**AGENDA**

**COLORADO SUPREME COURT ADVISORY COMMITTEE ON RULES OF APPELLATE PROCEDURE**

Thursday, August 31, 2023, 1:00 p.m. (please note new time)
Ralph L. Carr Colorado Judicial Center
2 E. 14th Ave., Denver CO 80203
**Third Floor, Court of Appeals Full Court Conference Room**

I. Call to Order

II. Approval of the March 3, 2023, minutes [Pages 1 to 2]

III. Business

A. Rule 3.3 (Marilyn Chappell) [Pages 5 to 8]

B. Rule 3.4 (Polly Brock) [Pages 9 to 11]

C. Rule 5 (Judge Gomez) [Pages 12 to 21]

D. Rule 12 (Melissa Meirink) [Page 22]

E. Rule 21 and Companion Rules 29, 32, and 40 (Melissa Meirink) [Pages 23 to 30]

F. Rule 41 (Melissa Meirink) [Page 31]

G. Next meeting

IV. Adjourn

**COLORADO SUPREME COURT**
**ADVISORY COMMITTEE ON RULES OF APPELLATE PROCEDURE**

**Minutes of Meeting**
**March 2, 2023**

A quorum being present, the Colorado Supreme Court's Advisory Committee on Rules of Appellate Procedure was called to order by Chief Judge Gilbert Román at 1:30 p.m., in the Court of Appeals Full Court Conference Room on the third floor of the Ralph L. Carr Colorado Judicial Center. Members and guests present or excused from the meeting were:

| **Name** | **Present** | **Excused** |
|---|---|---|
| Chief Judge Gilbert Román, Chair | X | |
| Marilyn Chappell | X | |
| Anne Whalen Gill | X | |
| Marcy Glenn | X | |
| Judge Christina Gomez | X | |
| Andrew Low | X | |
| Jason Middleton | | X |
| Norman Mueller | X | |
| Jillian Price | X | |
| Judge Christopher Seldin | | X |
| Judge Christopher Zenisek | X | |
| **Non-voting participants** | | |
| Justice Richard Gabriel, Liaison | X | |
| Polly Brock | X | |
| Melissa Meirink | X | |

## I. Attachments & Handouts

A. March 2, 2023 agenda packet

## II. Approval of Minutes

The committee approved the October 27, 2023 minutes as submitted.

## III. Announcements from the Chair

- Chair Chief Judge Román introduced new members Judge Christina Gomez and Perry Friedlander. Ms. Friedlander will be assisting the committee as a non-voting member.

## IV. Proposed drafts of Colorado Appellate Rules

The following issues and revisions were discussed:

- C.A.R. 39
    - This proposal came from attorney Jeffrey Kane, who suggested amendments aimed at providing discretion to the trial court to award reasonable out-of-pocket expenses necessary to adjudicate a particular appeal. After discussion, the committee approved a portion of the suggestions and voted 6-1 to send the proposal to the court.

- C.A.R. 12
    - After the committee approved changes to this rule at the last meeting, a few members proposed additional refinements. After discussion, the committee voted 5-3 not to restructure a section and voted unanimously to accept clarifying edits.

- C.A.R. 3.1
    - The proposed changes remove a reference to C.A.R. 12(a). The committee unanimously approved the proposed changes.

- C.A.R. 53
    - Attorney Paul Chessin submitted a memo to the committee detailing a possible conflict between (c)(1) and (2). The suggested revisions were made in response to the memo and were aimed at omitting confusion concerning opposition briefs and reply briefs. The committee unanimously approved the proposal.

- C.A.R. 28
    - Attorney Nelson Boyle brought the redaction issues to the attention of the committee. The Supreme Court and the Court of Appeals Clerk's Offices were opposed to the proposal and deemed it unworkable. The clerks and the Public Access Committee might consider the redaction issue separately.

- C.A.R. 32
    - An issue arose whether C.A.R. 32(f)(1) applies to criminal cases or to both civil and criminal cases. The rule was intended to apply only in criminal cases, but that is not what it says. The committee voted unanimously to approve the clarification that in both criminal and civil cases, initials should be used when referring to victims of sexual assault.

