Colorado Supreme Court

Rules Committees

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 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).

Credits

Amended eff. Jan. 1, 1984. Repealed and readopted 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.

(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(l).

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;

(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 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, 2018, effective July 1, 2018.

By the Court:
Richard L. Gabriel
Justice, Colorado Supreme Court

Rule Change 2018(08) Uniform Local Rules for All State Water Court Division Rules 11, 12 and 13.

Rule 11. Pre-Trial Procedure, Case Management, Disclosure, and Simplification of Issues

COMMITTEE COMMENT:

Rule 11(b)(5)(D)(III)

Amended Rule 11, which became effective July 1, 2009, provides for meetings of the experts without attorneys for the parties or the parties themselves. Effective July 1, 2011, Rule 11(b)(5)(D)(III) was amended, nunc pro tunc on and after July 1, 2009, to make explicit the non-discoverability and non-admissibility of the notes, records, content of discussions, and the experts' written statement prepared in accordance with Rule 11(b)(5(D)(II). In response to arguments that this provision does not prohibit use of such material in pretrial proceedings, Rule 11(b)(5)(D)(III) is further amended to clarify the original intent of the rule that the only permissible use of information from the expert meetings is for purposes of the preparation of the written statements and reports required or permitted by Rule 11(b)(5)(D). This clarifying change applies nunc pro tunc on and after July 1, 2009.

Rule 11(b)(5) and (9)

Effective January 1, 2018, Rule 11(b)(5) was amended to require expert disclosures to be made earlier than deadlines under the previous rule. For the applicant's expert disclosure, supplemental expert disclosure, and opposer's expert disclosure, the new deadline is five weeks earlier than the previous rule. For rebuttal expert disclosures, the new deadline is four weeks earlier than the previous rule. This change was to allow more time after expert disclosures for settlement discussions, mediation, and preparation of pretrial motions pursuant to C.R.C.P. 56. At the same time, Rule 11(b)(9) was amended to require that pretrial motions pursuant to C.R.C.P. 56 be filed 91 days before trial instead of the previous rule requiring such motions to be filed 84 days before trial.

Amended Rule 11, which became effective July 1, 2009, provides for meetings of the experts without attorneys for the parties or the parties themselves. Effective July 1, 2011, Rule 11 is further amended in subsection (b)(5)(D)(III) to make explicit the non-discoverability and non-admissibility of the notes, records, content of discussions, and written statement prepared by the experts in accordance with the rule, and, further, to clarify that the meetings of the experts exclude attorneys for the parties or the parties themselves unless they are designated experts. These clarifying changes apply nunc pro tunc on and after July 1, 2009.

In addition, the following Suggested Guide is included in this Comment by way of example for conduct of the meetings of the experts and preparation of the joint written statement of the experts.

Rule 12. Procedure Regarding Decennial Abandonment Lists

For all decennial abandonment lists filed by the Division Engineers pursuant to C.R.S. § 37-92-401(4), the following procedures apply:

a. The water clerk shall cause notice of the availability of the final decennial abandonment list to be included in the resume and published in accordance with C.R.S. § 37-92-401(4)(d). In addition, the water clerk shall include the revised or unrevised final decennial abandonment list in its entirety in the copy of the resume described in C.R.S. § 37-92-302(3)(a) posted on the water court's web site in accordance with C.R.S. § 37-92-302(3)(c)(I)(D). Neither the water clerk nor the Division Engineer is required to publish the final decennial abandonment list in any newspaper. The published notice and resume for the final decennial abandonment list shall include notice of the deadline for filing any protest.

b. Any protest filed pursuant to C.R.S. § 37-92-401(5) shall automatically trigger a bifurcation from the original case in which the decennial abandonment list was filed without the necessity of a motion to bifurcate or any bifurcation order by the court. Each bifurcated protest case shall be assigned a new case number by the water clerk, shall include a reference to the original abandonment case number, and shall be published in the water court resume in accordance with C.R.C.P. Rule 90 and C.R.S. § 37-92-302(3) and with notice of the deadline for any entry of appearance under Water Court Rule 12(d). Parties to the bifurcated protest cases shall not be considered parties to the original abandonment case for the purpose of filings and service in the original abandonment case, except as provided in Water Court Rule 12(j).

