

## Rule 7. Review of District Court Magistrate Orders or Judgments.

### Colorado Court Rules

#### Colorado Rules for Magistrates

#### Chapter 35. The Colorado Rules for Magistrates

*As amended through Rule Change 2015(02) effective January 14, 2015*

#### **Rule 7. Review of District Court Magistrate Orders or Judgments**

- (a) Orders or judgments entered when consent not necessary. Magistrates shall include in any order or judgment entered in a proceeding in which consent is not necessary a written notice that the order or judgment was issued in a proceeding where no consent was necessary, and that any appeal must be taken within 21 days pursuant to Rule 7(a).
- (1) Unless otherwise provided by statute, this Rule is the exclusive method to obtain review of a district court magistrate's order or judgment issued in a proceeding in which consent of the parties is not necessary.
  - (2) The chief judge shall designate one or more district judges to review orders or judgments of district court magistrates entered when consent is not necessary.
  - (3) Only a final order or judgment of a magistrate is reviewable under this Rule. A final order or judgment is that which fully resolves an issue or claim.
  - (4) A final order or judgment is not reviewable until it is written, dated, and signed by the magistrate. A Minute Order which is signed by a magistrate will constitute a final written order or judgment.
  - (5) A party may obtain review of a magistrate's final order or judgment by filing a petition to review such final order or judgment with the reviewing judge no later than 14 days subsequent to the final order or judgment if the parties are present when the magistrate's order is entered, or 21 days from the date the final order or judgment is mailed or otherwise transmitted to the parties.
  - (6) A request for extension of time to file a petition for review must be made to the reviewing judge within the 21 day time limit within which to file a petition for review. A motion to correct clerical errors filed with the magistrate pursuant to C.R.C.P. 60(a) does not constitute a petition for review and will not operate to extend the time for filing a petition for review.
  - (7) A petition for review shall state with particularity the alleged errors in the magistrate's order or judgment and may be accompanied by a memorandum brief discussing the authorities relied upon to support the petition. Copies of the petition

and any supporting brief shall be served on all parties by the party seeking review. Within 14 days after being served with a petition for review, a party may file a memorandum brief in opposition.

- (8) The reviewing judge shall consider the petition for review on the basis of the petition and briefs filed, together with such review of the record as is necessary. The reviewing judge also may conduct further proceedings, take additional evidence, or order a trial de novo in the district court. An order entered under 6(c)(1) which effectively ends a case shall be subject to de novo review.
  - (9) Findings of fact made by the magistrate may not be altered unless clearly erroneous. The failure of the petitioner to file a transcript of the proceedings before the magistrate is not grounds to deny a petition for review but, under those circumstances, the reviewing judge shall presume that the record would support the magistrate's order.
  - (10) The reviewing judge shall adopt, reject, or modify the initial order or judgment of the magistrate by written order, which order shall be the order or judgment of the district court.
  - (11) Appeal of an order or judgment of a district court magistrate may not be taken to the appellate court unless a timely petition for review has been filed and decided by a reviewing court in accordance with these Rules.
  - (12) If timely review in the district court is not requested, the order or judgment of the magistrate shall become the order or judgment of the district court. Appeal of such district court order or judgment to the appellate court is barred.
- (b) Orders or judgments entered when consent is necessary. Any order or judgment entered with consent of the parties in a proceeding in which such consent is necessary is not subject to review under Rule 7(a), but shall be appealed pursuant to the Colorado Rules of Appellate Procedure in the same manner as an order or judgment of a district court. Magistrates shall include in any order or judgment entered in a proceeding in which consent is necessary a written notice that the order or judgment was issued with consent, and that any appeal must be taken pursuant to Rule 7(b).

**History.** Entire chapter amended June 16, 1988, effective January 1, 1989; (rule title), (a), IP(b), IP(c), IP(d), (d)(5), IP(e), and (f) amended and effective September 12, 1991; entire chapter amended September 30, 1999, effective January 1, 2000; entire rule amended and adopted May 12, 2005, effective July 1, 2005; IP(a), (a)(5), (a)(6), and (a)(7) 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); (a)(8) amended and effective December 31, 2013.

**Case Notes:**

## ANNOTATION

**Law reviews.** For article, "Family Law Magistrates: An Overview of Review and Appeal Procedures", see 32 Colo. Law. 91 (September 2003).

**Section (a) of this rule**, rather than former rule, applies to a motion filed after the effective date of this rule concerning 1996 child support stipulation. *People ex rel. Garner v. Garner*, 33 P.3d 1239 (Colo. App. 2001).

**The consent distinctions in this rule** relate to the "with consent" and "without consent" categories established in C.R.M. 6. Thus, review of matters that may be heard by a magistrate without consent of the parties is governed by section (a) of this rule. Conversely, review of those matters that, by rule or statute, required the consent of the parties is governed by section (b). *People ex rel. Garner v. Garner*, 33 P.3d 1239 (Colo. App. 2001).

**Parties' consent in family law cases does not make the order subject to expedited appellate procedure prescribed in C.R.M. 7(b).** *In re Phelps*, 74 P.3d 506 (Colo. App. 2003) (decided prior to 2004 repeal of § 13-5-301 ).

