been filed, a party may promptly advise the court by giving notice, with a copy to all parties. The notice must set forth the citation and state, without argument, the reason for the supplemental citation, referring either to the page of the brief or to a point argued orally. The body of the notice must not exceed 350 words. Any response must be made promptly and must be similarly limited.

(Source: IP(a), (b), (c), (g), and (h) amended March 17, 1994, effective July 1, 1994; entire rule amended and adopted December 4, 2003, effective January 1, 2004; entire rule amended and adopted February 24, 2005, effective July 1, 2005; (k) and committee comment added and effective June 22, 2006; (e) amended and effective September 7, 2006; (g) amended and effective May 28, 2009; entire rule and comments amended and effective June 25, 2015.)

COMMENTS

2006

Compliance with subsection (k) does not warrant lengthy discussion but requires only the declaration of the applicable standard of review and the record reference to where the issue was preserved. The following are examples:

(1) An appellate court reviews the wording of an instruction for abuse of discretion, [cite case]. Because this is a criminal case and no objection was

made or alternative instruction tendered in the trial court, the issue should be reviewed for plain error [cite case].

(2) The admissibility of expert testimony is reviewed for abuse of discretion, [cite case] This issue was preserved by appellant's offer of proof. R._____, p._____.

2015

Prior subsection (h) entitled, "Briefs in Cases Involving Cross-Appeals," has been deleted from C.A.R. 28. The substance of prior subsection (h) now appears in C.A.R. 28.1, which sets forth briefing requirements for cases involving cross-appeals.

Prior subsection 28(k) entitled, "Standard of Review; Preservation," has been deleted, but parties must continue to comply with its substantive requirements, which are now set forth in subsections 28(a)(7)(A) and (b). Compliance with subsections 28(a)(7)(A) and (b) does not warrant lengthy discussion but requires only the declaration of the applicable standard of review with citation to authority and the record reference to where the issue was preserved. The following are examples:

(1) An appellate court reviews the wording of an instruction for abuse of discretion, [cite case]. Because this is a criminal case and no objection was made or alternative instruction tendered in the trial court, the issue should be reviewed for plain error [cite case].

(2) The admissibility of expert testimony is reviewed for abuse of discretion, [cite case] This issue was preserved by appellant's offer of proof. R. CF, p.

The deletion of prior subsections (h) and (k) required the re-lettering of the substance of previous subsections (i), "Briefs in Cases Involving Multiple Appellants or Appellees," and (j) "Citation of Supplemental Authorities," to new subsections (h) and (i), respectively.

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ANNOTATION

Law reviews.

For article, "How Not to Write a Brief", see 22 Dicta 109 (1945). For article, "Supreme Court Proceedings: Rules 111-119", see 23 Rocky Mt. L. Rev. 618 (1951). For article, "Colorado Criminal Procedure - Does It Meet Minimum Standards?", see 28 Dicta 14 (1951). For article, "Appellate Procedure and the New Supreme Court Rules", see 30 Dicta 1 (1953). For article, "Some

Observations on Colorado Appellate Practice", see 34 Dicta 363 (1957). For article, "Some Observations on Brief Writing", see 33 Rocky Mt. L. Rev. 23 (1960). For note, "Colorado Appellate Procedure", see 40 U. Colo. L. Rev. 551 (1968). For article, "Amendments to Appellate Rules Concerning Type Size and Word Count", see 34 Colo. Law. 27 (June 2005). For article, "Complying With C.A.R. 28 and 32", see 39 Colo. Law. 65 (November 2010).

Where court could discern that certain issues manifested themselves from a search of the briefs,

fact appellant's brief was deficient relative to the requirements of this rule did not require dismissal. Barr Lake Vill. Metro. Dist. v. Colo. Water Quality Control Comm'n, 835 P.2d 613 (Colo. App. 1992).

Purpose of rules of court.

Rules of court are for the purpose of enforcing an orderly and diligent preparation and submission of causes. La Junta & Lamar Canal Co. v. Fort Lyon Canal Co., 25 Colo. 515, 55 P. 728, motion to set aside order dismissing appeal granted, 25 Colo. 513, 55 P. 729 (1898).

Requirements of this rule adopted as aid to court in disposing of causes.

The requirements of this rule were not adopted merely for the protection or convenience of litigants, but in a large measure as aids to the court in disposing of causes submitted. Dubois v. People, 26 Colo. 165, 57 P. 187 (1899).

Counsel cannot determine for themselves in what manner they shall prepare a case

for hearing, in disregard of the requirements prescribed by the rules. Dubois v. People, 26 Colo. 165, 57 P. 187 (1899).

Failure to comply with this rule may result in dismissal.

Denver, W. & Pac. Ry. v. Woy, 7 Colo. 556, 5 P. 815 (1884); Meyer v. Helland, 2 Colo. App. 209, 29 P. 1135 (1892); McDonald v. McLeod, 3 Colo. App. 344, 33 P. 285 (1893); Hammond v. Herdman, 3 Colo. App. 379, 33 P. 933 (1893); Buckey v. Phenicie, 4 Colo. App. 204, 35 P. 277 (1894); Wilson v. People, 25 Colo. 375, 55 P. 721 (1898); Dubois v. People, 26 Colo. 165, 57 P. 187 (1899); Meldrum v. Bassler, 40 Colo. 506, 90 P. 1033 (1907); Knapp v. Fleming, 127 Colo. 414, 258 P.2d 489 (1953); Waters v. Culver, 130 Colo. 360, 275 P.2d 936 (1954).

Or affirmance of judgment.

A judgment may be affirmed upon appellant's failure to comply with the requirements for printing briefs. Mitchell v. Pearson, 34 Colo. 281, 82 P. 447 (1905).

General composition of briefs.

Gardner v. City of Englewood, 131 Colo. 210, 282 P.2d 1084 (1955).

Length and contents of appellate briefs.

It is neither necessary nor advisable that every previous procedural move and ruling be presented to the appellate court. Only those procedural steps which are relevant to the issues raised in the appellate court need be recited. People v. Galimanis, 728 P.2d 761 (Colo. App. 1986).

For when the limit on length may be modified, see People v. Galimanis, 728 P.2d 761Colo. App. 1986).

Rule does not extend an open invitation to counsel to conduct additional research

after the close of briefing and then present the fruits of such research to the court on the eve of argument. Glover v. Innis, 252 P.3d 1204 (Colo. App. 2011).

Sufficient statement of the case is presented by relating only the facts material to a decision.

F. W. Woolworth Co. v. Peet, 132 Colo. 11, 284 P.2d 659 (1955).

This rule requires a statement in the brief of the facts material to a decision of the case. Lowe v. United States Fid. & Guar. Co., 171 Colo. 215, 466 P.2d 73 (1970).

Rule provides for a summary of argument.

Farrell v. Bashor, 140 Colo. 408, 344 P.2d 692 (1959).

Appellant required to set out part of record supporting contentions of error.

The elimination of the requirement of an abstract of the record does not relieve the appellant of the duty of setting out such parts of the pleadings, the evidence, the findings, and the judgment as are required to support his contentions of error. In re Hay's Estate, 127 Colo. 411, 257 P.2d 972 (1953).

As court will not search through briefs to discover errors and supporting evidence.

The court will not search through briefs to discover what errors are relied on, and then search through the record for supporting evidence. It is the task of counsel to inform the court, as required by the rules, both as to the specific errors relied on and the grounds and supporting facts and authorities therefor. Mauldin v. Lowery, 127 Colo. 234, 255 P.2d 976 (1953); Westrac, Inc. v. Walker Field, 812 P.2d 714 (Colo. App. 1991); Castillo v. Koppes-Conway, 148 P.3d 289 (Colo. App. 2006).

Where a taxpayer appeals from an adverse decision in a quo warranto action challenging right of member of the federal rent advisory board to hold office as a city councilman and the federal statutes were not quoted or cited or summarized or analyzed in the record or in the taxpayer's brief, the appellate court will not search through the federal statutes to find grounds of technical disability in order to remove the councilman from office. People ex rel. Miller v. Cavender, 123 Colo. 175, 226 P.2d 562 (1950).

Argument that is merely a bald assertion of error violates section (a) of this rule and is not properly presented for review.

Sinclair Transp. Co. v. Sandberg, 2014 COA 76M,__P.3d__.

Brief held inadequate.

Mauldin v. Lowery, 127 Colo. 234, 255 P.2d 976 (1953); In re Hay's Estate, 127 Colo. 411, 257 P.2d 972 (1953); Westrac, Inc. v. Walker Field, 812 P.2d 714 (Colo. App. 1991); Castillo v. Koppes-Conway, 148 P.3d 289 (Colo. App. 2006).

Scurrilous brief attacking trial judge stricken.

Knapp v. Fleming, 127 Colo. 414, 258 P.2d 489 (1953).

Briefs stricken and appeal dismissed due to uncivil language and inadequate argument.

Martin v. Essrig, 277 P.3d 857 (Colo. App. 2011).

Applied in Barlow v. Staples, 28 Colo. App. 93, 470 P.2d 909 (1970).

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RULE 28.1. Briefs in Cases Involving Cross-Appeals

(a) Applicability. This rule applies to a case in which a cross-appeal is filed.

(b) Designation of Appellant. The party who files a notice of appeal first is the appellant for the purposes of this rule and C.A.R. 34. These designations may be modified by the parties' agreement or by court order.

(c) Appellant's Opening Brief. The appellant must file an opening brief in the appeal. This brief must be entitled "opening brief" and must comply with C.A.R. 28(a) and (d)-(h).

(d) Appellee's Opening-Answer Brief. The appellee must file an opening brief in the cross-appeal and must, in the same brief, respond to the opening brief in the appeal. This brief must be entitled "opening-answer brief" and must comply with C.A.R. 28(a), (b), and (d)-(h), except that the brief need not include a statement of the case unless the appellee is dissatisfied with the appellant's statement of the case.

(e) Appellant's Answer-Reply Brief. The appellant must file a brief that responds to the portion of the opening-answer brief that constitutes an opening brief in the cross-appeal, and may, in the same brief, reply to the portion of the opening-answer brief that constitutes an answer brief in the appeal. This brief must be entitled "answer-reply brief" and must comply with C.A.R. 28(b)-(h).

(f) Appellee's Reply Brief. The appellee may reply to the portion of the answer-reply brief that constitutes an answer brief. This brief must be entitled "reply brief" and must comply with C.A.R. 28(c)-(h) and must be limited to the issues raised in the cross-appeal. No further briefs may be filed except with leave of court.

(g) Length of Briefs.

(1) An opening, opening-answer, and answer-reply brief must contain no more than 9,500 words. An appellee's reply brief must contain no more than 5,700 words. Headings, footnotes, and quotations count toward the word limitations. The caption, table of contents, table of authorities, certificate of compliance, certificate of service, and signature block do not count toward the word limit.

(2) A self-represented party who does not have access to a word-processing system must file a typewritten or legibly handwritten opening, opening-answer, or answer-reply brief of not more than 30 double-spaced and single-

sided pages, or a reply brief of no more than 18 double-spaced and single-sided pages. Such a brief must otherwise comply with C.A.R. 32.

(3) A party may file a motion to exceed the word limitation explaining the reasons why additional words are necessary. The motion must be filed with the brief.

(h) Citation of Supplemental Authorities. If pertinent and significant new authority comes to a party's attention after the party's brief has been filed, a party may promptly advise the court by giving notice, with a copy to all parties. The notice must set forth the citation and state, without argument, the reason for the supplemental citation, referring either to the page of the brief or to a point argued orally. The body of the notice must not exceed 350 words. Any response must be made promptly and must be similarly limited.

Comment

2015

The new rule is similar to Fed. R. App. P. 28.1 and applies to briefs involving cross-appeals. The portions of the previous version of C.A.R. 28(h) and (g) referencing cross-appeals have been removed. The substance of those subsections has been imported into C.A.R. 28.1.

RULE 29. Brief of an Amicus Curiae

(a) When Permitted. An amicus curiae may file a brief only by leave of court or at the court's request.

(b) Motion for Leave to File. The motion to file an amicus brief must identify the movant's interest and state the reasons why an amicus brief would be helpful to the court. The brief must be conditionally filed with the motion, unless the court grants leave to file the motion without the brief.

(c) Content and Form. An amicus brief must comply with Rule 32. The caption page on the brief must indicate whether the brief is submitted in support of a party, and if so must identify the party or parties supported. The brief must also comply with Rule 28(a)(2) and (3) and must include the following:

(1) a certificate of compliance as required by Rule 32(h);

(2) a concise statement of the identity of the amicus curiae and its interest in the case; and

(3) an argument, which may be preceded by a summary but need not include a statement of the applicable standard of review or whether the issue was preserved.

(d) Length. Except by the court's permission, an amicus brief may be no more than one-half the maximum length authorized by these rules for a party's principal brief. If the court grants a party permission to file a longer brief, that extension does not affect the length of the amicus brief.

(e) Time for Filing. An amicus curiae must file its brief within the deadline for filing the principal brief of the party being supported. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's opening brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer.

(f) Reply Brief. Unless the court orders otherwise, an amicus curiae may not file a reply brief.

(g) Oral Argument. An amicus curiae may participate in oral argument only with the court's permission, which will be granted only for extraordinary reasons. A motion to participate in oral argument must state that the supported party does not object and will share its allotted time with amicus. The length of oral argument will not be extended to accommodate amicus participation.

Annotation

Amicus curiae limited to questions raised by appealing parties. An appellate court will consider only those questions properly raised by the appealing parties. Amicus curiae must accept the issues made and propositions urged by the appealing parties, and any additional questions presented in a brief filed by an amicus curiae will not be considered. Denver United States Nat'l Bank v. People ex rel. Dunbar, 29 Colo. App. 93, 480 P.2d 849 (1970).

Applied in First Lutheran Mission v. Dept. of Rev., 44 Colo. App. 417, 613 P.2d 351 (1980).

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RULE 30. E-Filing

(a) Definitions.

(1) Document. A pleading, motion, brief, writing or other paper filed or served under Colorado Appellate Rules.

(2) E-Filing/Service System. The E-Filing/Service System ("E-System") approved by the Colorado Supreme Court for filing and service of documents via the Internet through the Court-authorized E-System provider.

(3) Electronic Filing. Electronic filing ("E-Filing") is the transmission of documents to the clerk of the court, and from the court, via the E-System.

(4) Electronic Service. Electronic service ("E-Service") is the transmission of documents to any party in a case via the E-System. Parties who have subscribed to the E-System have agreed to receive service via the E-System.

(5) E-System Provider. The E-Service/E-Filing System Provider authorized by the Colorado Supreme Court.

(6) S/Name. A symbol representing the signature of the person whose name follows the "S/" on the electronically or otherwise signed form of the E-Filed or E-Served document.

(b) Types of Cases Applicable.

E-Filing and E-Service are permissible in all cases.

(c) To Whom Applicable.

(1) Attorneys licensed to practice law in Colorado may register to use the E-System.