c. All other Water Court Rules, with the exception of Water Court Rules 3, 6 and 9, apply to the bifurcated protest cases. For the purposes of the applicable Water Court Rules, the final decennial abandonment list shall be considered an application, the Division Engineer shall be considered the applicant, any protest shall be considered a statement of opposition, and any protestant shall be considered an opposer.

d. Any person who may be affected by the subject matter of a protest or by any ruling thereon and desiring to participate in any hearing pursuant to C.R.S. § 37-92-401(6) must file an entry of appearance by August 31, 2022, or the respective tenth anniversary thereafter. If the water judge permits additional protests after June 30, 2022, or the respective tenth anniversary thereafter, as will serve the ends of justice pursuant to C.R.S. § 37-92-401(6), then any entry of appearance under this Water Court Rule

12(d) must be filed by the last day of the second month following the month in which an additional protest is filed. An entry of appearance must identify:

(1) the portion of the decennial abandonment list with respect to which the appearance is being made; (2) whether the person is participating in support or in opposition to abandonment of the subject water right(s); (3) any factual and legal basis for any allegation that the person may be affected by the subject matter of the protest or by a ruling on the protest; and (4) any claim of ownership in the subject water right(s).

e. The at-issue date for a bifurcated protest case shall be 49 days after the deadlines for filing an entry of appearance by any potentially affected persons under Water Court Rule 12(d).

f. For the purpose of the proceedings within the bifurcated protest case, any person entering an appearance under Water Court Rule 12(d) in support of abandonment of the subject water right(s) shall have the same case management deadlines and order of presentation at hearing as the Division Engineer unless otherwise ordered by the water judge. Any person entering such an appearance in opposition to abandonment of the subject water right(s) shall have the same case management deadlines and order of presentation at hearing as the protestant(s) unless otherwise ordered by the water judge.

g. Any person who wishes to participate in a bifurcated protest case after the deadline for filing an entry of appearance must intervene pursuant to Water Court Rule 7.

h. If it is necessary to determine the ownership of or right to use a water right that is the subject of a protest to the decennial abandonment list in order to determine whether the water right has been abandoned, in whole or in part, then the water judge may exercise jurisdiction over any such controversy. If the water judge elects to exercise jurisdiction over such a controversy, the water judge shall order any party to serve additional notice under C.R.C.P. Rule 4, and to file such supplemental pleadings as the water judge finds necessary or appropriate to resolve such controversy. Any such controversy may be resolved by separate hearing and under a preliminary case management order prior to implementing the case management procedures of Water Court Rule 11 as to the Division Engineer's claim of abandonment. If the water judge does not elect to exercise jurisdiction over such controversy, then the water judge may order the applicable parties to commence a separate proceeding to resolve the controversy and stay further proceedings on the abandonment claim until the that controversy is resolved. If the water judge exercises jurisdiction over issues of ownership in such abandonment proceedings, the water judge will consider any requests by a party as to the place of trial, and venue is proper within any county in the water division notwithstanding C.R.C.P. 98.

i. Any order of the water court in a bifurcated protest case resolving the alleged abandonment of all or part of any water right that is the subject of a protest shall be entered in the bifurcated protest case and in the original abandonment case.

j. Within 63 days of resolution of all bifurcated protest cases, the Division Engineer shall file a motion in the original abandonment case for a judgment and decree listing: (1) the final decennial abandonment list as filed with the court by the Division Engineer; (2) identification of all orders by case number and date in the bifurcated protest cases and the resolution of the alleged abandonment of all or part of any water right that was the subject of a protest; and (3) a complete listing of the water rights, in whole or in part, abandoned by the water court. No conferral with any person shall be required

prior to the Division Engineer filing the motion. In each bifurcated protest case, the Division Engineer shall simultaneously file notice of the filing of the motion in the original abandonment case and a copy of the proposed judgment and decree. Any party to a bifurcated protest case objecting to the form of the proposed judgment and decree may file a response to the Division Engineer's motion in the original abandonment case solely to identify any clerical errors in the proposed judgment and decree within 21 days of the date that notice of the motion's filing was filed and served in the bifurcated protest case, and the Division Engineer may file a reply.