**Future Meeting**

The next meeting will be held Thursday, August 24th at 1:00 pm.
The committee adjourned at 3:12 pm.

**From:** Marilyn Chappell
**Sent:** Monday, March 20, 2023 12:34 PM
**To:** meirink, melissa; michaels, kathryn
**Cc:** nmueller@hmflaw.com
**Subject:** [External] RE: Appellate Rules Committee suggestion

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Thank you, Melissa. --Marilyn

**MARILYN S. CHAPPELL**

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Denver, CO 80202
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vCard

**From:** meirink, melissa <melissa.meirink@judicial.state.co.us>
**Sent:** Monday, March 20, 2023 12:31 PM
**To:** Marilyn Chappell <mchappell@grsm.com>; michaels, kathryn <kathryn.michaels@judicial.state.co.us>
**Cc:** nmueller@hmflaw.com
**Subject:** RE: Appellate Rules Committee suggestion

Thanks, Marilyn. We will hold on to Mr. Boyle's request for inclusion at the next Committee meeting.

-Melissa

Melissa C. Meirink (she/her)
Staff Attorney
Colorado Supreme Court
(720) 625-5406
melissa.meirink@judicial.state.co.us

**From:** Marilyn Chappell <mchappell@grsm.com>
**Sent:** Saturday, March 11, 2023 4:22 PM
**To:** michaels, kathryn <kathryn.michaels@judicial.state.co.us>; meirink, melissa <melissa.meirink@judicial.state.co.us>
**Cc:** nmueller@hmflaw.com
**Subject:** [External] FW: Appellate Rules Committee suggestion

**EXTERNAL EMAIL:** This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Greetings – below is a proposal from Mr. Boyle on amending C.A.R. 3.3 that I am forwarding for the Appellate Rules Committee's consideration. Thank you, and have a great weekend. --Marilyn

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**From:** Nelson Boyle <nelsonboyle@gmail.com>
**Sent:** Wednesday, March 8, 2023 10:43 AM
**To:** Marilyn Chappell <mchappell@grsm.com>
**Subject:** Re: Appellate Rules Committee suggestion

I think amending Rule 3.3 makes more sense. it currently reads:
An appeal from an order granting or denying class certification under C.R.C.P. 23(f) may be allowed pursuant to the procedures set forth in that rule and C.R.S. [sec] 13-20-901.
I would suggest amending it to read:

An appeal from an order granting or denying class certification under C.R.C.P. 23(f) may be allowed pursuant to the procedures set forth in that rule, C.A.R. 27(a), and [sec] 13-20-901, C.R.S.

(Note that if amended, I also have suggested moving "C.R.S." to its proper place consistent with other rules, the state statutes, and the way our appellate courts cite our statutes. See, e.g., C.A.R. 3.2 and C.A.R. 3.4.)

On Fri, Mar 3, 2023 at 4:20 PM Marilyn Chappell <mchappell@grsm.com> wrote:

> Hi Nelson – thanks much. I'm wondering if you have specific language for C.A.R. 3.3 to propose that would be consistent with CRCP 23(f) and CRS 13-20-901, or would amending CRCP 23(f) make more sense? --Marilyn

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**From:** Nelson Boyle <nelsonboyle@gmail.com>
**Sent:** Friday, March 3, 2023 10:28 AM
**To:** Marilyn Chappell <mchappell@grsm.com>
**Subject:** Re: Appellate Rules Committee suggestion

Thanks.
I think Rule 3.3 could use a look, too. A petition for an interlocutory appeal of a class certification order seems to be treated as a motion, which makes sense. But it could use a cross-reference in 3.3, indicating that. I just had one filed earlier this year after a judge ruled to certify a class. The rules give no guidance on what to do when receiving one except that the motions rule seems to apply. So I responded within 7 days after getting the petition and that worked. IMHO, since it's unclear and someone might miss the chance to respond to one of these, it could use a cross-reference in Rule 3.3 and in the motions rule.
Wow, that's a lot of moves in one year. Congratulations on your new position.
-Nelson