(2) Where the system and necessary equipment are in place to permit it, pro se parties and government entities and agencies may register to use the E-System.

(d) E-Filing-Date and Time of Filing.

A document transmitted to the E-System Provider by 11:59 p.m. Colorado time shall be deemed to have been filed with the clerk of the court on that date.

(e) E-Service-When Required-Date and Time of Service.

Documents submitted to the court through E-Filing shall be served under C.A.R. 25 by E-Service. A document transmitted to the E-System Provider for service by 11:59 p.m. Colorado time shall be deemed to have been served on that date.

(f) Filing Party to Maintain the Signed Copy-Paper Document Not to Be Filed-Duration of Maintaining of Document. A printed or printable copy of an E-Filed or E-Served document with original or scanned signatures shall be maintained by the filing party and made available for inspection by other parties or the court upon request, but shall not be filed with the court. When these rules require a party to maintain a document, the filer is required to maintain the document for a period of two years after the final resolution of the action, including the final resolution of all appeals.

(g) Documents Requiring E-Filed Signatures. For all E-Filed and E-Served documents, signatures of attorneys and parties may be in S/Name typed form to satisfy signature requirements, once the necessary signatures have been obtained on a paper form of the document. Attorneys and parties may also use an electronic ink signature.

(h) Documents under Seal. A motion for leave to file documents under seal may be E-Filed. Documents to be filed under seal pursuant to an order of the court may be E-Filed at the direction of the court; however, the filing party may object to this procedure.

(i) Transmitting of Orders, Notices, Opinions and Other Court Entries. Appellate courts shall distribute orders, notices, opinions, and other court entries using the E-System in cases where E-Filings were received from any party.

(j) Form of E-Filed Documents. E-Filed documents shall comply with all requirements as to form contained within these rules.

(k) E-Filing May be Mandated. The Chief Justice may mandate, or, with the permission of the Chief Justice, the Chief Judge of the court of appeals may mandate E-Filing for specific case classes or types of cases. An appellate justice or judge may mandate E-Filing and E-Service for a specific case for submitting documents to the court and serving documents on case parties. Where E-Filing is mandatory, the court may thereafter accept a document in paper form and the court shall scan the document and upload it to the E-Service Provider. After notice to an attorney that all future documents are to be E-Filed, the court may charge a fee of $50 per document for the service of scanning and uploading a document filed in paper form. Where E-Filing and E-Service are mandatory an appellate justice or judge may exclude pro se parties from mandatory E-Filing requirements.

(l) Relief in the Event of Technical Difficulties.

(1) Upon satisfactory proof that E-Filing or E-Service of a document was not completed because of: (a) an error in the transmission of the document to

the E-System Provider which was unknown to the sending party; (b) a failure of the E-System Provider to process the E-Filing when received, or (c) other technical problems experienced by the filer or E-System Provider, the court may enter an order permitting the document to be filed nunc pro tunc to the date it was first attempted to be sent electronically.

(2) Upon satisfactory proof that an E-Served document was not received by or unavailable to a party served, the court may enter an order extending the time for responding to that document.

(m) Form of Electronic Documents.

(1) Electronic Document Format, Size and Density. Electronic document format, size, and density shall be as specified by Chief Justice Directive #11-01, as amended.

(2) Multiple Documents. Multiple documents may be filed in a single electronic filing transaction. Each document in that filing must bear a separate document title.

(3) The Court authorized service provider for the program is Colorado Courts E-Filing (www.courts.state.co.us).

(Source: Entire rule added and effective February 7, 2008; e amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1 b; amended October 26, 2017, effective October 26, 2017.)

RULE 31. Serving and Filing Briefs

(a) Time to Serve and File Briefs. The appellant must serve and file the opening brief within 42 days after record is filed. The appellee must serve and file the answer brief within 35 days after service of the opening brief. The appellant may serve and file a reply brief within 21 days after service of the answer brief. In cases involving cross-appeals the appellant must serve and file the opening brief within 42 days after the record is filed, the cross-appellant's opening-answer brief and the appellant's answer-reply brief shall be served and filed within 35 days after service of the opposing party's brief. The cross-appellant may serve and file a reply brief within 21 days after service of the appellant's answer-reply brief.

(b) Consequence of Failure to File. If an appellant or cross-appellant fails to file a brief within the time provided by this rule, or within an extended time as permitted by the court, the court may dismiss the appeal on its own motion or a motion to dismiss filed by the appellee or cross-appellee.

(Source: a amended March 17, 1994, effective July 1, 1994; b and c amended May 12, 1994, effective July 1, 1994; a amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1 b.)

Annotation

Law reviews. For article, "The Problem of Delay in the Colorado Court of Appeals", see 58 Den. L.J. 1 (1980).

Purpose and observance of rule. This rule is for the proper dispatch of business, and its observance is required in the interests of litigants generally. Wilson v. People, 25 Colo. 375, 55 P. 721 (1898); People v. J. H. Cooper Enterprises, 111 Colo. 338, 141 P.2d 414 (1943).

Briefs may not be filed whenever or wherever counsel may find it convenient. Smith v. Woodall, 129 Colo. 435, 270 P.2d 746 (1954); Freeman v. Cross, 134 Colo. 437, 305 P.2d 759 (1957).

Burden is clearly on appellants to make a timely filing of their opening brief pursuant to this rule and ? §24-4-106(4), C.R.S.Warren Village, Inc. v. Bd. of Assmt. Appeals, 619 P.2d 60 (Colo. 1980); Wilkinson v. Motor Vehicle Div., 634 P.2d 1016 (Colo. App. 1981).

Right to file answer brief is lost where no request for extension of time is made within the time limit the brief was due, except upon a showing that

failure to act was the result of excusable neglect. Fraka v. Malernee, 129 Colo. 87, 267 P.2d 651 (1954).

Court's discretion to dismiss. Dismissal for failure to comply with statutory time limitations for filing briefs is within the discretion of the trial court. Wilkinson v. Motor Vehicle Div., 634 P.2d 1016 (Colo. App. 1981).

Time for filing when motion to dismiss appeal denied. Time for filing an answer brief on the merits, where a motion to dismiss an appeal is denied, shall commence to run on the date of the announcement of the opinion; otherwise, this rule will control in the matter of filing briefs. Johnson v. George, 119 Colo. 153, 200 P.2d 931 (1948).

Judicial review of agency action pursuant to ? §24-4-106(4), C.R.S., is subject to the time limitations specified in section (a) of this rule. Dismissal for failure to comply with statutory time limitations for filing briefs is left within the trial court's discretion. DuPuis v. Charnes, 668 P.2d 1 (Colo. 1983).

Agreement between parties extending time not binding on court. A court is not bound by an agreement between parties which extends the time for filing briefs. Wilkinson v. Motor Vehicle Div., 634 P.2d 1016 (Colo. App. 1981).

Applied in Smith v. County of El Paso, 42 Colo. App. 316, 593 P.2d 979 (1979); People v. Boivin, 632 P.2d 1038 (Colo. App. 1981).

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RULE 32. Form of Briefs and Appellate Documents

(a) Form of Briefs and Other Appellate Documents. Except as otherwise provided in this rule or by leave of court, all briefs and other appellate documents must comply with the following standards:

(1) Type Size. The typeface must be 14-point or larger, including footnotes, except that the caption may be in 12-point if necessary to fit on one page;

(2) Typeface. The type must be a plain, Roman style with serifs. Italics or boldface may be used for emphasis. Cited case names must be italicized or underlined.

(3) Paper Size, Line Spacing, and Margins. All documents must be on 8 ?½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least 1 ?½ inches on the top and 1 inch on the left, right, and bottom. Page numbers, are required; and may be placed in the bottom margin, but no text may appear there.

(4) Length. If a brief or other appellate document is subject to a word limit, it must include a certificate by the attorney, or by a self-represented party, that the document complies with the applicable word limit. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the document. The certificate must state the number of words in the document.

(b) Documents Submitted by Self-Represented Parties. A self-represented party who does not have access to a word-processing system must file typewritten or legibly handwritten briefs and other appellate documents. Such documents must otherwise comply with the form requirements of this rule and the requirements of C.A.R. 28 and, if applicable, C.A.R. 28.1.

(c) Binding and Reproduction. Briefs and other appellate documents may be produced by any process that yields a clear black image on white paper. The paper must be opaque and unglazed. Only one side of the paper may be used. Text must be reproduced with a clarity that equals or exceeds the output of a laser printer. Photographs, illustrations, and tables may be reproduced by any method that results in a good copy of the original; a glossy finish is acceptable if the original is glossy. Consecutive sheets must be stapled together at the top left margin.

(d) Caption. The first page of each brief or other appellate document must contain a caption that includes the following basic document information:

(1) the name and address of the court in which the proceeding is filed;

(2) the nature of proceeding (e.g., Appeal, Petition for Writ of Certiorari, Petition for Rule to Show Cause); name of the court(s), agency, or board below; and the lower court judge(s), and case number(s);

(3) the names of parties with appellate court party designations as follows:

(A) In the Supreme Court: Appellant(s) or Appellee(s) in cases in which the Supreme Court has original appellate jurisdiction; Petitioner(s) or Respondent(s) in original proceedings filed pursuant to C.A.R. 21 and certiorari proceedings.

(B) In the Court of Appeals: Petitioner(s) or Respondent(s) in appeals filed pursuant to C.A.R. 3.1 and 3.4 (see Appendix to Chapter 32); Appellant(s) or Appellee(s) in all other appeals.

(4) the name, address, telephone number, e-mail address (if any), and fax number (if any) of counsel or self-represented party filing the document;

(5) if the document is filed by counsel, his or her attorney registration number;

(6) the title of the document (e.g., Opening Brief, Petition for Writ of Certiorari), identifying the party or parties for whom the document is filed; and

(7) on the top-right side (opposite filing court information), a blank area that is at least 2 ?½ inches wide and 1 ?¾ inches long, with the words "Case Number."

Form 7 illustrates the required caption for all documents created using a word-processing system. Form 7A illustrates the required caption for all documents filed by a self-represented party who does not have access to a word-processing system and is unable to obtain and complete Form 7.

(e) Signature. Every brief, motion, or other document filed with an appellate court must be signed by the party filing the document or, if the party is represented, by one of the party's attorneys.

(f) References to Sexual Assault Victims and Minors. Except as otherwise provided by this rule or by leave of court, the following individuals must not be named in briefs or other appellate documents and must be identified by initials or appropriate general descriptive terms such as "victim" or "child":

(1) sexual assault victims; and

(2) minors in criminal cases and cases brought under Title 19.

Any relative whose name could be used to determine the name of a person protected under this subsection must also be identified by initials or appropriate general descriptive terms. When the defendant in a criminal case is a family member of the person protected under this subsection, the defendant may be named.

(g) Non-Compliant Documents. If the clerk determines that a brief or other document does not comply with the Colorado Appellate Rules or is not sufficiently legible, the clerk will accept the document for filing but may require that a conforming document be filed.

(h) Certificate of Compliance. Each brief must include, on a separate page immediately behind the caption page, a certificate that the brief complies with all requirements of C.A.R. 28 and C.A.R. 32, and, if applicable, C.A.R. 28.1 or 29. Forms 6 and 6A are the preferred forms for a certificate of compliance and will be regarded as meeting the requirements of C.A.R. 32(a)(4).

(Source: a, b, and c2 amended and d added, effective July 8, 1993; entire rule amended and adopted March 13, 1997, effective July 1, 1997; c amended and Comment added June 1, 2000, effective July 1, 2000; entire rule and Comment amended and adopted June 28, 2001, effective July 1, 2001; c1II and c2II corrected July 24, 2001, effective nunc pro tunc July 1, 2001; entire rule amended and adopted February 24, 2005, effective July 1, 2005; IPa amended and effective February 7, 2008; f added and effective May 28, 2009.)

Comments

2000

This rule conforms the appellate practice to the forms of case captions provided in C.R.C.P. 10 for all documents that are filed in Colorado courts, including both criminal and civil cases. The purpose of the form captions is to provide a uniform and consistent format that enables practitioners, clerks, administrators, and judges to locate identifying information more efficiently.

The preferred case caption format for documents initiated by a party is found in subsection (c)(1)(I). The preferred caption for documents issued by the court or clerk of court is found in subsection (c)(1)(II). Because some parties may have difficulty formatting their documents to include vertical

lines and boxes, alternate case caption formats are found in subsections (c)(2)(I) and (c)(2)(II). However, the box format is the preferred and recommended format.

The boxes may be vertically elongated to accommodate additional party and attorney information if necessary. The "court use" and "case number" boxes, however, shall always be located in the upper right side of the caption.

Forms approved by the State Court Administrator's Office (designated "JDF" or "SCAO" on preprinted or computer-generated forms), forms set forth in the Colorado Court Rules, volume 12, C.R.S. (including those pre-printed or computer-generated forms designated "CRCP" or "CPC" and those contained in the appendices of volume 12, C.R.S.), and forms generated by the state's judicial electronic system, "ICON," shall conform to criteria established by the State Court Administrator's Office with the approval of the Colorado Supreme Court. This includes preprinted and computer-generated forms. JDF and SCAO forms and a flexible form of caption which allows the entry of additional party and attorney information are available and can be downloaded from the Colorado courts web page at http://www.courts.state.co.us/scao/Forms.htm.

2014

This rule conforms the appellate practice to the forms of case captions provided in C.R.C.P. 10 for all documents filed in Colorado appellate courts. The purpose of the form caption is to provide a uniform and consistent format that enables practitioners, clerks, administrators, and judges to locate identifying information more efficiently.

The preferred case caption format for documents initiated by a party is found in subsection (d)(1). Parties who cannot format documents to include vertical lines and boxes may use the alternate case caption format in subsections (d)(2). However, the box format is the preferred and recommended format.

2015

The purpose of the form caption is to provide a uniform and consistent format that enables practitioners, clerks, administrators, and judges to locate identifying information more efficiently. The changes to this rule make the appellate practice caption forms consistent with the forms of case captions provided in C.R.C.P. 10 for all documents filed in Colorado appellate courts.

The required case caption format for documents created using a word-processing system is found in Form 7. Self-represented parties who do not have access to a word-processing system and cannot format documents to include vertical lines and boxes may use the alternate case caption format in Form 7A. However, Form 7 caption format is preferred and recommended.

Subsection (f) is a new subsection. It is based on the legislative requirements set forth in Colo. Rev. Stat. ? §? §19-1-102 (1.7), 19-1-109(1), and 24-72-304(4)(a), and is consistent with longstanding court practice.

Prior subsection (e), formerly titled "Improper Form and Briefs of Other Papers," now titled "Non-Compliant Documents" and (f) titled "Certificate of Compliance" have been re-lettered to subsections (g) and (h), respectively. The substance of the prior subsections has not changed.