Rule 13. Modification of Rules

The requirements of these rules may be modified with approval of the water court upon agreement of the parties, or by the court, in exceptional cases to meet emergencies or to avoid substantial injustice or great hardship. Any request for modification shall be presented to the judge before whom the case is pending and shall state in writing the grounds supporting it. The opposing party shall be given reasonable notice and an opportunity to contest the request in writing.

Amended and Adopted by the Court, En Banc, May 31, 2018, effective immediately.

By the Court:
Monica M. Márquez
Justice, Colorado Supreme Court

Rule Change 2018(09) Chapter 38 Public Access to Information and Records

Rule 2. Public Access to Administrative Records of the Judicial Branch.

This rule governs public access to all records maintained for the purpose of managing the administrative business of the Judicial Branch of the State of Colorado. Using the Colorado Open Records Act (CORA), sections 24-72-200.1 to -206, C.R.S. (2015), as a guide, the Supreme Court published a proposed Rule governing access to administrative records of the Judicial Branch, and the Chief Justice signed Chief Justice Directive 15-01 to govern interim access to administrative records. The Colorado Supreme Court received comments and held a public hearing on the proposed rule. The Supreme Court revised the rule in response to the comments received. Although CORA served as a guide in drafting this rule, the rule and CORA are not identical. Many of the rule's deviations from CORA reflect simple changes to language and streamlined organization of the rule for clarity and to better serve the public. Other, substantive deviations from CORA reflect the unique nature of the records and operations of the Judicial Branch. These changes are addressed in comments throughout the rule. This rule pertains only to administrative records and does not contemplate or control access to court records, which is governed by P.A.I.R.R. 1 and Chief Justice Directive 05-01. This rule is intended to be a rule of the Supreme Court within the meaning of CORA, including section 24-72-204(1)(c), C.R.S. (2015).

SECTION 1
DEFINITIONS

For purposes of Chapter 38, Rule 2, the following definitions apply:

(a)–(b) [NO CHANGE]

(c) "Custodian" means the person designated by federal or state statute, court rule, or court order as the keeper of the record, regardless of possession. Where no federal statute or regulation, state statute, court rule, or court order designates, the custodian is as provided in this subsection:

(1)–(7) [NO CHANGE]

(8) For the Office of Alternate Defense Counsel, the custodian is the Director of the Office of Alternate Defense Counsel or his or her designee.

(9)–(11) [NO CHANGE]

(d) [NO CHANGE]

(e) The "Judicial Branch" includes Colorado State Courts and Probation, the Office of the State Court Administrator, the Office of the Presiding Disciplinary Judge, the Office of Judicial Performance Evaluation, the Office of Attorney Regulation Counsel, the Office of Attorney Registration, the Colorado Lawyer Assistance Program, the Colorado Attorney Mentor Program, the Office of Alternate Defense Counsel, the Office of the Child's Representative, the Office of the State Public Defender, and the Office of the Respondent Parents' Counsel. The Judicial Branch does not include the Commission on Judicial Discipline, Independent Ethics Commission, or the Independent Office of the Child Protection Ombudsman.

COMMENT: The Independent Ethics Commission was created by article 29, section 5 of the Colorado Constitution, and is an independent and autonomous constitutional entity. The Supreme Court does not believe it is appropriate to promulgate a rule governing access to records of a separate constitutional entity. The Commission on Judicial Discipline is also a separate constitutional entity, created by article 6, section 23 of the Colorado Constitution. Section 24-72-401, C.R.S. (2015) governs the confidentiality of information and records of the Commission on Judicial Discipline. The Supreme Court presumes that the legislature intended section 24-72-401, C.R.S. (2015), and not CORA to control the confidentiality of Commission on Judicial Discipline records. The legislation creating the Independent Office of the Child Protection Ombudsman specifies that it is subject to CORA. § 19-3.3-102(5), C.R.S. (2015).

(f)–(h) [NO CHANGE]

SECTION 2
ACCESS TO ADMINISTRATIVE RECORDS

(a) All Judicial Branch administrative records shall be available for inspection by any person at reasonable times, except as provided in this rule or as otherwise provided by federal statute or regulation, state statute, court rule, or court order. The custodian of any administrative record shall make policies governing the inspection of administrative records that are reasonably necessary to protect the records and prevent unnecessary interference with the regular discharge of the duties of the custodian or the custodian's office.