On Thu, Mar 2, 2023 at 5:03 PM Marilyn Chappell <mchappell@grsm.com> wrote:

> Hi Nelson – I hope all is well at your end. Congrats on your new firm affiliation! As you can see, I moved firms too. (I also moved houses last year – still figuring out what year/planet I'm on!). Norm Mueller (who sends you his regards) and I wanted to circle back with you about your idea you sent us

for consideration by the Appellate Rules Committee, about amending the rules to streamline the process for submitting redacted versions of briefs that contain privileged/confidential information. At its meeting today the Committee gave your idea serious consideration. The consensus was not to propose specific amendments to the rules at this time but to continue to look for ways to meaningfully address public access of court documents while protecting privileged/confidential information. Thanks again for reaching out. Hope to see you at the Inn! --Marilyn

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--
Nelson Boyle
(Personal Email Account)

--
Nelson Boyle
(Personal Email Account)

## Rule 3.3. Appeals of Grant or Denial of Class Certification

An appeal from a written, signed, and dated order granting or denying class certification under C.R.C.P. 23(f) may be allowed pursuant to the procedures set forth in that rule, C.A.R. 27(a), and ~~C.R.S.~~ § 13-20-901, C.R.S.

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**From:** roman, gilbert
**Sent:** Monday, July 24, 2023 1:28 PM
**To:** mortier, tiffany
**Cc:** brock, polly; friedlander, perry; dethman, marguerite; bartlett, taylor; meirink, melissa; michaels, kathryn
**Subject:** RE: Rule change suggestion

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Good suggestion. I am including Melissa and Kathryn on this email to get it teed up properly for the August 31st RAP meeting.

***Gilbert M. Román***
***Chief Judge***
***Colorado Court of Appeals***
***720-625-5326***

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**From:** mortier, tiffany <tiffany.mortier@judicial.state.co.us>
**Sent:** Monday, July 24, 2023 9:24 AM
**To:** roman, gilbert <gilbert.roman@judicial.state.co.us>
**Cc:** brock, polly <polly.brock@judicial.state.co.us>; friedlander, perry <perry.friedlander@judicial.state.co.us>; dethman, marguerite <marguerite.dethman@judicial.state.co.us>; bartlett, taylor <taylor.bartlett@judicial.state.co.us>
**Subject:** Rule change suggestion

Hi Chief,

For the next appellate rules committee meeting, the motions team has a suggestion for a rule change.

Rule C.A.R. 3.4(g)(7) covers answer briefs for D&N cases. It encourages the Department and GAL to file a joint brief, but it does not include any word count.

We would propose adding a word count of 9,500 words, similar to the word count requirement for a combined answer brief that responds to more than one appellant. Right now we get quite a few motions for excess words from joint GAL/Department briefs because they are limited to 7500. And our practice is to grant the motions and allow them 9,500 words.

Here's the language from 3.4(g):

> (5) The answer brief or cross-appeal opening/answer brief must contain no more than 7,500 words, excluding attachments and/or any addendum containing statutes, rules, regulations, etc. A self-represented party who does not have access to a word-processing system must file a typewritten or legibly handwritten brief of not more than 25 double-spaced and single-sided pages. Such a brief must otherwise comply with this rule and C.A.R. 32.
>
> (6) In cases involving more than one appellant and in which the appellee chooses to file an answer brief, the appellee must file a combined answer brief addressing the legal issues raised by all appellants. The combined answer brief must be filed within 28 days of service of the last opening brief filed and must contain no more than 9,500 words.
>
> (7) In cases involving more than one appellee, the court encourages coordination among appellees to avoid repetition within the answer briefs. A joint answer brief may, but is not required to, be filed by appellees.

So, we would propose amending (7) to read:

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

filed by appellees. Such a joint brief must contain no more than 9,500 words."