Annotation

Law reviews. For article, "Amendments to Appellate Rules Concerning Type Size and Word Count", see 34 Colo. Law. 27 (June 2005). For article, "Complying With C.A.R. 28 and 32 ", see 39 Colo. Law. 65 (November 2010).

Noncompliance will result in dismissal. Where an appellant fails to comply with this provision, the appeal will be dismissed. Dubois v. People, 26 Colo. 165, 57 P. 187 (1899).

Example of noncompliance. A reply brief which is in indistinct and blurred typewriting flagrantly violates this provision. Mitchell v. Pearson, 34 Colo. 281, 82 P. 447 (1905).

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RULE 33. Prehearing Conference

(Repealed effective [January 7, 2015].)

Annotation

Law reviews. For article, "The Problem of Delay in the Colorado Court of Appeals", see 58 Den. L.J. 1 (1980).

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RULE 34. Oral Argument

(a) In General. Oral argument may be allowed at the discretion of the court. A request for oral argument must be made in a separate document entitled "request for oral argument." The request must be filed no later than 7 days after briefs are closed. The court may order oral argument regardless of whether any party requested oral argument.

(b) Notice of Argument; Postponement. The clerk must advise all parties of the date, time, and place oral argument. A motion to postpone the argument must be filed reasonably in advance of the argument date.

(c) Time Allowed for Argument.

(1) In the Supreme Court. Unless the court orders otherwise, each side will be allowed 30 minutes for argument. Any motion for additional time must be made by motion filed within 7 days after the briefs are closed, and will be granted only if good cause is shown. The court may vacate or terminate the argument if, in its judgment, further argument is unnecessary.

(2) In the Court of Appeals. Unless the court orders otherwise, each side will be allowed 15 minutes for argument. Any motion for additional time must be filed within 7 days after the briefs are closed and will be granted only if good cause is shown. The court may vacate or terminate the argument if, in its judgment, further argument is unnecessary.

(d) Order and Content of Argument. The appellant opens the argument and may reserve a portion of its allotted time for rebuttal. Parties should not read at length from briefs, records, or authorities. Unless the court orders otherwise, oral arguments will be limited to the issues raised in the briefs.

(e) Cross-Appeals and Separate Appeals. If there is a cross-appeal, C.A.R. 28.1(b) determines which party is the appellant and which is the appellee for purposes of oral argument. Unless the court directs otherwise a cross-appeal will be argued with the initial appeal ast a single argument. The court may set separate appeals that involve the same or similar issues together for argument. In such cases, separate parties should avoid duplicative argument.

(f) Nonappearance of Parties. If the appellee fails to appear for argument, the court may hear argument by the appellant, if present. If the appellant fails to appear, the court may hear argument by the appellee. If neither party appears, the case will be decided on the briefs unless the court orders otherwise.

(g) Use of Physical Exhibits at Argument; Removal. Parties intending to use physical exhibits other than documents at the argument must arrange with the clerk of court to place them in the court room on the day of the argument before the court convenes. After the argument, the party must removed the exhibits from the court room unless the court directs otherwise. The clerk may destroy or dispose of the exhibits if a party does not reclaim them within a reasonable time after the clerk has given notice to remove them.

(h) Supreme Court Sessions En Banc and in Departments. The chief justice may convene the court en banc at any time, and must do so on the written request of three justices. Subject to this provision, or as limited by the constitution, sessions of the court in departments for the purpose of hearing oral arguments, and designation of the justices to hear such arguments, will be under the direction and control of the chief justice.

(i) References to Minors and Sexual Assault Victims. Reference at oral arguments to sexual assault victims and minors must comply with the requirements of C.A.R. 32(f).

(Source: b1 and c amended March 15, 1985, effective July 1, 1985; b amended August 30, 1985, effective January 1, 1986; d amended and adopted April 4, 1996, effective July 1, 1996; b2 amended and effective September 9, 2004; b amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1 b.)

Comment

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Subsection (i) is a new subsection. It is consistent with new C.A.R. 32(f), and is based on the legislative requirements set forth in Colo. Rev. Stat. ? §? §19-1-102 (1.7), 19-1-109(1), and 24-72-304(4)(a), and is consistent with longstanding court practice.

Comment to (b): This change places a limit on the time period for filing a request for oral argument. The time period is the same as the limit for filing a request for additional time.

Annotation

Law reviews. For article, "Supreme Court Proceedings: Rules 111-119 ", see 23 Rocky Mt. L. Rev. 618 (1951).

Decision on briefs satisfies obligation of counsel on criminal appeal. Where counsel for the parties filed with the court a statement requesting a decision upon the briefs of the respective parties without oral argument pursuant to section (f), it was held that the statement was in accord with the standards of criminal justice, as they relate to the obligations of counsel for the defendant on appeal. Garcia v. People, 174 Colo. 372, 483 P.2d 1347 (1971).

Requests for further oral arguments. Where no request for further oral argument was made, nor was any request for an argument en banc made until after the announcement of the court's decision, the right, if it existed, was waived. Scott v. Shook, 80 Colo. 40, 249 P. 259, 47 A.L.R. 1108 (1926) (decided under former Supreme Court Rule 43).

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RULE 35. Determination of Appeal

(a) Disposition of Appeal. The appellate court may, in whole or in part, dismiss an appeal; affirm, vacate, modify, reverse, or set aside a lower court judgment; and remand any portion of the case to the lower court for further proceedings. When reviewing a ruling or judgment dismissing criminal charges, the appellate court may approve or disapprove of the judgment if retrial of the defendant is prohibited. The appellate court may dismiss an appeal or affirm a lower court judgment without opinion, but it must issue a written opinion when vacating, modifying, reversing, setting aside, or remanding any portion of the lower court judgment.

(b) Equally Divided Supreme Court. When the supreme court acting en banc is equally divided in an opinion, the judgment being appealed will stand affirmed.

(c) Harmless Error. The appellate court may disregard any error or defect not affecting the substantial rights of the parties.

(d) Advancement on Docket. Any pending action may be advanced on the docket and may be disposed of in such order as the court deems appropriate. The court may make such orders relating to the time and necessity for the filing brief and for oral argument as it deems the circumstances demand.

(e) Published Opinions of Court of Appeals. A majority of all of the judges of the court of appeals shall determine which opinions of that court will be designated for official publication. They opinions shall be published in the official publication designated by the supreme court. Opinions designated for official publication must be followed as precedent by all lower court judges in the state of Colorado.

No court of appeals opinion shall be designated for official publication unless it satisfies one or more of the following standards:

(1) the opinion establishes a new rule of law, or alters or modifies an existing rule, or applies an established rule to a novel fact situation;

(2) the opinion involves a legal issue of continuing public interest;

(3) the majority opinion, dissent, or special concurrence directs attention to the shortcomings of existing common law or inadequacies in statutes; or

(4) the opinion resolves an apparent conflict of authority.

(f) Unpublished Opinions of Court of Appeals. A court of appeals opinion not designated for official publication must contain the following notation on the title page: "NOT PUBLISHED PURSUANT TO C.A.R. 35(e)."

If the supreme court grants certiorari to a court of appeals opinion not designated for official publication, and if the supreme court announces an opinion in the case, the court of appeals' opinion will not be published unless otherwise ordered by the supreme court.

(g) Effect of Denial of Writ of Certiorari. The supreme court's denial of a writ of certiorari does not constitute approval of the lower court judgment.

(h) References to Minors and Sexual Assault Victims. Opinions and orders issued by the appellate courts will refer to sexual assault victims and minors in a manner consistent with C.A.R. 32(f).

(Source: f amended and adopted June 27, 2002, effective July 1, 2002; f amended and effective February 7, 2008; e amended and effective April 5, 2010.)

COMMENTS

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(1) Prior subsections (c), entitled, "Affirmation;" (d), entitled, "Reversal;" and (e), entitled, "Disposition of Cause;" were deleted to reflect current appellate practice, for readability, and because portions of these prior subsections addressed functions of the trial court rather than functions of an appellate court. The relevant substance of those prior subsections, however, has been relocated to new subsections (a), entitled "Disposition of Appeal;" (b) entitled "Equally Divided Supreme Court;" and (c), entitled "Harmless Error."

(2) Because prior subsections (c), (d), and (e) were deleted, prior subsection (f), entitled, "Published Opinions of the Court of Appeals," has been re-lettered to subsection (e). For readability and organization, the contents of prior subsection (f) have been divided into new subsections (e); (f), entitled, "Unpublished Opinions of the Court of Appeals;" and (g) entitled, "Effect of Denial of Writ of Certiorari."

(3) New subsection (h) is consistent with C.A.R. 32(f) and 34, and is based on the legislative requirements set forth in Colo. Rev. Stat. ? §? §19-1-102 (1.7), 19-1-109(1), and 24-72-304(4)(a), and is consistent with longstanding court practice.

Annotation

I. General Consideration.

Law reviews. For article, "Supreme Court Proceedings: Rules 111-119 ", see 23 Rocky Mt. L. Rev. 618 (1951). For article, "Appellate Procedure and the New Supreme Court Rules", see 30 Dicta 1 (1953). For article, "A Summary of Colorado Supreme Court Internal Operating Procedures", see 11 Colo. Law. 356 (1982). For article, "Collecting Pre- and Post-Judgment Interest in Colorado: A Primer", see 15 Colo. Law. 753 (1986).

Where question presented on appeal is moot, dismissal of the appeal is in order. People in Interest of P.L.V., 176 Colo. 342, 490 P.2d 685 (1971).

An appeal from order of foreclosure on real property was mooted where record reveals a conscious and voluntary choice by the defendants to allow the property to be sold to satisfy the judgment. Stenback v. Front Range Financial Corp., 764 P.2d 380 (Colo. App. 1988).

Appeal becomes moot if events subsequent to the filing of the appeal render the issues present moot. In re Hartley, 886 P.2d 665 (Colo. 1994).

A case is moot when a judgment, if rendered, would have no practical legal effect upon the existing controversy. In re Hartley, 886 P.2d 665 (Colo. 1994).

Decision on review reinvests jurisdiction in lower court. When a case is determined in the supreme court on review, the lower court is thereupon immediately reinvested with jurisdiction without the issuance of, or receipt by the clerk of the trial court, of a remittitur. Haggott v. Plains Iron Works Co., 74 Colo. 37, 218 P. 909 (1923).

Remittitur is not essential. The former rule directing the clerk to issue remittitur contained no suggestion that it is essential to further proceeding in the trial court. The practice from earliest times has been for the clerk to issue the mandate only upon request. Haggot v. Plains Iron Works Co., 74 Colo. 37, 218 P. 909 (1923).

Supreme court has jurisdiction to compel obedience to its remittitur to district court to require that court to show cause as to whether and in what manner remittitur had been complied with. Green v. Green, 170 Colo. 197, 460 P.2d 224 (1969).

Applied in Brinker v. City of Sterling, 121 Colo. 430, 217 P.2d 613 (1950); Lewis v. Oliver, 129 Colo. 479, 271 P.2d 1055 (1954); Pettingell v. Moede, 129 Colo. 484, 271 P.2d 1038 (1954); Bohn v. Bd. of Adjustment, 129 Colo. 539, 271 P.2d 1051 (1954); Am. Nat'l Bank v. Hereford State Bank, 139 Colo. 345, 338 P.2d 1032 (1959); Colo. Interstate Gas Co. v. Logan Props. Corp., 140

Colo. 411, 344 P.2d 693 (1959); McKenzie v. People, 178 Colo. 450, 497 P.2d 1262 (1972); People v. Chavez, 179 Colo. 69, 498 P.2d 341 (1972); Thornburg v. Homestead Minerals Corp., 184 Colo. 141, 518 P.2d 941 (1974); Coen v. Boulder Valley Sch. Dist. No. RE-2, 402 F. Supp. 1335 (D. Colo. 1975); People v. Morris, 190 Colo. 215, 545 P.2d 151 (1976); Martin v. District Court, 191 Colo. 107, 550 P.2d 864 (1976); Columbine Valley Constr. Co. v. Bd. of Dirs., 626 P.2d 686 (Colo. 1981); Jackson v. Harsco Corp., 653 P.2d 407 (Colo. App. 1982); Palmer v. A.H. Robins Co., Inc., 684 P.2d 187 (Colo. 1984); Martinez v. Dixon, 710 P.2d 498 (Colo. App. 1985); Banek v. Thomas, 733 P.2d 1171 (Colo. 1986); Coors v. Sec. Life of Denver Ins. Co., 112 P.3d 59 (Colo. 2005).

II. Affirmation.

Findings of the trial court will not be disturbed on review unless they are clearly erroneous. C.K.A. v. M.S., 695 P.2d 785 (Colo. App. 1984), cert. denied, 705 P.2d 1391 (Colo. 1985).

Affirmance of the trial court's action disposes of all issues properly presented for review. Mills v. Saunders, 30 Colo. App. 462, 494 P.2d 1309 (1972).

Judgment affirmed where a retrial would result in the same judgment. Boyd v. Munson, 59 Colo. 166, 147 P. 662 (1915); Swanson v. First Nat'l Bank, 74 Colo. 135, 219 P. 784 (1923).

Or when supported by substantial evidence. A determination by a quasi-judicial body is not arbitrary or capricious, and thus not an abuse of discretion, where it is supported by substantial competent evidence, and it will be affirmed on review. Kizer v. Beck, 30 Colo. App. 569, 496 P.2d 1062 (1972).

Where the sufficiency of the evidence to support a guilty verdict is challenged, an appellate court must review the testimony in the light most favorable to the prosecution. If there is sufficient competent evidence to establish the essential elements of a crime, a guilty verdict will not be overturned by an appellate court even though there are conflicts and inconsistencies in the evidence. People v. Diefenderfer, 784 P.2d 741 (Colo. 1989).

The court of appeals should not substitute its opinion of what damages are appropriate for that of the jury. Mere disagreement with the amount of damages awarded is not a sufficient ground to overturn an award of damages which is supported by competent evidence in the record as it is the sole province of the jury to fix fair and just damages, and only upon a

showing of arbitrary or capricious jury action, or that the jury was swayed by passion or prejudice, should an appellate court overturn a jury verdict. Morrison v. Bradley, 655 P.2d 385 (Colo. 1982); Lee's Mobile Wash v. Campbell, 853 P.2d 1140 (Colo. 1993).

Where the evidence is conflicting, a reviewing court should not disregard the jury's verdict, which has support in the evidence, in favor of its own view of the evidence, but must reconcile the verdict with the evidence if at all possible, and if there is any basis for the verdict, it will not be reversed for inconsistency. Lee's Mobile Wash v. Campbell, 853 P.2d 1140 (Colo. 1993).

There was evidence in the record to support the jury award of zero noneconomic damages, and the fact that the jury instruction mandated that the jury "shall determine" the amount of noneconomic damages did not necessarily require an affirmative award of damages since an award of such damages was required only if the damages were caused by the petitioners' negligence. Lee's Mobile Wash v. Campbell, 853 P.2d 1140 (Colo. 1993).