(b)–(c) [NO CHANGE]

SECTION 3
EXCEPTIONS AND LIMITATIONS ON ACCESS TO RECORDS

(a) [NO CHANGE]

(b) May Deny Inspection. Unless otherwise provided by federal statute or regulation, state statute, court rule, or court order, the custodian may deny inspection of the following records on the ground that disclosure would be contrary to the public interest:

(1)–(9) [NO CHANGE]

(10) Security records, including records regarding security plans developed or maintained by the Judicial Branch, such as:

(A)–(E) [NO CHANGE]

COMMENT: CORA contains a similar provision. § 24-72-204(2)(a)(VIII), C.R.S. (2015). This rule provides more specific detail on the types of security records maintained by the Judicial Branch.

Notwithstanding any provision to the contrary in this subsection (b), the custodian shall deny inspection of any record that is confidential by federal statute or regulation, state statute, court rule, or court order.

(c) Must Deny Inspection. Unless otherwise provided by federal statute or regulation, state statute, court rule, or court order, the custodian must deny inspection of the following records:

(1)–(2) [NO CHANGE]

(3) (A) Any records of sexual harassment complaints and investigations, whether or not such records are maintained as part of a personnel file; except that, an administrative agency investigating the complaint may, upon a showing of necessity to the custodian of records, gain access to information necessary to the investigation of such a complaint. This paragraph shall not apply to records of sexual harassment complaints and investigations that are included in court files and records of court proceedings. Disclosure of all or a part of any records of sexual harassment complaints and investigations to the person in interest is permissible to the extent that the disclosure can be made without permitting the identification, as a result of the disclosure, of any individual involved. This paragraph shall not preclude disclosure of all or part of the results of an investigation of the general employment policies and procedures of an agency, office, department, or division, to the extent that the disclosure can be made without permitting the identification, as a result of the disclosure, of any individual involved.

(B) A person in interest under this paragraph (3) includes the person making a complaint and the person whose conduct is the subject of such a complaint.

(C) A person in interest may make a record maintained pursuant to this paragraph (3) available for public inspection when such record supports the contention that a publicly reported, written, printed, or spoken allegation of sexual harassment against such person is false.

(4) [NO CHANGE]

(5) Trade secrets and proprietary information including copyrighted and trademarked materials, and other intellectual property constituting trade secrets and proprietary information; software programs; network and systems architectural designs; network, system, and individual login and logon credentials and passwords; source code; source documentation; project management materials developed or maintained by the Judicial Branch; information in tangible or intangible form relating to released and unreleased Judicial Branch software or hardware, user interface specifications, use case documents, images and design screens, database design structures and architecture; records of investigations conducted by Judicial Information Security, records of the intelligence information or security procedures relating to security events, incidents, or breach, and security structure, architecture, procedures, policies, and investigations; the Judicial Branch's original design ideas; the Judicial Branch's non-public business policies and practices relating to software development and use; and the terms and conditions of any actual or proposed license agreement or other agreement concerning the Judicial Branch's products and licensing negotiations.

This paragraph (5) does not prohibit the custodian from transferring records to the Colorado Chief Information Security Officer or other state or federal agencies as determined to be necessary by the custodian for information security purposes.

COMMENT: CORA contains a similar provision. § 24-72-204(3)(a)(IV), C.R.S. (2015). This provision of the rule is broader than CORA and contains additional protection of information technology records, including trade secrets and proprietary information. The Judicial Branch relies heavily on its Information Technology infrastructure and has invested in proprietary systems that may not be subject to disclosure.

(6)–(8) [NO CHANGE]

(9) With the exception of any records that are accessible pursuant to C.R.C.P. 251, any records related to reports of misconduct made to the Office of Attorney Regulation Counsel.

COMMENT: This provision is not in CORA. Records of reports of misconduct made to the Office of Attorney Regulation Counsel are governed by C.R.C.P. 251 and that Rule should not be circumvented by P.A.I.R.R. 2.

(10)–(11) [NO CHANGE]

(12) Juror records, except as provided by federal or state statute, court rule, or court order. This paragraph (12) does not prohibit the publication or disclosure of information in de-identified aggregate or statistical form.