Let me know if you have any questions. Thanks for considering it.

Tiffany

## Rule 3.4. Appeals From Proceedings in Dependency or Neglect

**(a) – (f) NO CHANGE**

**(g) Answer Brief on Appeal.**

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

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

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

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

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

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

(7) In cases involving more than one appellee, the court encourages coordination among appellees to avoid repetition within the answer briefs. A joint answer brief may, but is not required to, be filed by appellees. Such a joint brief must contain no more than 9,500 words.

**(h) – (o) NO CHANGE**

## Summary of Proposed Amendments to CAR 5(e) and (f)

## Background

This proposal comes from a working group consisting of Court of Appeals judges Lino Lipinsky, Christina Gomez, and Tim Schutz; Court of Appeals senior judges Dan Taubman and Dave Richman; and practitioners Katayoun (Katy) Donnelly and Erika Holmes. It was presented to and approved by the Court of Appeals judges on July 27, 2023. (Minor adjustments have been made since that vote that we can discuss at the rules committee meeting.)

The proposal would expand and clarify the provisions for limited scope representation in civil appeals. Part of the impetus for the proposal comes from concerns raised by volunteers with the CBA Civil Appeals Clinic. As currently drafted, the rule doesn't permit limited appearances for the purpose of assisting with briefs, and it doesn't address an attorney's ability to provide assistance on appeals absent a formal entry of appearance. We want to facilitate volunteer assistance at the Clinic without potentially running afoul of the rule and imposing unreasonable burdens on the volunteer attorneys. And, more broadly, we want to encourage attorneys to provide unbundled services in appeals, particularly for self-represented litigants.

## Summary of Proposal

The proposal sets out the three types of limited scope representation attorneys could provide in appeals:

- Limited legal services requiring entry of appearance and withdrawal [subsection (e)(1)]. This type of service — full representation for a part of an appeal — is covered by the existing rule and is comparable to the language in C.R.C.P. 121, § 1-1(5). However, we are proposing a revision that would no longer prohibit its use for brief writing. We researched state appellate rules from across the country but found no similar restriction in the analogous rule of any other jurisdiction.

- Limited legal services requiring disclosure of attorney assistance without entry of appearance [subsection (e)(2)]. This type of service — drafting assistance — would require an attorney to disclose the assistance, using a certification form the self-represented party would file with the pleading. (We've prepared a proposed JDF form for this.) The language here is taken from C.R.C.P. 11(b) with a few minor modifications.

- Limited legal services not requiring entry of appearance or disclosure of attorney assistance [subsection (e)(3)]. This type of service — more limited assistance — would not require either an entry of appearance or a certification disclosing the attorney's assistance. The language here is taken from C.R.C.P. 11(b), which excepts filling out pre-printed forms from any disclosure requirements. We've modified the language to provide additional exceptions for oral assistance or advice and for legal assistance provided through a nonprofit or court-sponsored program that does not create an expectation by either the client or the lawyer that the legal assistance will continue.

**PROPOSED REVISED RULE (REDLINE)**

### CAR 5. Entry of Appearance and Withdrawal

**(a) Entry of Appearance.** An attorney enters an appearance in any matter before an appellate court when the attorney files an entry of appearance or signs a document filed with the appellate court. An entry of appearance must identify the party for whom the appearance is made and provide the attorney's office address, telephone number, email address, and attorney registration number. An entry of appearance by an attorney who is a member or an employee of a law firm, professional corporation, or clinic relieves other members or employees of the same law firm, professional corporation, or clinic from needing to file an entry of appearance in the same proceeding unless the court indicates otherwise. An attorney who enters an appearance and wishes to withdraw must comply with this rule.