Deference is given to the trial court's findings of fact which will not be overturned as long as there is support for them. This is true even though a contrary position may find support in the record and even though the court might have reached a different result had it been acting as the finder of fact. People v. Thomas, 853 P.2d 1147 (Colo. 1993).

Correct judgment entered for the wrong reason will be affirmed. Klipfel v. Neill, 30 Colo. App. 428, 494 P.2d 115 (1972).

III. Reversal.

Retrial may be ordered on liability only. On reversal of a judgment in an action for damages, the reviewing court may order retrial only upon the question of liability, holding the amount of damages to have been established on the first trial. Boyle v. Bay, 81 Colo. 125, 254 P. 156 (1927).

Or on amount of damages. Where the amount of the judgment due plaintiff was determined on conflicting evidence, a reversal of the judgment will require that the amount be set aside in its entirety pending a trial court determination of the sum properly due plaintiff. Farmers Elevator Co. v. First Nat'l Bank, 30 Colo. App. 529, 497 P.2d 352 (1972) aff'd, 181 Colo. 231, 508 P.2d 1261 (1973).

Mixed questions of law and fact presented for determination must be decided by the trial court, and where left undecided, the cause will be remanded for additional findings. Cook v. Cook, 74 Colo. 339, 221 P. 883 (1923).

When court may direct that proper judgment be entered. Where on review the record clearly discloses the entry of a judgment by the trial court finding all issues for the plaintiff but for an erroneous sum, the cause may be remanded with directions to enter the proper judgment. Mystic Tailoring Co. v. Jacobstein, 94 Colo. 306, 30 P.2d 263 (1934).

In appeal involving challenge to sales and use tax provisions of municipal code, appropriate remedy on appeal is not remand to district court for de novo review under ? §29-2-106.1 since taxpayer pursued review under municipal code. Arapahoe Roofing & Sheet Metal v. Denver, 831 P.2d 451 (Colo. 1992).

Judgment reversed where appeal and questions presented are moot. An ordinance passed while an action is pending on error renders the question before the supreme court moot, and a new zoning resolution adopted by the board of county commissioners even before the action is commenced renders the original action moot. Holding that the action before the lower court and the proceedings on appeal before the supreme court are on questions that are now moot, the judgment of the trial court is reversed and the cause is remanded with directions to dismiss the complaint. Bd. of Adjustment v. Iwerks, 135 Colo. 578, 316 P.2d 573 (1957).

Abstract claim, as an afterthought on appeal, will not support reversal. Anderson v. People, 176 Colo. 224, 490 P.2d 47 (1971), cert. denied, 405 U.S. 1042, 92 S. Ct. 1376, 31 L. Ed. 2d 583 (1972).

IV. Disposition of Cause.

A. In General.

Duties of trial court.Upon regaining jurisdiction, a trial court, through the use of its own enforcement procedures, is then responsible for execution on its own judgment in accordance with any directions issued by an appellate court. Hylton v. City of Colo. Springs, 32 Colo. App. 9, 505 P.2d 26 (1973).

Petition for certiorari is addressed to sound judicial discretion, and denial does not constitute a determination of the issues on the merits. Menefee v. City & County of Denver, 190 Colo. 163, 544 P.2d 382 (1976).

Denial of a petition for certiorari in a criminal case means nothing more than that the supreme court has declared that the case is not properly postured for further appellate review. Menefee v. City & County of Denver, 190 Colo. 163, 544 P.2d 382 (1976).

B. Equally Divided Court.

Affirmed by operation of law. Where one justice did not sit and the remaining six divided equally, the judgment is affirmed by operation of law. Speer v. People ex rel. Rush, 52 Colo. 325, 122 P. 768 (1912); City & County of Denver v. Gunter, 63 Colo. 69, 163 P. 1118 (1917); Menzel v. McKee Live Stock Comm'n Co., 71 Colo. 326, 206 P. 383 (1922); People v. Stapleton, 79 Colo. 629, 247 P. 1062 (1926); Craddock v. Craddock, 90 Colo. 284, 8 P.2d 1112 (1932); La Argo v. Cronbaugh, 90 Colo. 286, 8 P.2d 1112 (1932); Midland Oil Ref. Co. v. Allen, 93 Colo. 102, 23 P.2d 1119 (1933); People ex rel. Link v. Tucker, 96 Colo. 273, 42 P.2d 472 (1935); Pring v. Brown, 96 Colo. 284, 42 P.2d 607 (1935); Larson v. Kalcevic, 99 Colo. 279, 62 P.2d 572 (1936); Courtright v. Legislative Statutory Comm'n, 100 Colo. 82, 65 P.2d 710, cert. denied, 302 U.S. 695, 58 S.Ct. 13, 82 L. Ed. 537 (1937); Creel v. Pueblo Masonic Bldgs. Ass'n, 100 Colo. 281, 68 P.2d 23 (1937); Taylor v. Bd. of Control of State Indus. Sch., 105 Colo. 219, 94 P.2d 184 (1939); Snyder v. Bd. for Appointment of Civil Serv. Comm'rs, 106 Colo. 83, 101 P.2d 436 (1940); Roenfeldt v. Rinker, 108 Colo. 359, 116 P.2d 964 (1941); Butler v. Byrne, 108 Colo. 507, 120 P.2d 196 (1941); Henderson v. Anderson, 108 Colo. 529, 120 P.2d 195 (1941); Hinkley v. Oriental Ref. Co., 116 Colo. 33, 178 P.2d 416 (1947); White v. Jensen, 116 Colo. 378, 182 P.2d 139 (1947); DeWitt v. Victor Am. Fuel Co., 116 Colo. 450, 181 P.2d 816 (1947); State v. Knight-Campbell Music Co., 117 Colo. 326, 187 P.2d 931 (1947); Oestereick v. Roper, 122 Colo. 59, 220 P.2d 551 (1950); Metropolitan Life Ins. Co. v. Hoffman, 122 Colo. 431, 222 P.2d 620 (1950); Eresch v. Hines, 122 Colo. 588, 225 P.2d 59 (1950); In re McNeal's Estate, 124 Colo. 99, 234 P.2d 622 (1951); Hix v. Stanchfield, 124 Colo. 422, 238 P.2d 200 (1951); Jabelonsky v. Fike, 125 Colo. 487, 244 P.2d 1081 (1952); City & County of Denver v. Bd. of County Comm'rs, 145 Colo. 451, 359 P.2d 1031 (1961); State Dept. of Hwys. v. Biella, 672 P.2d 529 (Colo. 1983); Pease v. District Court, 708 P.2d 800 (Colo. 1985).

Constitutes no precedent. A judgment by an equally divided court constitutes no precedent. People ex rel. Walker v. Stapleton, 79 Colo. 629, 247 P. 1062 (1926).

Same question cannot be relitigated between the same parties merely by bringing in a different action. In re Craddock's Estate, 91 Colo. 79, 11 P.2d 807 (1932).

Because judgment has the same effect as if entered with the approval of all the justices. In re Craddock's Estate, 91 Colo. 79, 11 P.2d 807 (1932).

C. Error Not Affecting Substantial Rights of the Parties.

Error which clearly does not prejudice substantial rights of the complaining party is not ground for reversal. Swanson v. First Nat'l Bank, 74 Colo. 135,

219 P. 784 (1923); Thuro v. Meredith, 75 Colo. 471, 226 P. 867 (1924); Myers v. Hayden, 82 Colo. 98, 257 P. 351 (1927); Parker v. Ullom, 84 Colo. 433, 271 P. 187 (1928).

"Substantial right" defined. In construing this rule, as well as C.R.C.P. 61, a substantial right is one which relates to the subject matter and not to a matter of procedure and form. Sowder v. Inhelder, 119 Colo. 196, 201 P.2d 533 (1948).

Variance between pleading and proof does not affect substantial rights. Hiner v. Cassidy, 92 Colo. 78, 18 P.2d 309 (1932).

The variance was not such as affected the substantial right of the parties and was, therefore, such error or defect as the supreme court may disregard. Southwestern Sur. Ins. Co. v. Miller, 63 Colo. 15, 164 P. 507 (1917); Otis & Co. v. Teal, 74 Colo. 336, 221 P. 884 (1923).

Harmless instruction does not affect substantial rights. Howard v. Mitchell, 27 Colo. App. 45, 146 P. 486 (1915).

Improper admission of evidence to a fact which is established by other sufficient evidence does not affect substantial rights. Patterson v. People ex rel. Parr, 23 Colo. App. 479, 130 P. 618 (1913).

Appellate review of trial court's determination pursuant to ? §13-25-129 regarding admissibility of child's hearsay statement should be based upon record made at in limine hearing and may go beyond such record only if issue of harmless error or plain error is raised. People v. Bowers, 801 P.2d 511 (Colo. 1990).

Defect in summons. Error cannot be predicated on any defect in a summons unless the defect results in prejudice. Hocks v. Farmers Union Coop. Gas & Oil Co., 116 Colo. 282, 180 P.2d 860 (1947).

Receipt of verdict in absence of trial judge is technical error. Although the trial judge was not present when the verdict was received, it did not appear that any substantial rights of the defendant were violated by the trial court's procedure, and, as directed by this rule, mere technicalities would not constitute ground for reversal. Sowder v. Inhelder, 119 Colo. 196, 201 P.2d 533 (1948).

V. Published Opinions of Court of Appeals.

An unpublished court of appeals decision has no value as precedent. In re Ballot Title 2005-06 No. 55, 138 P.3d 273 (Colo. 2006).

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For provision on harmless error in proceedings before the trial court, see C.R.C.P. 61.

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RULE 36. Entry and Service of Judgment

An appellate judgment is entered when the court issues or announces its dispositive order or opinion. The clerk must serve the order or opinion on all parties on the day it is entered.

Comment

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This rule was changed for brevity and to reflect the current practice of the appellate courts.

Annotation

Am. Jur.2d. See 20 Am. Jur.2d, Courts, ? § 22.

RULE 37. Interest on Judgments

(a) When the Court Affirms. Unless the law provides otherwise, if a money judgment in a civil case is affirmed, whatever interest is allowed by law is payable from the date on which the judgment was entered in the lower court.

(b) When the Court Does Not Affirm. If a all or part of a judgment is dismissed, vacated, modified, reversed, or set aside with a direction that a money judgment be entered in the lower court, the mandate must contain instructions with respect to allowance of interest.

Annotation

This rule is identical to Federal Appellate Rule 37. Pet Inc. v. Goldberg, 37 Colo. App. 257, 547 P.2d 943 (1975).

Appellate court's authority to determine interest is exclusive. While the appellate court may, of course, remand to the trial court for a determination of the proper statutory interest, the trial court, without such an instruction, lacks jurisdiction to enter any amount of interest not stated in the mandate. Pet Inc. v. Goldberg, 37 Colo. App. 257, 547 P.2d 943 (1975); In re Gutfreund, 148 P.3d 136 (Colo. 2006).

Proper method of attacking an appellate court's instructions as to interest is to petition for amendment or recall of the mandate. Such a procedure is available in Colorado. Pet Inc. v. Goldberg, 37 Colo. App. 257, 547 P.2d 943 (1975).

Applied in Loesekan v. Benefit Trust Life Ins. Co., 37 Colo. App. 493, 552 P.2d 36 (1976); Westec Constr. Mgmt. Co. v. Postle Enter. I, Inc., 68 P.3d 529 (Colo. App. 2002).

RULE 38. Sanctions

(a) General Powers of the Court; Sanctions for Non-Compliance. The appellate court may dismiss an appeal or other appellate proceeding or impose other sanctions it deems appropriate, including attorney fees, for the failure to comply with any of its orders or these appellate rules, including for failure to prosecute the appeal, cause timely transmission of the record, or file an opening brief.

(b) Sanctions for Frivolous Appeal. If the appellate court determines that an appeal or cross-appeal is frivolous, it may award damages it deems appropriate, including attorney fees, and single or double costs to the appellee or cross-appellee.

Comments

1984

[1] This rule now gathers all the sanctions specified in the appellate rules into one rule and broadens the powers of the court by the addition of (e).

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[2] Prior subsections (b), entitled, "Consequence of Failure to File Brief," (c), entitled, "Failure to Prosecute Appeal," and (e), entitled "General Powers of the Court," have been deleted. The relevant substance of these prior subsections has been combined and condensed and now appears in revised subsection (a).

[3] The statement contained in prior subsection (b) that the court may dispense with oral argument if an appellant or cross-appellee fails to file a brief has been deleted from the Rule because, pursuant to C.A.R. 34, whether to allow oral argument is always at the discretion of the appellate court.

[4] Because prior subsections (b), (c), and (e) were deleted, prior subsection (d), entitled "Sanctions for Frivolous Appeal," has been re-lettered to subsection (b).

Annotation

Law reviews. For comment, "Attorney Fee Assessments for Frivolous Litigation in Colorado", see 56 U. Colo. L. Rev. 663 (1985).

Due process considerations. When an appellate court imposes sanctions upon an appellant, due process requires that the appellant be afforded

certain protections before being deprived of his property. He is entitled to notice and an opportunity to respond. Mission Denver Co. v. Pierson, 674 P.2d 363 (Colo. 1984).

Award against state for damages may only be ordered if authorized by statute. People in Interest of A.L.B., 683 P.2d 813 (Colo. App. 1984).

No basis for damages where genuine issue in dispute. There is no basis for an award of damages pursuant to this rule where there is a genuine disputed issue in the matter on appeal. Rocky Mt. Sales & Serv., Inc. v. Havana RV, Inc., 635 P.2d 935 (Colo. App. 1981).

Even where trial court's entry of summary judgment in favor of defendant is upheld on appeal and no genuine issue of material fact is found to have existed, plaintiff's appeal is not automatically frivolous and defendant's request for fees may be denied. Price v. Conoco, Inc., 748 P.2d 349 (Colo. App. 1987).

Appeal held not frivolous because of absence of Colorado authority on the question forming basis of appeal. Jorgenson Realty, Inc. v. Box, 701 P.2d 1256 (Colo. App. 1985).

Abuse of discretion. In light of the significance of the issues on appeal (i.e., the state's obligation to maintain state prisoners in state correctional facilities and to reimburse counties for confining state prisoners) and the fact that both petitioner and respondent sought appellate review, court of appeals abused its discretion in dismissing case for failure to timely transmit the record. Dept. of Corr. v. Pena, 788 P.2d 143 (Colo. 1990).

Substantiality of issues. When determining whether dismissal is an appropriate sanction for failure to timely transmit the record, an appellate court should consider the substantiality of the issues on appeal and the full range of possible sanctions and should select the sanction most appropriate under the circumstances. Dept. of Corr. v. Pena, 788 P.2d 143 (Colo. 1990).

Because the theory propounded on appeal was not a "relitigation" of a settled issue, wholly lacking in precedential support, devoid of a plausible rationale, or brought vexatiously, it cannot be said to be "frivolous". Wood Brothers Homes, Inc. v. Howard, 862 P.2d 925 (Colo. 1993) (decided under former ? § 13-80-127); Adams v. Land Servs., Inc., 194 P.3d 429 (Colo. App. 2008).