COMMENT: This provision is not in CORA. Juror records are unique to the Judicial Branch and must remain confidential to protect juror safety and security. Certain juror records are addressed by statute. §§ 13-71-101 to -145, C.R.S. (2015).

(13) Collection files pertaining to a person, including collections investigator files, with the exception that such files shall be available to the person in interest to the extent permitted by federal statute or regulation, state statute, court rule, or court order. Information regarding restitution collections efforts and payment plans shall be available to the victim(s) of the offender's crime(s) after confidential personal information has been redacted. Aggregate or statistical information related to collection files is available for inspection.

COMMENT: This provision is not in CORA. The Judicial Branch is responsible in many cases for collections and collections investigations

related to court costs, fines, fees, and restitution. These files contain confidential personal and financial information. This provision strikes a balance between protection of certain offender financial information and information available to a crime victim owed restitution.

(14)–(17) [NO CHANGE]

(18) Purchasing records related to a service or product purchased from a vendor that are determined to be confidential pursuant to applicable procurement rules. Records related to the purchasing process, including criteria and scoring, are not available for inspection until the purchasing process is finalized and any information identifying the scorekeeper on the scoring sheets has been redacted.

COMMENT: Confidential purchasing records are addressed generally in CORA as confidential commercial and financial information. § 24-72-204(3)(a)(IV), C.R.S. (2015). This provision of the rule specifies more clearly that purchasing records determined to be confidential under the applicable procurement rules cannot be disclosed.

(19)–(20) [NO CHANGE]

(21) Investigation records, such as:

(A) Any record of civil or administrative investigations authorized by federal statute or regulation, state statute, court rule, or court order conducted by the Judicial Branch unless the record is available for inspection pursuant to federal statute or regulation, state statute, court rule, or court order; and

(B) Any record of an internal personnel investigation, except that records of actions taken based on such investigation must be open to inspection. For complaints involving sexual harassment, records of the internal personnel investigation, including records of actions taken based upon such investigation, are not open to inspection except as provided in Section (3)(c)(3). Any records of investigations referred to the Commission on Judicial Discipline are governed by the Colorado Rules of Judicial Discipline.

COMMENT: CORA does not specifically address internal personnel investigations. This rule strikes a balance between providing a thorough and confidential process for investigating personnel issues and disclosing any action taken as a result of the investigation.

(22)–(24) [NO CHANGE]

(25) Trial and appellate court memoranda, drafts of opinions and orders, court conference records, notes, and other written materials of a similar nature prepared by judges or court staff acting on behalf of or at the direction of a judge or court as part of the judicial decision-making process utilized in disposing of cases and controversies before Colorado courts unless filed as part of the court record and thus subject to Chief Justice Directive 05-01.

COMMENT: This provision is not in CORA.

(d) [NO CHANGE]

SECTION 4

PROCEDURE TO ACCESS RECORDS

COMMENT: This rule creates a different process than CORA for accessing records but with similar timeframes. Under the rule, the Judicial Branch responds to a request for inspection within three business days of receipt of the request. Certain extenuating circumstances specified in the rule may require additional time for a response. Any fees charged must be consistent with Chief Justice Directive 06-01, but the fees are similar to the fees under CORA.

(a)–(b) [NO CHANGE]

(c) Fees.

(1) A custodian may impose a fee in response to a record request if the custodian has, before the date of receiving the request, either posted on the custodian's website or otherwise made publicly available a written policy that specifies the applicable conditions and fees for research, retrieval, redaction, copying, and transmission of a record. Assessment of fees shall be consistent with Chief Justice Directive 06-01. Where the fee for a certified copy or other copy, printout, or photograph of a record is specifically prescribed by federal statute or regulation, state statute, court rule, or court order, the specific fee shall apply.

(2) [NO CHANGE]

SECTION 5 [NO CHANGE]

Amended and Adopted by the Court, En Banc, May 31, 2018, effective immediately.