**Characterization of a common law marriage determination hinges on context in which the issue is raised.**

When the common law marriage issue is related to an effort to dissolve a marriage, it constitutes a "family law case", thereby implicating C.R.M. 6(b) and § 13-5-301(3) . *In re Phelps*, 74 P.3d 506 (Colo. App. 2003) (decided prior to 2004 repeal of § 13-5-301 ).

**A magistrate may, without the consent of the parties**, act upon an inmate's in forma pauperis request and dispose of the case in accordance with its ruling thereon. Therefore, it is appropriate for such action to be governed by section (a), which sets out procedures for review of a magistrate's orders and judgments that have been entered without consent of the parties. *Bryan v. Neet*, 85 P.3d 556 (Colo. App. 2003).

**A magistrate's order must fully resolve an issue before it may be reviewed by the district court or appealed to the court of appeals.** *In re Roosa*, 89 P.3d 524 (Colo. App. 2004).

**Failure to file motion for review with the reviewing judge** justifies dismissal of appeal with prejudice. *Matter of Estate of Burnford*, 746 P.2d 51 (Colo. App. 1987); *Estate of Jordan v. Estate of Jordan*, 899 P.2d 350 (Colo. App. 1995); *In re Estate of Hillebrandt*, 979 P.2d 36 (Colo. App. 1999).

**A party is not entitled to appellate review unless the party has first filed a timely motion for district court review of the magistrate's order.** Such a motion for review must be filed within 15 days after the date of the magistrate's order. *In re McCord*, 910 P.2d 85 (Colo. App. 1995); *In re Tonn*, 53 P.3d 1185 (Colo. App. 2002); *In re Moore*, 107 P.3d 1150 (Colo. App. 2005).

**A party must present an issue to the district court in a petition for review before that issue may be raised in the court of appeals.** A party seeking review of a magistrate's decision must raise a particular issue in the district court so that the district court may have an opportunity to correct any error that may have been made by the

magistrate. If a party does not raise an issue before the district court in a petition for review, but raises the issue on appeal for the first time, such party seeks to have the court of appeals correct an error that could have been corrected by the district court in a petition for review. *People ex rel. K.L-P.*, 148 P.3d 402 (Colo. App. 2006).

**A magistrate's order or judgment entered without the consent of the parties is not a decree and order to or from which an appeal lies**, as envisioned in C.R.C.P. 54(a). Therefore, C.R.C.P. 59 is inapplicable to motions for review of a magistrate's order. *In re Moore*, 107 P.3d 1150 (Colo. App. 2005).

**District court erred in denying appellant's motion for review based on the failure timely to provide a transcript.** The Colorado rules for magistrates do not contain a separate section on procedure or any procedural rules specifying any time limits for filing a transcript of a hearing before a magistrate. There is no requirement that a transcript be filed at all in a review proceeding, and there is no requirement that the district court must consider a transcript, if one is provided, when reviewing a magistrate's order. *In re Schmidt*, 42 P.3d 81 (Colo. App. 2002).

**A party seeking review of a magistrate's order shoulders the burden of providing a record justifying the rejection or modification of that order** even though this rule does not require that a transcript be filed at all in a review proceeding and it provides no guidance on the procedures for filing a transcript. Absent such a record, the district court may presume that the magistrate's findings were supported by the evidence. *In re Rivera*, 91 P.3d 464 (Colo. App. 2004).

**A magistrate has authority under § 13-5-301 to hear a C.R.C.P. 60(b)(2) motion without the consent of the parties.** As a result, a district court has jurisdiction to review the motion. *In re Malewicz*, 60 P.3d 772 (Colo. App. 2002).

**The rules governing magistrates do not authorize any motion except a motion for review.** Thus, a magistrate's order issued in response to a motion for reconsideration is void. *In re Roosa*, 89 P.3d 524 (Colo. App. 2004).

**Previous courts have concluded that a motion for reconsideration may be deemed a motion for review;** therefore, a motion for extension of time to file a motion for reconsideration may also be construed to allow the late filing of a motion for review. *In re Coopridger*, 140 P.3d 312 (Colo. App. 2006).

**When a magistrate enters an order outside the presence of the parties, the 15 days to file for review of the order begins to run on the date the order is mailed, not the date the order is made.** *In re Talbott*, 43 P.3d 734 (Colo. App. 2002); *In re Tonn*, 53 P.3d 1185 (Colo. App. 2002).

**In paternity action where grandmother sought to intervene for visitation rights, § 19-1-108 of the Colorado Children's Code is properly applied, not this rule**, if parents have waived the right to a hearing before a judge. *In re K.L.O-V.*, 151 P.3d 637 (Colo. App. 2006).

**Magistrate has no authority to reconsider its own order, sua sponte, or to hear a motion for reconsideration made by a party.** Once a magistrate has entered a written and signed order on a matter without consent, a party must file a motion for review of the magistrate's order with the district court judge. *In re M.B.-M.*, 252 P.3d 506 (Colo.

App. 2011).