Damages not awarded where amount not specified. Where a number of the issues raised by the appellant are frivolous, but where the appellee has not

specified an amount requested for damages, the appellate court will decline to award damages. In re Mann, 655 P.2d 814 (Colo. 1982).

Appeal should be considered frivolous if the proponent can present no rational argument based on the evidence or law in support of a proponent's claim or defense, or the appeal is prosecuted for the sole purpose of harassment or delay. Mission Denver Co. v. Pierson, 674 P.2d 363 (Colo. 1984).

Appeal held to be frivolous, and attorney's fees assessed. Rogers v. Charnes, 656 P.2d 1322 (Colo. App. 1982); Artes-Roy v. City of Aspen, 856 P.2d 823 (Colo. 1993); In re Purcell, 879 P.2d 468 (Colo. App. 1994); Martin v. Essrig, __ P.3d __ (Colo. App. 2011).

An appeal "lacks substantial justification" and is "substantially frivolous" when the appellant's brief fails to set forth, in a manner consistent with C.A.R. 28, a coherent assertion of error supported by legal authority. As a result, it is appropriate to assess attorney fees against the attorney prosecuting the appeal in this case. Castillo v. Koppes-Conway, 148 P.3d 289 (Colo. App. 2006).

Because appeal is not frivolous, court denies defendants' request for their appellate attorney fees pursuant to paragraph (d) of this rule. Lobato v. Taylor, 13 P.3d 821 (Colo. App. 2000), rev'd on other grounds, 71 P.3d 938 (Colo. 2002).

Board of education is entitled to reasonable attorney fees incurred in defending claim of breach of duty to teach morality in public schools where plaintiff relied primarily on overruled case law, constitutional and statutory provisions that imposed no duty, and where plaintiff presented no rational argument based on existing law. Skipworth v. Bd. of Educ., 874 P.2d 487 (Colo. App. 1994).

A claim is frivolous if the proponent can present no rational argument based on the evidence or the law in support thereof. Such test encompasses appeals that are manifestly insufficient or futile. Lego v. Schmidt, 805 P.2d 1119 (Colo. App. 1990).

No sanctions awarded for frivolous appeal even though the court rejected appellants' public policy argument. In re Estate of Schlagel, 89 P.3d 419 (Colo. App. 2003).

Request for costs pursuant to this rule denied. Dewar v. LeNard, 653 P.2d 82 (Colo. App. 1982); People ex rel. A.R.D., 43 P.3d 632 (Colo. App. 2001).

Applied in In re Estate of Perini, 34 Colo. App. 201, 526 P.2d 313 (1974); In re Trask, 40 Colo. App. 556, 580 P.2d 825 (1978); Sports Premiums, Inc. v. Kaemmer, 42 Colo. App. 172, 595 P.2d 696 (1979); Applewood Gardens Homeowners' Ass'n v. Richter, 42 Colo. App. 510, 596 P.2d 1226 (1979); In re Erickson, 43 Colo. App. 319, 602 P.2d 909 (1979); In re Joseph, 44 Colo. App. 128, 613 P.2d 344 (1980); Wyatt v. United Airlines, 638 P.2d 812 (Colo. App. 1981); In re Norton, 640 P.2d 254 (Colo. App. 1981); People in Interest of W.M., 643 P.2d 794 (Colo. App. 1982); United Bank of Denver Nat'l Ass'n v. Pierson, 661 P.2d 1191 (Colo. App. 1982); Smith v. Colo. Dept. of Rev., 661 P.2d 1192 (Colo. App. 1982); Schoonover v. Hedlund Abstract Co. Inc., 727 P.2d 408 (Colo. App. 1986); Citicorp Mortg., Inc. v. Younger, 856 P.2d 52 (Colo. App. 1993); Anderson v. Somatogen, Inc., 940 P.2d 1079 (Colo. App. 1996); In re Custody of C.J.S., 37 P.3d 479 (Colo. App. 2001); Yadon v. Lowry, 126 P.3d 332 (Colo. App. 2005).

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RULE 39. Costs

(a) Against Whom Assessed. The following rules apply unless the law provides or the court orders otherwise:

(1) if an appeal is dismissed, costs are taxed against the appellant unless the parties agree otherwise;

(2) if a judgment is affirmed, costs are taxed against the appellant;

(3) if a judgment is reversed, costs are taxed against the appellee;

(4) if a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed only as ordered by the trial court.

(b) Costs for and Against the State of Colorado. Costs for or against the State of Colorado or any of its agencies or officers will be assessed under subsection (a) only if authorized by law.

(c) Costs on Appeal Taxable in the Trial Court.

(1) Costs Allowed. The following costs on appeal are taxable in the trial court for the benefit of the party entitled to costs under this rule:

(A) the preparation and transmission of the record;

(B) the reporter's transcript, if needed to determine the appeal;

(C) premiums paid for a supersedeas or other bond to preserve rights pending appeal;

(D) docket fees charged pursuant to C.A.R. 12(a); and

(E) fees charged for E-Filing and E-Service as defined in C.A.R. 30(a).

(2) Bill of Costs. A party who wants costs to be taxed in the appellate court must file an itemized and verified bill of costs with the clerk of the trial court. The cost of printing or otherwise producing necessary copies of the record is taxable at rates not higher than those generally charged for such work in Denver. The bill of costs and proof of service must be filed within 14 days after entry of the appellate mandate. Any objection must be filed within 14 days after service of the bill of costs. Upon request to of the trial court clerk, the clerk of the appellate court will provide a receipt reflecting docket fees paid pursuant to Rule 12 and fees paid for E-Filing and E-Service.

(Source: c and e amended May 15, 1986, effective November 1, 1986; c amended and adopted December 14, 2011, effective January 1, 2012, for all

cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1 b. Amended and Adopted by the Court, En Banc, November 3, 2015, effective immediately.)

Comments

2015

[1] This rule has been amended, in part, to be consistent with F.R.A.P. 39, which governs costs, and for clarity and readability. The rule was also revised to shift responsibility for taxing costs from the appellate courts to the trial courts, which reflects and is consistent with the current practice of the courts.

[2] Prior subsection (a), which was previously titled, "To Whom Allowed," is now, more accurately titled, "Against Whom Assessed." The substance of prior subsection (a) had not changed, but its contents are now organized in list form.

[3] Prior subsection (c), entitled "Costs on Appeal Taxable in the Trial Courts," has been deleted, but its substance has been relocated to revised subsection (c)(2), entitled, "Bill of Costs."

[4] Prior subsection (d), entitled "Clerk to Include Costs in Mandate," has been deleted.

[5] Prior subsection (e), entitled "Costs of Appeal Taxable in the Trial Court," has been re-lettered to revised subsection (c) as a result of the deletion of prior subsections (c) and (d), and its title had been slightly revised to "Costs on Appeal Taxable in the Trial Courts."

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Annotation

Law reviews. For article, "Appellate Procedure and the New Supreme Court Rules", see 30 Dicta 1 (1953).

Costs, strictly so called, are a matter of statute or rule of court. Antero & Lost Park Reservoir Co. v. Lowe, 70 Colo. 467, 203 P. 265 (1921).

Costs are recoverable only by virtue of the statute allowing them. Phillips v. Corbin, 25 Colo. 567, 56 P. 180 (1899); Giampapa v. Am. Family Mut. Ins. Co., 12 P.3d 839 (Colo. App. 2000), rev'd on other grounds, 64 P.3d 230 (Colo. 2003).

Costs are limited to docket fees and the expense of producing necessary copies of briefs filed with the appellate court. Giampapa v. Am. Family Mut. Ins. Co., 12 P.3d 839 (Colo. App. 2000), rev'd on other grounds, 64 P.3d 230 (Colo. 2003).

The appellate court is the appropriate court for determination of an award of costs under this rule. Where the trial court awarded costs of the appeal on remand, following a denial by the appellate court of an untimely request for costs under this rule, the trial court erred. Giampapa v. Am. Family Mut. Ins. Co., 12 P.3d 839 (Colo. App. 2000), rev'd on other grounds, 64 P.3d 230 (Colo. 2003).

Court discretion. The use of the word "shall" in section (a) does not mean that a trial court is required to award costs sought under section (e) to a prevailing party on appeal or that the court only has discretion with respect to the amount. In re Goodbinder, 119 P.3d 584 (Colo. App. 2005).

Costs and attorney fees distinguished. Where there is statutory authorization for an award of attorney fees incurred by the prevailing party in defending a judgment on appeal, the question of what court should determine the amount awarded is not governed by this or any other rule. Giampapa v. Am. Family Mut. Ins. Co., 12 P.3d 839 (Colo. App. 2000), rev'd on other grounds, 64 P.3d 230 (Colo. 2003).

In the absence of any statute, rule, or precedent limiting the trial court's jurisdiction to award prevailing party appellate attorney fees, an application to the trial court was appropriate. Giampapa v. Am. Family Mut. Ins. Co., 12 P.3d 839 (Colo. App. 2000), rev'd on other grounds, 64 P.3d 230 (Colo. 2003).

Costs are only to reimburse the successful party. Antero & Lost Park Reservoir Co. v. Lowe, 70 Colo. 467, 203 P. 265 (1921).

For all trials of same cause. Where there is more than one trial of the same cause, the successful party is entitled to recover costs for all the trials. Wallace Plumbing Co. v. Dillon, 73 Colo. 10, 213 P. 130 (1922).

And including annexation proceedings. Under this rule the successful party may recover costs incurred in the supreme court upon appeal in annexation proceedings. Phillips v. Corbin, 25 Colo. 567, 56 P. 180 (1898).

Where suit is instituted and prosecuted vexatiously, defendant's attorney fees may be taxed as costs. London v. Allison, 87 Colo. 27, 284 P. 776 (1930).

In action in mandamus to compel a city council to grant a permit, where judgment is for the plaintiff, he is entitled to recover from the defending

officials who voted against granting the permit his costs taxed in the trial court, but not from those who voted in favor of granting the permit. City of Colorado Springs v. Street, 81 Colo. 181, 254 P. 440 (1927).

This rule does not include a case dismissed for want of jurisdiction. Bartels v. Hoey, 3 Colo. 279 (1877).

Objection barred after payment of costs. When there is no fraud or wrongful purpose or mistake of fact, one may not object further to a taxation of costs against him after he has paid them, or received payment thereof. Webber v. Phister, 71 Colo. 332, 206 P. 385 (1922).

Rationale for section (b) limitation. The limitation in section (b) stems from the basic concept that costs should not be charged against a sovereign state, unless the proper authority so directs. People in Interest of W.M., 643 P.2d 794 (Colo. App. 1982).

Applied in In re Trask, 40 Colo. App. 556, 580 P.2d 825 (1978); Caldwell v. Armstrong, 642 P.2d 47 (Colo. App. 1981); Holcomb v. Steven D. Smith, Inc., 170 P.3d 815 (Colo. App. 2007); URS Group, Inc. v. Tetra Tech FW, Inc., 181 P.3d 380 (Colo. App. 2008); Lucht's Concrete Pumping, Inc. v. Horner, 224 P.3d 355 (Colo. App. 2009), rev'd on other grounds, 255 P.3d 1058 (Colo. 2011).

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For costs incurred in civil actions in general, see article 16 of title 13, C.R.S.

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RULE 39.1. Attorney Fees on Appeal

If attorney fees are recoverable for the appeal, the principal brief of the party claiming attorney fees must include a specific request, and explain the legal and factual basis, for an award of attorney fees. Any opposition to a request for attorney fees, and the legal and factual basis for the opposition, must be set forth in either the answer or reply brief, as appropriate. In its discretion, the appellate court may determine entitlement to and the amount of an award of attorney fees for the appeal, or may remand those determinations to the lower court or tribunal.

(Source: Entire rule added and adopted December 4, 2003, effective January 1, 2004; entire rule corrected February 2, 2004, nun pro tunc December 4, 2003, effective January 1, 2004; amended and adopted by the Court, En Banc, June 9, 2016, effective immediately.)

Annotation

Merely identifying the statute under which fees are requested, without stating the specific grounds that justify an award of fees, does not adequately comply with this rule. In re Newell, 192 P.3d 529 (Colo. App. 2008).

Neither party is entitled to recover its appellate attorney fees from the estate where decedent's siblings and nieces are contesting who is entitled to the estate proceeds, and their respective attorneys are not employed by the personal representative. In re Estate of Evarts, 166 P.3d 161 (Colo. App. 2007).

No award of attorney fees to condominium association on appeal under this rule and ? §38-33.3-123 . Section 38-33-123(1)(c) provides for recovery of attorney fees only in actions to "enforce or defend the provision of this article or of the declaration, bylaws, articles, or rules and regulations". Condominium association defended against purchasers' breach of contract action and sought declaratory action that contract was void. Neither purchasers' claims nor associations' counterclaims were to enforce or defend the article; thus, the statute does not apply. Platt v. Aspenwood Condo. Ass'n, 214 P.3d 1060 (Colo. App. 2009).

Contract provision concerning attorney fees should be considered on remand where it was not part of the record on appeal. Adams v. Land Servs., Inc., 194 P.3d 429 (Colo. App. 2008).

Appellate attorney fees are only awardable where requesting party states a legal basis for recovery. In re Wells, 252 P.3d 1212 (Colo. App. 2011).

RULE 40. Petition for Rehearing

(a) Time to File; Contents; Answer; Oral Argument; Action by Court if Granted.

(1) Time. Unless the time is shortened or extended by order, a petition for rehearing may be filed within 14 days after entry of judgment.

(2) Contents. The petition must state with particularity each points of law or fact the petitioner believes the court has overlooked or misapprehended and must include an argument in support of the petition.

(3) Answer. Unless the court requests a response, no answer to a petition for rehearing is permitted.

(4) Oral Argument. Oral argument is not permitted on a petition for rehearing.

(5) Action by the Court. If a petition for rehearing is granted, the court may:

(A) make a final disposition of the case without reargument;

(B) restore the case to the calendar for reargument or resubmission; or

(C) issue any other order it deems appropriate.

(b) Form of Petition; Length.

The petition must comply in form with C.A.R. 32. The petition must include the following in the caption:

(1) If filed in the supreme court: the name of the author justice; the name of any justice who wrote or participated in a separate opinion; the name of any justice who did not participate in the case; whether the decision was en banc; and, if a departmental decision, the names of the participating justices.

(2) If filed in the court of appeals: the names of the author judge and participating judges, and the name of any judge who wrote or participated in a separate opinion.

Except by permission of court, a petition for rehearing must not exceed 1,900 words, excluding material not counted under C.A.R. 28(g)(1).

(c) Petition for Rehearing in Supreme Court Proceedings.

A petitions for rehearing filed in proceedings before the supreme court must comply with the requirements of subsections (a) and (b) of this rule.