By the Court:
Monica M. Márquez
Justice, Colorado Supreme Court

Rule Change 2018(10) Colorado Rules of Civil Procedure

Rule 256. The Colorado Lawyer Self-Assessment Program

(1) The Colorado Supreme Court Lawyer Self-Assessment Program. The Colorado Supreme Court hereby establishes the Colorado Lawyer Self-Assessment Program. The Colorado Lawyer Self-Assessment Program allows lawyers and law firms to evaluate confidentially and voluntarily the systems and procedures they have in place to promote compliance with professional obligations. The program gives lawyers and law firms the opportunity to improve the quality of legal services offered and to build greater client satisfaction through proactive practice review. This program also promotes access to justice, as well as inclusivity and well-being among lawyers and their staff.

Lawyer participation in this program furthers the objectives in the Preamble to Chapters 18–20 of the Colorado Rules of Civil Procedure.

The Colorado Supreme Court additionally finds that maintaining the confidentiality of information prepared, created, or communicated by a lawyer or by a law firm administrator, employee, or consultant acting under the direction of a lawyer, in connection with a lawyer self-assessment will enhance participation in the Colorado Lawyer Self-Assessment Program, which will further the objectives referenced above.

(2) Definitions. As used in this rule:

(a) "Confidential information" means any information, including, but not limited to, documents, notations, notes, records, writings, and responses prepared or created by a lawyer or by a law firm administrator, law firm employee, or consultant under the direction of a lawyer, in connection with a lawyer self-assessment. Confidential information includes any conclusions or evaluations made by a lawyer or by a law firm administrator, law firm employee, or consultant acting under the direction of a lawyer,

in connection with a lawyer self-assessment. Confidential information also includes any oral, written, or electronic communication by or to a lawyer or law firm administrator, law firm employee, or consultant acting under the direction of a lawyer, in connection with a lawyer self-assessment. Confidential information further includes any information generated or communicated as part of a law practice review.

(b) "Lawyer self-assessment" means any lawyer self-assessment tool approved by the Colorado Supreme Court Advisory Committee. This includes both the online survey self-assessment tool and the downloadable and printable survey tool available at www.coloradosupremecourt.com.

(c) "Law practice review" means any oral, written, or electronic communications between a lawyer who has completed a lawyer self-assessment and one or more law practice reviewers for purposes of obtaining feedback and guidance on that lawyer's practice.

(d) "Law practice reviewer" means a lawyer, and any consultant acting under the direction of a lawyer, who agrees to provide practice feedback and guidance to a lawyer following completion of a lawyer self-assessment.

(3) Program Administration. The Office of Attorney Regulation Counsel shall be responsible for the administration of the Colorado Lawyer Self-Assessment Program.

(4) Confidentiality.

(a) Confidential information shall not be utilized in any disciplinary or disability complaint or investigation, and shall be excluded as evidence in any disciplinary or disability proceeding before the Supreme Court Attorney Regulation Committee, the Presiding Disciplinary Judge of the Supreme Court, or the Colorado Supreme Court.

(b) Confidential information that lawyers or staff within a law firm communicate with other lawyers or staff in the same law firm and concerning a lawyer self-assessment shall be kept strictly confidential, shall not be utilized in any disciplinary or disability complaint or investigation, and shall be excluded as evidence in any disciplinary or disability proceeding before the Supreme Court Attorney Regulation Committee, the Presiding Disciplinary Judge of the Supreme Court, or the Colorado Supreme Court.

(c) The Office of Attorney Regulation Counsel shall not collect any personally-attributable answer data from lawyers who participate in the Colorado Lawyer Self-Assessment Program, nor shall any confidential information be used in any investigation or any disciplinary or disability proceeding initiated by the Office of Attorney Regulation Counsel.

(5) Immunity. Any law practice reviewer is immune from suit and liability for damages in any legal proceeding related to participation in law practice review, provided the law practice reviewer acted in good faith. Law practice reviewers shall be relieved of the duty of disclosure of information to authorities imposed by Colo. RPC 8.3(a).

Amended and Adopted by the Court, En Banc, June 28, 2018, effective immediately.

By the Court:
Monica M. Márquez
Justice, Colorado Supreme Court

Visit the Supreme Court's website for complete text of rule changes, including corresponding forms and versions with highlights of revisions (deletions and additions), which are not printed in Court Business. Material printed in Court Business appears as submitted by the Court and has not been edited by *Colorado Lawyer* staff.