

Colorado Supreme Court

Rules Committees

Correction to Rule Change 2018(07)

Colorado Appellate Rules

Rule 10. Appendix to Chapter 32, Form 8, Designation of Transcripts Rules 21, 21.1, 49, 50, 51, 51.1, 52, 53, 54, 56 and 57

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 cause 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;



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- (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).

Credits

Amended eff. Jan. 1, 1984. Repealed and re-adopted eff. Jan. 1, 1999. Amended eff. July 1, 2002; March 3, 2003.

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.

Credits

Amended eff. Jan. 1, 2012.

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) 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.

Rule 50. Certiorari to the 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.

Credits

Amended eff. June 23, 2014.

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) Respondent's Docket Fee. Upon respondent's initial filing, if any, respondent must pay the docket fee of \$115.00.

Credits

Amended eff. Jan. 1, 1984; March 23, 2000; March 3, 2003; June 23, 2014.

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. If 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.

Credits

Adopted eff. May 18, 2006. Amended eff. Jan. 1, 2012.

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.

Credits

Amended eff. Jan. 1, 1988; May 17, 1990; July 1, 1991; Jan. 1, 1999; Feb. 7, 2008; May 28, 2009; Jan. 1, 2012.

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(1).

Rule 53. Petition for Writ of Certiorari and Cross-Petition for Writ of Certiorari

(a) The Petition. The petition for writ of 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;



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(5) a 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; and
- (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

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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.

Credits

Amended eff. Jan. 1, 1984; Sept. 1, 1984; Jan. 1, 1986; July 8, 1993; April 7, 1994; July 1, 1996; July 1, 2005; Jan. 1, 2012; June 23, 2014.

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.

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.

Credits

Amended eff. Sept. 1, 1984.

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.

Credits

Amended eff. Jan. 1, 1984; Sept. 1, 1984; Jan. 1, 1988; July 8, 1993; Oct. 17, 2014.

Amended and Adopted by the Court, En Banc, June 7, 2019, effective immediately.

By the Court:

*Richard L. Gabriel
Justice, Colorado Supreme Court*

Rule Change 2019(12) Colorado Rules of Criminal Procedure

Rule 55. Records

(a) Register of actions (criminal docket). The clerk shall keep a record known as the register of actions and shall enter those items set forth below. The register of actions may be in any form or style prescribed by Chief Justice Directive or approved by the State Court Administrator.

A register of actions shall be prepared for each case filed. The file number of each case shall be entered in the court case management system. All documents filed with the clerk, all process issued and returns made thereon, all costs, appearances, orders, verdicts, and judgments shall be noted chronologically in the register of actions. The entries shall be brief but shall show the date and title of each document filed, order or writ issued, data transfer submitted or received, and the substance of each order or judgment of the court and the returns showing execution of process. The notation of an order or judgment shall show the date the notation is made. The notation of the judgment in the register of actions shall constitute the entry of judgment.

(b) [No Changes]

(c) Indices; Calendars. The clerk shall keep indices of all records. The clerk shall also keep as directed by the court, calendars of all hearings and all cases ready for trial, which shall distinguish trials to a jury from trials to the court. Indices and calendars may be in any form or style prescribed by chief justice directive or approved by the State Court Administrator.

(d) Files. Repealed effective June 6, 2019.

(e) [No Changes]

(f) Retention and Disposition of Records. The clerk shall retain and dispose of all court records in accordance with the Colorado Judicial Department's records retention manual.

Amended and Adopted by the Court, En Banc, June 6, 2019, effective immediately.

By the Court:

*Carlos A. Samour, Jr.
Justice, Colorado Supreme Court* 

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