(1) In Direct Appeals. A petition for rehearing may be filed in a direct appeal to the supreme court only after issuance of an opinion. No petition for rehearing may be filed after issuance of an order affirming a lower court order.

(2) In Proceedings Under C.A.R. 21. A petition for rehearing may be filed after issuance of an opinion discharging a rule to show cause or making a rule absolute. No petition for rehearing may be filed after denial of a petition without explanation.

(3) In Certiorari Proceedings. A petition for rehearing may be filed after issuance of an opinion on the merits of a granted petition for writ of certiorari, or when, after granting a writ of certiorari, the court later denies the writ as having been improvidently granted. No petition for rehearing may be filed after issuance of an order denying a petition for writ of certiorari.

(4) In Interlocutory Appeals in Criminal Cases under C.A.R. 4.1. No petition for rehearing shall be permitted in interlocutory appeals filed pursuant to C.A.R. 4.1.

(Source: b amended and adopted April 4, 1996, effective July 1, 1996; entire rule amended and adopted February 24, 2005, effective July 1, 2005; a amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1 b.)

COMMENT

2016

Subsection (c), entitled "Petition for Rehearing in Supreme Court Proceedings" is new. It explains when a petition for rehearing may be filed, see also C.A.R. 21(n) and 54(b); reiterates that a petition for rehearing shall not be permitted in interlocutory appeals in criminal cases, see C.A.R. 4.1 ((g); and clarifies that a petition for rehearing may not be filed after issuance of an order without explanation.

Annotation

Law reviews. For article, "A Summary of Colorado Supreme Court Internal Operating Procedures", see 11 Colo. Law. 356 (1982). For article, "Amendments to Appellate Rules Concerning Type Size and Word Count", see 34 Colo. Law. 27 (June 2005).

Object of a petition for rehearing is to give the parties an opportunity to point out mistakes of law or fact, or both, which it may be claimed the court has made in reaching its conclusion. Norris v. Kelsey, 60 Colo. 297, 152 P. 1167 (1915).

Direct attack upon the judgment after the mandate has issued is not contemplated by the appellate rules. Garrett v. Garrett, 30 Colo. App. 167, 490 P.2d 313 (1971).

Rule inapplicable to decision neither raised nor argued. The prohibitions of this rule do not apply where a cause is decided upon a question not raised by the record nor argued by counsel. Model Land & Irrigation Co. v. Baca Irrigating Ditch Co., 83 Colo. 131, 262 P. 517 (1927).

Rule does not prohibit the citation of authorities, or a reference to those cited in the briefs. Book v. Book, 71 Colo. 502, 208 P. 474 (1922).

Appellate court has no duty to accept untimely petition. Nothing in the language of this rule would imply nor was it the intention of this court in drafting this language that there be a duty on the part of the appellate court to accept an untimely petition for rehearing. The only duty which this rule creates is that the court use its sound discretion in considering a request for any extension of time. Wiggins v. People, 199 Colo. 341, 608 P.2d 348 (1980).

Refusal to enlarge time was an abuse of discretion where the failure to timely file was due to the failure of the clerk of the court of appeals to mail copies of the court of appeals opinion to the third party defendants as required by C.A.R. 36. Brewster v. Nandrea, 705 P.2d 1 (Colo. 1985).

Appellate court's jurisdiction not relinquished pending petition for rehearing. The appellate court holds jurisdiction of the cause for a fixed period for the purpose of permitting an application for a rehearing, and in no case except upon special order, is this jurisdiction relinquished during such period. Norris v. Kelsey, 60 Colo. 297, 152 P. 1167 (1915).

If a petition for rehearing is filed, jurisdiction is retained until such application is finally disposed of, and which may result in a modification or even a reversal of the original judgment of the appellate court. Norris v. Kelsey, 60 Colo. 297, 152 P. 1167 (1915).

Jurisdiction of district court is not restored until cause is finally disposed of by appellate court. Norris v. Kelsey, 60 Colo. 297, 152 P. 1167 (1915).

Evenly divided vote denies petition. A three to three division of the supreme court on the question of granting or denying the first petition for a rehearing

operates to deny that petition. For that reason, under this rule, the appellant was without legal right to file the second petition for rehearing, and should not have been permitted to do so. Such petition, if filed, should be stricken, or if not stricken, then denied. People ex rel. Link v. Tucker, 96 Colo. 273, 42 P.2d 472 (1935).

C.A.R. 26(c) inapplicable as time extension. C.A.R. 26(c), relating to additional time after service by mail, has no application as an extension of time limit set forth in section (a) of this rule. Garrett v. Garrett, 30 Colo. App. 167, 490 P.2d 313 (1971).

Petition held to sufficiently state issue. A petition stating a point the court might have overlooked, and showing the relation of that point to the court's decision, and nothing irrelevant thereto, does not violate this rule. Colburn v. Ernst, 75 Colo. 120, 223 P. 759 (1924).

Petition which contains insulting criticism of the courts or flagrantly disregards court rules will be stricken. Goodrich v. Union Oil Co., 85 Colo. 218, 274 P. 935 (1929).

Applied in Honey v. Ranchers & Farmers Livestock Auction Co., 191 Colo. 503, 553 P.2d 799 (1976); People v. Parsons, 645 P.2d 850 (Colo. 1982).

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RULE 41. Mandate

(a) Contents. The clerk of the court will issue the mandate with a copy of the appellate court judgment.

(b) When Issued. Unless the court grants or removes a stay, or otherwise changes the time by order, the mandate will issue as follows:

(1) In the Court of Appeals. Except as provided in subsections (A) and (B), the court of appeals mandate will issue no earlier than 42 days after entry of the judgment.

(A) If the court extends the time to file a petition for rehearing but no petition is filed within the extended period, the mandate will issue following the last day of the extended period for filing the petition for rehearing or after the day specified by this rule, whichever occurs later. The mandate will issue no earlier than 28 days after the court denies the petition for rehearing.

(B) In workers' compensation and unemployment insurance cases, the mandate will issue no earlier than 28 days after entry of the judgment, or 14 days after the court denies a timely petition for rehearing, whichever occurs later.

(2) In the Supreme Court. The supreme court mandate will issue no earlier than 14 days after entry of the judgment. If a petition for rehearing is denied, or if the court extends the time to file a petition for rehearing but no petition is filed within the extended period, the mandate will issue no earlier than 2 days after entry of the order denying the petition or the extended deadline for filing a petition. The supreme court must issue the mandate immediately when a copy of a United States Supreme Court order denying a petition for writ of certiorari is filed.

(c) Staying the Mandate.

(1) On Petition for Rehearing or Motion. The timely filing of a petition for rehearing or motion for stay of mandate stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

(2) Pending Petition for Writ of Certiorari in the Colorado Supreme Court. The timely filing of a petition for writ of certiorari pursuant to C.A.R. 52 stays the court of appeals mandate until disposition of the petition.

(3) Pending Petition for Writ of Certiorari in the United States Supreme Court.

(A) A party may move to stay the appellate mandate pending the filing of a petition for a writ of certiorari in the United States Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.

(B) The court, or a judge or justice thereof, may stay issuance of the mandate until the petition for writ of certiorari is filed, or if review is timely sought, until the petition is ruled on, or, if review is granted, until final disposition of the case by the United States Supreme Court. A stay pending the filing of a petition for writ of certiorari must not exceed 90 days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for the writ and so notifies the clerk of the appellate court, in writing, within the period of the stay, in which case the stay continues until disposition of the petition.

(C) The court may require a bond or other security as a condition of granting or continuing a stay of the mandate.

(d) Effective Date. The mandate is effective when issued.

(e) Recall of Mandate. The court of appeals may recall its mandate, and the supreme court may recall any appellate mandate as it deems appropriate. Upon recall of a mandate, re-issuance of the mandate may be stayed pursuant to subsection (c) of this rule.

(Source: Entire rule amended and adopted November 20, 1998, effective January 1, 1999; entire rule amended and adopted and committee comment added and adopted December 14, 2000, effective January 1, 2001; committee comment corrected and effective January 4, 2001; b amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1 b.)

Comments

2001

(1) The purpose of this amendment is to clarify that the Court of Appeals can extend the stay of the issuance of the mandate when an extension of time to file a petition for rehearing is timely filed. The rule change addresses the specific problem that arises when, after an extension has been granted, no petition for rehearing is filed. Practitioners had been concerned that, without having filed a petition for rehearing, any petition for certiorari filed beyond the time specified in the rule for stay of the issuance of the mandate would be untimely.

2016

(2) The amendments to this Rule are mainly structural, not substantive, and were made to provide better organization. They were modeled, in part, on F.R.A.P. 41. The title of the Rule changed to "Mandate," because the revisions created a more comprehensive rule. The Rule now contains separate subsections explaining when a mandate issues (subsection (b)); when a mandate may be stayed (subsection (c)); when a mandate becomes effective (subsection (d)); and when an appellate court may recall a mandate (subsection (e)).

(3) Rule 41.1 has been deleted, and its substance has been relocated to new subsections (c) and (e) of Rule 41.

Annotation

Intent is to establish finality of judgment. The mandate provided for in this rule intended to establish the finality of the judgment upon which the parties can rely. Garrett v. Garrett, 30 Colo. App. 167, 490 P.2d 313 (1971); Hrabczuk v. John Lucas Landscaping, 888 P.2d 367 (Colo. App. 1994).

Direct attack upon the judgment after the mandate has issued is not contemplated by the appellate rules. Garrett v. Garrett, 30 Colo. App. 167, 490 P.2d 313 (1971). See Hrabczuk v. John Lucas Landscaping, 888 P.2d 367 (Colo. App. 1994).

Lower court without jurisdiction until date mandate may issue. The date when the mandate may issue under this rule must be held to be the earliest date upon which the district court can acquire jurisidction. Until this occurs the lower court is without jurisdiction for any purpose. Norris v. Kelsey, 60 Colo. 297, 152 P. 1167 (1915); People v. Jones, 631 P.2d 1132 (Colo. 1981).

Directions in remand "for consideration of the request for attorney fees" set out in order are controlling over language contained in mandate form regarding attorney fees issued by the clerk's office of the court. Hrabczuk v. John Lucas Landscaping, 888 P.2d 367 (Colo. App. 1994).

Applied in People v. Martinez, 186 Colo. 388, 527 P.2d 534 (1974).

RULE 41.1. [Deleted]

(Deleted eff. April 7, 2016.)

RULE 42. Voluntary Dismissal

The appellate court must dismiss an appeal or other appellate proceeding if the parties file a signed dismissal agreement specifying how costs will be paid and pay any fees that are due. The appellate court may dismiss an appeal or other appellate proceeding on the appellant's or petitioner's motion on terms agreed upon by the parties or fixed by the court. No mandate or other process may issue without a court order.

(Source: Entire rule amended and effective January 6, 2005.)

RULE 43. Substitution of Parties

(a) Death of a Party.

(1) After Notice of Appeal is Filed. If a party dies after a notice of appeal is filed or while a proceeding is otherwise pending in the appellate court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or any party. A death certificate or other official proof of death must be filed with the motion. A party's motion must be served on the representative in accordance with C.R.C.P. 25. If the decedent has no representative, any party may suggest the death on the record, and the court may then direct appropriate proceedings.

(2) Before Notice of Appeal is Filed - Potential Appellant. If a party entitled to appeal dies before filing a notice of appeal, the decedent's personal representative-or, if the decedent has no personal representative, the decedent's attorney of record-may file a notice of appeal within the time prescribed by these rules. After the notice of appeal is filed, substitution must be in accordance with section (a)(1) of this rule.

(3) Before Notice of Appeal is Filed - Potential Appellee. If a party against whom an appeal may be taken dies after entry of a judgment or order in the underlying proceeding, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution must be in accordance with section (a)(1) of this rule.

(b) Substitution for Reasons Other Than Death.

If substitution of a party is required for any reason other than death, the party seeking substitution must file a motion stating the grounds for substitution.

(c) Public Officers; Identification; Substitution.

(1) Identification of Party. A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name; but the court may require the public officer's name to be added.

(2) Automatic Substitution of Officeholder. When a public officer who is a party to an appeal or other proceedings in an official capacity dies, resigns, or otherwise ceases to hold office, the action does not abate. The public officer's successor is automatically substituted as a party. Proceedings following the substitution must be in the name of the substituted party, but any misnomer that does not affect the substantial rights of the parties may

be disregarded. The court may enter an order of substitution at any time, but failure to enter an order does not affect the substitution.

((a) amended effective June 23, 2014; amended and adopted by the Court, En Banc, June 9, 2016, effective immediately.)

RULE 44. Cases Involving a Constitutional Question When the State of Colorado is Not a Party

If a party questions the constitutionality of any Colorado statute in an appellate proceeding in which the state, its agency, officer, or employee is not a party in an official capacity, the questioning party must notify the clerk of the supreme court in writing immediately upon the filing of the proceeding or as soon as the question is raised in the appellate court. The clerk must then certify that fact to the Attorney General.

(Amended and adopted by the Court, En Banc, June 9, 2016, effective immediately.)

COMMENT

2016

The substance of prior subsections (b) and (c) has been relocated to C.A.R. 44.1.

RULE 44.1. Cases Involving Public Utilities Laws or the Public Utilities Commission When the Commission is Not a Party

(a) Challenge to Public Utilities Law or Act of Public Utilities Commission. If a party questions the validity, interpretation, or application of any section of the Public Utilities Law of the State of Colorado or of any rule, regulation, order, certificate, or permit issued by the Public Utilities Commission in a proceeding in which the Commission is not a party, the questioning party must notify the clerk of the appellate court in writing immediately upon the filing of the proceeding or as soon as the question is raised in the appellate court. The clerk must then certify that fact to the Secretary of the Public Utilities Commission.

(b) Other Proceedings Impacting the Public Utilities Commission. In an appellate proceeding involving a municipally owned utility in which the court's decision may impact the powers and duties of the Public Utilities Commission or the interpretation of the Public Utilities Law of the State of Colorado, the clerk of the appellate court must notify the Secretary of the Public Utilities Commission of the pendency of the proceeding and invite the Commission to intervene or to enter an appearance as amicus curiae.

(Adopted by the Court, En Banc, June 9, 2016, effective immediately.)

COMMENT

2016

This new rule contains the substance of prior C.A.R. 44(b) and (c), pertaining to cases involving Public Utilities Law or proceedings impacting the Public Utilities Commission when the Commission is not a party.

RULE 45. Duties of Clerk of the Appellate Court

(a) General Provisions.

(1) Qualifications. The clerk of the appellate court must take any oath required by law. Neither the clerk nor any deputy clerk may practice as an attorney or counselor in any court while in office.

(2) When Court is Open. The appellate courts are always open for filing any document, issuing and returning process, making a motion, and entering an order. The clerk's office with the clerk or a deputy in attendance must be open during business hours on all days except Saturdays, Sundays, and legal holidays, as defined in C.A.R. 26(a), but the chief justice may order that the clerk's office be open or closed during specified hours on other days.

(b) Records.

(1) The Docket. The clerk must maintain a docket and an index of all docketed cases in the manner prescribed by the appellate court. The clerk must record all documents filed with the clerk and all process, orders, and judgments.

(2) Calendar. Under the court's direction, the clerk must prepare a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk must give preference to appeals and other proceedings entitled to preference by law.

(3) Other Records. The clerk must keep other records as required by the court.

(c) Service of Orders and Judgments.

The clerk must serve all orders and judgments on each party and note the date of service on the docket. Service on a party represented by counsel must be made on counsel.

(d) Custody of Records and Documents.

The clerk has custody of the court's records and documents. Unless the court orders otherwise, the clerk must not permit an original record or document to be taken from the clerk's custody. Upon disposition of the case, the clerk must return original documents containing the record on appeal or review to the court or agency from which they were received. The clerk must preserve a copy of any brief, appendix, or other document that has been filed.

(Amended and effective June 23, 2014; amended and adopted by the Court, En Banc, June 9, 2016, effective immediately.)

RULE 46. Review of Workers' Compensation Decisions of the Industrial Claim Appeals Panel by the Court of Appeals [Repealed]

(Repealed, effective January 26, 1995.)

RULE 46.1. Time for Petitioning

(Repealed, effective January 26, 1995.)

RULE 46.2. Review on Certiorari to the Court of Appeals - How Sought [Repealed]

(Repealed, effective January 26, 1995.)

RULE 46.3. The Petition for Certiorari

(Repealed, effective January 26, 1995.)

RULE 46.4. Order Granting or Denying Certiorari

(Repealed, effective January 26, 1995.)

RULE 46.5. Briefs-In General

(Repealed, effective January 26, 1995.)

RULE 46.6. Oral Argument

(Repealed, effective January 26, 1995.)

RULE 46.7. Further Review

(Repealed, effective January 26, 1995.)

RULE 49. Considerations Governing Review on Certiorari

Review in the supreme court on a writ of certiorari as provided in section 13-4-108, C.R.S., and section 13-6-310, C.R.S., is a matter of sound judicial discretion and will be granted only when there are special and important reasons. The following, while neither controlling nor fully measuring the supreme court's discretion, indicate the character of reasons that will be considered:

(a) the district court on appeal from the county court has decided a question of substance not yet determined by the supreme court;

(b) Where the court of appeals, or district court on appeal from the county court, has decided a question of substance in a way probably not in accord with applicable decisions of the supreme court;

(c) a division of the court of appeals has rendered a decision in conflict with the decision of another division of said court; the same ground applies to judgments and decrees of district courts on appeal from the county court when a decision is in conflict with another district court on the same matters;

(d) the court of appeals has so far departed from the accepted and usual course of judicial proceedings or so far sanctioned such procedure by a lower court as to call for the exercise of the supreme court's power of supervision.

(Amended and adopted June 7, 2018, effective July 1, 2018.)

Annotation

Law reviews. For article, "A Summary of Colorado Supreme Court Internal Operating Procedures", see 11 Colo. Law. 356 (1982).

The common-law writ of certiorari serves to correct substantial errors of law not otherwise reviewable which are committed by an inferior tribunal. Sutterfield v. District Court, 165 Colo. 225, 438 P.2d 236 (1968).

Statutes creating appellate remedies take precedence over judicial rules of procedure. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

Scope of constitutional rule-making power. The manner in which subject matter jurisdiction is exercised is properly within the scope of the supreme court's rule-making powers vested by ? §2(1) of art. VI, Colo. Const. This procedure has been established and is set forth in C.A.R. 50 to 57. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

Supreme court may not expand jurisdiction by rule. Supreme court jurisdiction, as initially spelled out in the Colorado constitution, may be expanded by statute. But there is no authority for the supreme court to expand its jurisdiction by rule of court. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

Certiorari is proper remedy to protect substantial right. An original proceeding in the nature of certiorari under this rule, when directed to an endangered, fundamentally substantive and substantial right, is maintainable and recognized as a proper remedy. Potashnik v. Pub. Serv. Co., 126 Colo. 98, 247 P.2d 137 (1952); Lucas v. District Court, 140 Colo. 510, 345 P.2d 1064 (1959).

Where usual review does not afford adequate protection. The power of certiorari is exercisable where usual review on appeal would not afford adequate protection to substantive rights of the petitioners. Sutterfield v. District Court, 165 Colo. 225, 438 P.2d 236 (1968).

Certiorari may be granted to determine a policy. Where no well-defined policy has emerged on a subject, the court will grant certiorari in order to make such a determination. Mile High Fence Co. v. Radovich, 175 Colo. 537, 489 P.2d 308 (1971).

Petition for certiorari is addressed to sound judicial discretion, and denial does not constitute a determination of the issues on the merits. Menefee v. City & County of Denver 190 Colo. 163, 544 P.2d 382 (1976).

The issuance of a writ of certiorari is always discretionary. Sutterfield v. District Court, 165 Colo. 225, 438 P.2d 236 (1968).

Review of interlocutory orders. The supreme court has the power under ? §3 of art. VI, Colo. Const., to issue certiorari to review interlocutory orders of lower courts. Sutterfield v. District Court, 165 Colo. 225, 438 P.2d 236 (1968).

The proper proceeding for relief from an interlocutory order is by certiorari. Lucas v. District Court, 140 Colo. 510, 345 P.2d 1064 (1959).

Review of eminent domain interlocutory order. Within the period of stay of execution granted by a trial court, the owners of property being condemned, not having the right of review of an interlocutory order on appeal, may file original action by way of certiorari in the supreme court, alleging that otherwise they are without remedy whatsoever to protect their property from seizure under an order of a district court, which they contend is

without lawful authority. Lucas v. District Court, 140 Colo. 510, 345 P.2d 1064 (1959).

Pretrial proceedings reviewable. The denial of an asserted right in pretrial proceedings, not otherwise reviewable, may be determined by means of an original proceeding in certiorari in the supreme court. Lucas v. District Court, 140 Colo. 510, 345 P.2d 1064 (1959).

Certiorari granted where judgment would render question moot. Application for an original writ of mandamus or certiorari in the supreme court is the only procedure by which to test the validity of a trial court's ruling where the question involved, if permitted to await final judgment, would become moot. Lucas v. District Court, 140 Colo. 510, 345 P.2d 1064 (1959).

Certiorari to review joinder of claims was issued where all parties would be put to unnecessary delay and expense were it required that one or both of these tort claims be fully tried before determining whether the claims should have remained joined in the first instance. Should plaintiffs obtain a favorable judgment in both lawsuits, none of the parties will be in a position to raise the procedural question of separate trials posed by this original proceeding. Sutterfield v. District Court, 165 Colo. 225, 438 P.2d 236 (1968).

Amended answers ordered to be struck. In an original proceeding for relief as in certiorari, it was held that the district court should strike amended and amending answers which it allowed to be filed subsequent to the supreme court's remanding order which mentioned the specific pleadings out of which the trial court should ascertain the issues and on which it should conduct the trial. People ex rel. Henderson v. Greeley Nat'l Bank, 112 Colo. 274, 148 P.2d 580 (1944).

Review of superior court's reversal of county court. The supreme court may review by certiorari a superior court's reversal of a county court judgment. People v. Dee, 638 P.2d 749 (Colo. 1981).

The appellate review of county court judgments by the superior court is subject to ultimate review by the supreme court, since any party has the right to petition for a writ of certiorari. People v. Superior Court, 175 Colo. 391, 488 P.2d 66 (1971).

Certiorari dismissed where denial of charge of venue may be considered on appeal. Under applicable rules of civil procedure, where a motion for change of venue has been filed by defendants and said motion has been denied, the defendants can thereafter file an answer and proceed to trial without waiving the question of error based upon the denial of said motion. An original proceeding in the nature of a writ of certiorari to review the denial

of a motion for change of venue by a district court will be dismissed. Colo. State Bd. of Exam'rs of Architects v. District Court, 126 Colo. 340, 249 P.2d 146 (1952).

Where conviction necessarily involves only a factual issue, certiorari to review such conviction will be dismissed as improvidently granted. Erickson v. City & County of Denver, 179 Colo. 412, 500 P.2d 1183 (1972).

Denial of a petition for certiorari in a criminal case means nothing more than that the supreme court has declared that the case is not properly postured for further appellate review. Menefee v. City & County of Denver, 190 Colo. 163, 544 P.2d 382 (1976).

Where a decision of a reviewing court could not result in further proceedings against the petitioner, he has no standing to prosecute appellate proceedings beyond the court where his acquittal occurred. Garcia v. City of Pueblo, 176 Colo. 96, 489 P.2d 200 (1971).

Moot question not reviewed. Where the question involved does not have that degree of public importance to justify review of a moot question, it is properly dismissed. People in Interest of P. L. V., 176 Colo. 342, 490 P.2d 685 (1971).

Appellate courts are bound by the jury's findings where there is sufficient competent evidence in the record to support the finding, where the jury makes the finding on conflicting evidence, and where the jury has been correctly instructed by the trial court. Vigil v. Pine, 176 Colo. 384, 490 P.2d 934 (1971).

Applied in McGregor v. People, 176 Colo. 309, 490 P.2d 287 (1971); Bd. of County Comm'rs v. Fifty-first Gen. Ass'y, 198 Colo. 302, 599 P.2d 887 (1979).

RULE 50. Certiorari to Court of Appeals Before Judgment

(a) Considerations Governing. A petition for writ of certiorari from the supreme court to review a case newly filed or pending in the court of appeals, before judgment is given in said court, may be granted upon a showing that:

(1) the case involves a matter of substance not yet determined by the supreme court of Colorado, or that the case if decided according to the relief sought on appeal involves the overruling of a previous decision of the supreme court; or

(2) the court of appeals is being asked to decide an important state question which has not been, but should be, determined by the supreme court; or

(3) the case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate determination in the supreme court.

(b) By Whom Sought. The petition for a writ of certiorari may be filed by either party or by stipulation of the parties. The court of appeals on its own motion may request transfer to the supreme court, or the supreme court may on its own motion require transfer of the case to it.

(c) Applicability. This rule does not permit certiorari review in cases pending in the district court on appeal from the county court before judgment is entered in the district court.

(Amended and adopted June 7, 2018, effective July 1, 2018.)

Annotation

Law reviews. For article, "A Summary of Colorado Supreme Court Internal Operating Procedures", see 11 Colo. Law. 356 (1982). For comment, "In the Interest of R.C., Minor Child: The Colorado Artificial Insemination by Donor Statute and the Non-Traditional Family", see 67 Den. U.L. Rev. 79 (1990).

Procedure provides for appellate review. The procedure established in ? §13-4-108(2), C.R.S., and in C.A.R. 50 through C.A.R. 57, C.A.R., clearly provides for appellate review in the supreme court. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

And is constitutional. The changes brought about by pertinent statutes with respect to the jurisdiction of the supreme court and the court of appeals are within the authority of the general assembly. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

Review similar to common-law certiorari. The form of certiorari review the supreme court will maintain over the court of appeals is quite similar to the common-law review by certiorari, and distinguishable from the limited ancillary type of certiorari in existence in past years under Rule 106(a)(4), C.R.C.P. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

The supreme court may retain and review an appeal of a declaratory order of the state personnel board that should have been filed with the court of appeals. The court's authority rests in its power under section (b) to review cases pending in the court of appeals prior to judgment and under C.A.R. 2 to suspend the rules of appellate procedure. Colo. Ass'n of Pub. Emp. v. Dept. of Hwys., 809 P.2d 988 (Colo. 1991).

Study of petition and record constitutes review. The study by the supreme court of the petition provided in the Colorado appellate rules and of the record on appeal to determine whether to grant or deny the petition constitutes a review. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

Applied in Ackmann v. Merchants Mtg. & Trust Corp., 645 P.2d 7 (Colo. 1982); Slack v. City of Colo. Springs, 655 P.2d 376 (Colo. 1982); Rustic Hills Shopping Plaza, Inc. v. Columbia Sav. & Loan Ass'n, 661 P.2d 254(Colo. 1983); Income Realty & Mtg., Inc. v. Columbia Sav. & Loan Ass'n, 661 P.2d 257 (Colo. 1983); Krause v. Columbia Sav. & Loan Ass'n, 661 P.2d 265 (Colo. 1983); In the Interest of R.C., 775 P.2d 27 (Colo. 1989); Romer v. Bd. of County Comm'rs, Weld County, 897 P.2d 779 (Colo. 1995).

For general considerations governing certiorari, see C.A.R. 49; for certification and transfer of cases, see ? §? §13-4-109 and 13-4-110 , C.R.S.

RULE 51. Review on Certiorari-How Sought

(a) Filing and Record on Appeal. A party seeking review on certiorari must file, within the time limit provided in C.A.R. 52, a petition that complies with C.A.R. 25 and 32 with the clerk of the supreme court.

(1) Record from a District Court Judgment. For appeals from district courts reviewing final judgments and decrees of the county court or municipal court, the clerk of the district court must certify the complete record in the case and transmit the record to the clerk of the supreme court within fourteen days of the filing of the petition.

(2) Record from a Court of Appeals Judgment. For appeals from the court of appeals, no action is required by the clerk of the court of appeals to transmit the record.

(b) Petitioner's Docket Fee. Upon the filing of the petition or a motion for extension of time in which to file the petition pursuant to C.A.R. 26(b), petitioner must pay the docket fee of $225.00, of which $1.00 will be transferred to the state general fund as a tax levy pursuant to section 2-5-119 , C.R.S. The case will then be placed on the certiorari docket.

(c) Docket Fee. Upon respondent's initial filing, if any respondent must pay the docket fee of $115.00.

(Source: a amended and effective March 23, 2000; b and d amended and adopted February 27, 2003, effective March 3, 2003; amended and adopted June 7, 2018, effective July 1, 2018.)

Annotation

Law reviews. For article, "A Summary of Colorado Supreme Court Internal Operating Procedures", see 11 Colo. Law. 356 (1982).

RULE 51.1. Exhaustion of State Remedies Requirement in Criminal Cases

(a) Exhaustion of Remedies.

In all appeals from criminal convictions or postconviction relief matters from or after July 1, 1974, a litigant is not required to petition for rehearing and certiorari following an adverse decision of the intermediate appellate court in order to be deemed to have exhausted all available state remedies respecting a claim of error. Rather, the litigant will have exhausted all available state remedies when a claim has been presented to the intermediate appellate court and the supreme court, and relief has been denied or when relief has been denied in the intermediate appellate court and the time for petitioning for certiorari review has expired.

(b) Savings Clause.

f a litigant's petition for federal habeas corpus is dismissed or denied for failure to exhaust state remedies based on a decision that this rule is ineffective, the litigant may file a motion to recall the mandate together with a writ of certiorari presenting any claim of error not previously presented in reliance on this rule. Any motion to recall the mandate must be filed within 49 days after entry of the federal court's dismissal or denial order.

(Source: Entire rule added and effective May 18, 2006; (b) amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1(b); amended and adopted June 7, 2018, effective July 1, 2018.)

RECENT ANNOTATIONS

Section (a) permits state prisoners to exhaust all available state remedies without seeking discretionary relief from the state supreme court, rendering state supreme court review "unavailable" for purposes of federal Antiterrorism and Effective Death Penalty Act of 1996 exhaustion. Ellis v. Raemisch, 872 F.3d 1064 (10th Cir. 2017).

Annotation

Section (a) does not require a litigant to raise a claim in the supreme court if he or she has already raised it in the court of appeals and been denied relief. Once a litigant raises a claim before the court of appeals, and relief is denied, "all available state remedies" are deemed unavailable. Al-Yousif v. Trani, 11 F. Supp. 3d 1032 (D. Colo. 2014), rev'd on other grounds, 779 F.3d 1173 (10th Cir. 2015).

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RULE 52. Review on Certiorari-Time for Petitioning

(a) Petition for Rehearing Optional. Filing a petition for rehearing in the intermediate appellate court before seeking certiorari review in the supreme court is optional.

(b) Time to File.

(1) In General. Except as provided in subsections (2) and (3) of this rule, a petition for writ of certiorari must be filed within 42 days after entry of the judgment on appeal if no petition for rehearing is filed. If a petition for rehearing is filed, the petition for writ of certiorari must be filed within 28 days after the intermediate appellate court's denial of the petition for rehearing. No petition for issuance of a writ of certiorari may be submitted to the Supreme Court until the time for filing a petition for rehearing in the intermediate appellate court has expired.

(2) In Workers' Compensation and Unemployment Insurance Cases. A petition for writ of certiorari to review a judgment of the court of appeals in workers' compensation and unemployment insurance cases must be filed in the supreme court within 28 days after the issuance of the court of appeals opinion if no petition for rehearing is filed, or within 14 days after the denial of a petition for rehearing by the court of appeals.

(3) In Dependency or Neglect Cases. A petition for writ of certiorari to review a judgment of the court of appeals in dependency or neglect cases must be filed within 28 days after issuance of the court of appeals opinion if no petition for rehearing is filed, or within 14 days after the denial of a petition for rehearing by the court of appeals.

(Source: b amended June 4, 1987, effective January 1, 1988; a amended and effective May 17, 1990; b amended July 11, 1991, effective July 1, 1991; b amended and adopted November 20, 1998, effective January 1, 1999; b3 amended and effective February 7, 2008; b3 amended and effective May 28, 2009; a and b3 amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1 b; amended and adopted June 7, 2018, effective July 1, 2018.)

COMMENTS

C.A.R. 52 has been revised to recognize that petitions for rehearing of a district court's review of a county court judgment are permissible, and if a petition for rehearing is filed, the petition for writ of certiorari must be filed within 28 days after the district court's denial of the petition for rehearing.

C. A.R. 52(b)(3) is a new subsection and is consistent with the petition for writ of certiorari requirements set forth in C.A.R. 3.4(l).

Annotation

Law reviews. For article "A Summary of Colorado Supreme Court Internal Operating Procedures", see 11 Colo. Law, 356 (1982).

When a petition for rehearing of a municipal court judgment is timely filed in the district court, the district court judgment will not become final for purposes of this rule until the district court denies the petition. City of Aurora v. Rhodes, 689 P.2d 603 (Colo. 1984).

If a party files a conditional cross-petition for certiorari of issues not reached unless the underlying judgment is disturbed, there is no requirement that the party first file a petition for rehearing in the court of appeals. Farmers Group, Inc. v. Williams, 805 P.2d 419 (Colo. 1991).

Health maintenance organization (HMO) could not seek certiorari where HMO was dismissed from suit on its motion for summary judgment, was not a party in the court of appeals, was not substantially aggrieved by the disposition of the case by the court of appeals, and did not file the prerequisite petition for rehearing. Colo. Permanente Medical Group v. Evans, 926 P.2d 1218 (Colo. 1996).

Applied in Honey v. Ranchers & Farmers Livestock Auction Co., 191 Colo. 503, 553 P.2d 799 (1976); Wiggins v. People, 199 Colo. 341, 608 P.2d 348 (1980); People v. Dee, 638 P.2d 749 (Colo. 1981); Byrd v. People, 58 P.3d 50 (Colo. 2002).

RULE 53. Petition for Writ of Certiorari and Cross-Petition for Writ of Certiorari

(a) The Petition. The petition for certiorari must comply with C.A.R. 32 and must contain the following under appropriate headings and in the order here indicated:

(1) a table of contents, with page references;

(2) a table of authorities-cases (alphabetically arranged), statutes, and other authorities-with references to the pages of the petition or cross-petition where they are cited;

(3) an advisory listing of the issues presented for review expressed in the terms and circumstances of the case but without unnecessary detail. The statement of an issue presented will be deemed to include every subsidiary issue clearly comprised therein. Only the issues set forth or fairly comprised therein will be considered.

(4) a reference to the official or unofficial reports of the opinion, judgment, or decree from which review is sought;

(5) an concise statement of the grounds on which jurisdiction of the supreme court is invoked, showing:

(A) the date of the opinion, judgment, or decree sought to be reviewed and the time of its entry;

(B) the date of any order respecting a rehearing and the date and terms of any supreme court order granting an extension of time within which to petition for writ of certiorari;

(6) a reference to any pending cases in which the supreme court has granted certiorari review on the same legal issue on which review is sought;

(7) a concise statement of the case containing the matters material to consideration of the issues presented;

(8) A direct and concise argument explaining the reasons relied on for the issuance of the writ, whether the issues raised in the petition were preserved in the lower court, and the applicable standard of review; and

(9) an appendix containing:

(A) a copy of any opinion, judgment, or decree from which review is sought;

(B) the text of any pertinent statute, rule, ordinance, or regulation not currently in effect or not generally available in electronic format.

(b) Cross-Petition. Any cross-petition must be filed and served within 14 days after service of the petition for writ of certiorari. A cross-petition must comply with C.A.R. 32 and must have the same contents, in the same order, as the petition.

(c) Opposition Brief.

(1) In General. An opposition brief is not required unless otherwise ordered by the court. Any opposition brief must comply with C.A.R. 53(a)(1)-(3).

(2) By the Respondent. The respondent must file and serve any opposition brief within 14 days after service of the petition. If a respondent files a cross-petition, any opposition brief and cross-petition may be combined.

(3) By the Petitioner. The petitioner must file any opposition brief within 14 days after service of the cross-petition.

(d) Reply Brief. A reply brief is not required unless otherwise ordered by the court. A petitioner or cross-petitioner must file and serve any reply brief within 7 days after service of an opposition brief. The reply brief must comply with C.A.R. 32.

(e) No Separate Brief. No separate brief may be appended to the petition, any cross-petition, the opposition brief, or the reply brief.

(f) Length of Petition, Cross-Petition, Opposition, and Reply Briefs.

(1) A petition, cross-petition, opposition brief, and combined cross-petition and opposition brief must contain no more than 3,800 words. A reply brief must contain no more than 3,150 words. Headings, footnotes, and quotations count toward the word limitation. The caption, table of contents, table of authorities, certificate of compliance, certificate of service, and signature block do not count toward the word limit.

(2) A self-represented party who does not have access to a word-processing system must file a typewritten or legibly handwritten petition, cross-petition, opposition brief, or combined cross-petition and opposition brief containing no more than 12 double-spaced and single-sided pages, or a reply brief of no more than 10 double-spaced and single sided pages.

(3) A party may file a motion to exceed the word limitation explaining the reasons why additional words are necessary. The motion must be filed with the document for which the party seeks to expand the word limit. Motions to exceed the word limitation will be granted rarely and only upon a showing of exceptional need to exceed the word limitation.

(g) Amicus Briefs. An amicus curiae may file a brief in support of or in opposition to a petition, opposition, or cross-petition only by leave of court or at the court's request. Leave to file an amicus brief must be sought in accordance with C.A.R. 29(b) and may not be filed until after a petition for writ of certiorari has been filed. Amicus briefs must comply with the content and form requirements of C.A.R. 29(c). Except by the court's permission, an amicus brief must contain no more than 3,150 words. An amicus brief must be filed within 7 days after the filing of the petition, opposition, or cross-petition that the amicus brief supports. An amicus curiae that does not support either party must file its brief within 7 days after the filing of the petition or cross-petition in which the issue to which the amicus brief is directed was first raised.

(h) Filing and Service. Filing and service must be in the same manner as provided in C.A.R. 25.

(Source: Entire rule repealed and readopted August 30, 1985, effective January 1, 1986; IPa and b to d amended and effective July 8, 1993; rule title amended and effective April 7, 1994; a7 repealed, e amended, and f added April 4, 1996, effective July 1, 1996; entire rule amended and adopted February 24, 2005, effective July 1, 2005; b, c, and d amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1 b; amended and adopted June 7, 2018, effective July 1, 2018.)

Annotation

Law reviews. For article, "A Summary of Colorado Supreme Court Internal Operating Procedures", see 11 Colo. Law. 356 (1982). For article, "Amendments to Appellate Rules Concerning Type Size and Word Count", see 34 Colo. Law. 27 (June 2005).

The petition for writ of certiorari is an application of right. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

If a party files a conditional cross-petition for certiorari of issues not reached unless the underlying judgment is disturbed, there is no requirement that the party first file a petition for rehearing in the court of appeals. Farmers Group, Inc. v. Williams, 805 P.2d 419 (Colo. 1991).

Issue held not to be fairly comprised within issues raised by petition for certiorari, as required by subsection (a)(3). Vigoda v. Denver Urban Renewal Auth., 646 P.2d 900 (Colo. 1982).

Applied in County of Clearwater v. Petrash, 198 Colo. 231, 598 P.2d 138 (1979).

RULE 54. Order Granting or Denying Certiorari

(a) Grant of Writ. Whenever a petition for writ of certiorari to review a decision of any court is granted, the clerk will issue an order to that effect, and will notify the lower court and counsel of record. The order will direct that the certified transcript of record on file be treated as though sent up in response to a formal writ. A formal writ will not issue unless specially directed.

(b) Denial of Writ. No mandate will issue upon the denial of a petition for writ of certiorari. Whenever the court denies a petition for writ of certiorari, the clerk will issue an order to that effect, and will notify the lower court and counsel of record. If, after granting the writ, the court later denies the same as having been improvidently granted or renders decision by opinion of the court on the merits of the writ, a petition for rehearing may be filed in accordance with the provisions of C.A.R. 40. No petition for rehearing may be filed after the issuance of an order denying a petition for writ of certiorari.

(Amended and adopted June 7, 2018, effective July 1, 2018.)

Annotation

Law reviews. For article, "A Summary of Colorado Supreme Court Internal Operating Procedures", see 11 Colo. Law. 356 (1982). For article, "Amendments to Appellate Rules Concerning Type Size and Word Count", see 34 Colo. Law. 27 (June 2005).

Review by certiorari constitutes appellate review under the Colorado constitution. Menefee v. City & County of Denver, 190 Colo. 163, 544 P.2d 382 (1976).

The denial of a petition for certiorari is "appellate review" as that term is used in the Colorado constitution. Bill Dreiling Motor Co. v. Court of Appeals, 171 Colo. 448, 468 P.2d 37 (1970).

Petition for certiorari is addressed to sound judicial discretion, and denial does not constitute a determination of the issues on the merits. Menefee v. City & County of Denver, 190 Colo. 163, 544 P.2d 382 (1976).

Denial of a petition for certiorari in a criminal case means nothing more than that the supreme court has declared that the case is not properly postured for further appellate review. Menefee v. City & County of Denver, 190 Colo. 163, 544 P.2d 382 (1976).

RULE 55. Stay Pending Review on Certiorari

Application to the supreme court for stay of execution of a decision of the court of appeals or the judgment of a district court on appeal from a county court will normally not be entertained until application for a stay has first been made to the court rendering the decision sought to be reviewed and that court has denied or failed to rule on a motion to stay the judgment on appeal. A motion for stay filed pursuant to this rule must comply with C.A.R. 8(a)(2).

(Amended and adopted June 7, 2018, effective July 1, 2018.)

Annotation

Law reviews. For article, "A Summary of Colorado Supreme Court Internal Operating Procedures", see 11 Colo. Law. 356 (1982).

RULE 56. Extension of Time

After appearance is made and a docket fee paid, the supreme court for good cause shown may upon motion extend the time prescribed by these rules for filing a petition for writ of certiorari, or may permit the petition to be filed after the expiration of such time. Any initial motion for extension of time must include the date on which the court of appeals issued its opinion or the date on which the district court on appeal from the county court issued its order.

(Amended and adopted June 7, 2018, effective July 1, 2018.)

Comment: This change requires an appearance and payment of the docket fee under Rule 51(b) before counsel will be permitted to file a motion for the enlargement of time in which to file the writ of certiorari.

Annotation

Law reviews. For article, "A Summary of Colorado Supreme Court Internal Operating Procedures", see 11 Colo. Law. 356 (1982).

RULE 57. Briefs-In General

Briefs of the petitioner and the respondent on the merits must comply with the content and length requirements of C.A.R. 28 and the form and service requirements of C.A.R. 25 and 32. Briefs must be filed within the time prescribed in C.A.R. 31; except that in workers' compensation cases the petitioner must serve and file the petitioner's opening brief within 14 days and the respondent must file the respondent's brief within 7 days after service of the petitioner's brief, and no other brief will be permitted. Incorporation by reference of briefs previously filed in the lower court is prohibited.

(Source: Entire rule amended June 4, 1987, effective January 1, 1988; entire rule amended and effective July 8, 1993; amended and adopted June 7, 2018, effective July 1, 2018.)

Annotation

Law reviews. For article, "A Summary of Colorado Supreme Court Internal Operating Procedures", see 11 Colo. Law. 356 (1982).

RULE 58. Citation

These rules in Chapter 32 may be known as the Colorado Appellate Rules and shall be cited as "C.A.R.", followed by the number of the rule.

FORM 1. Notice of Appeal (Cross-Appeal) and Designation of Record

FORM 2. Certificate of Diligent Search [Delete]

(Deleted July 1, 2016.)

FORM 3. Supplemental Designation of Record

FORM 4. Petition on Appeal [Delete]

(Deleted July 1, 2016.)

FORM 5. Response to Petition on Appeal (Cross-Appeal) [Delete]

(Deleted July 1, 2016.)

FORM 6. Certificate of Compliance

FORM 6A. Amicus Certificate of Compliance

FORM 7. Caption for Documents Filed by Party with Access to Word-Processing System

FORM 7A. Caption for Documents Filed by Self-Represented Party Without Access to Word-Processing System

FORM 8. Designation of Transcripts

Designation of Transcripts

(Amended and adopted June 7, 2018, effective July 1, 2018.)

FORM 9. Motion to Supplement the Record