**(b) Withdrawal without Leave of Court.** An attorney may withdraw from a case without leave of the appellate court by filing a notice of withdrawal confirming that the withdrawing attorney has complied with all outstanding appellate court orders and one of the following applies:

(1) the party represented by the withdrawing attorney will continue to be represented by co-counsel who has already entered an appearance pursuant to subsection (a); or

(2) the notice of withdrawal includes a substitution of counsel, signed by both the withdrawing and replacement attorneys, containing the information required for an entry of appearance under subsection (a) for replacement counsel; or

(3) the withdrawing attorney is a member or employee of a law firm, professional corporation, or clinic, and another attorney from the same law firm, professional corporation, or clinic will represent the party. Withdrawal of an attorney pursuant to this subsection relieves the other attorneys of the same law firm, professional corporation, or clinic from needing to file an entry of appearance or withdrawal in the same proceeding unless the court indicates otherwise.

**(c) Withdrawal with Leave of Court.** If not covered by subsection (b), an attorney may withdraw from a case only with the appellate court's approval. Such approval rests in the appellate court's sound discretion, and will not be granted until a motion to withdraw or a Form Motion to Withdraw [JDF Form 1905 SC] has been filed and served on the client and the other parties of record or their attorneys and either (i) both the client and all counsel for the other parties consent in writing at or after the time of service of the motion, or (ii) at least 14 days have expired after service of the motion.

Every motion to withdraw must contain the following advisements to the client:

(1) that the attorney wishes to withdraw;

(2) that the appellate court retains jurisdiction;

(3) that the client has the burden of keeping the appellate court and other parties informed where notices, pleadings, or other documents may be served;

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

(5) that, if the client fails or refuses to meet these burdens, the appellate court may impose appropriate sanctions, including dismissal of the case;

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

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

(8) of the client's last known address, telephone number, and email address and that process may be served on the client at the client's last known address; and

(9) of the client's right to object within 14 days of the date of service of the motion to withdraw.

**(d) Objections to Motion to Withdraw.** The client and opposing parties have 14 days after the service of a motion to withdraw within which to file an objection to the withdrawal.

**(e) Limited Legal Services.** An attorney may provide limited legal services to a self-represented party involved in a civil appellate proceeding in accordance with Colo. R.P.C. 1.2(c) and the following provisions.

(1) **Limited Legal Services Requiring Entry of Appearance and Withdrawal.** An attorney may make a limited appearance for a self-represented party in a civil appellate proceeding if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the part(s) of the proceeding for which the attorney appears. At the conclusion of such part(s) of the proceeding, the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance. Service on an attorney who makes a limited appearance for a party will be valid only in connection with the specific part(s) of the proceeding for which the attorney appears.

(2) **Limited Legal Services Requiring Disclosure of Attorney Assistance without Entry of Appearance.** An attorney may provide drafting assistance to a self-represented party involved in a civil appellate proceeding without filing a notice of limited appearance. Documents filed by the self-represented party that were prepared with the drafting assistance of the attorney must include the attorney's name, address, telephone number, e-mail address, and registration number. The attorney must provide a signed attorney disclosure certification to the self-represented party for the self-represented party to file with the court as an attachment to the document(s). The certification must indicate whether the attorney provided drafting assistance for the entire document or for specific sections only, and if for specific sections, indicate which sections. The certification also must contain the following statement: "In helping to draft the document filed by the self-represented party, the attorney certifies that, to the best of the attorney's knowledge,

**Deleted: Representation Entry of Appearance and Withdrawal.**

**Deleted:** undertake to

**Deleted:** representation

**Deleted:** pro se

**Deleted:** . Upon the request and with the consent of a pro se party, an

**Deleted:** the pro se party to file a notice of appeal and designation of transcripts in the court of appeals or the supreme court, to file or oppose a petition or cross-petition for a writ of certiorari

**Deleted:** the supreme court, to respond to an order to show cause issued by the supreme court or the court of appeals, or to participate in one or more specified motion proceedings in either court,

**Deleted:** (s)

**Deleted:** (s)

**Deleted:** in the appellate court in which the attorney appeared, a copy of which may be filed in any other court, except that an attorney filing a notice of appeal or petition or cross-petition for writ of certiorari is obligated, absent leave of court, to respond to any issues regarding the appellate court's jurisdiction.

**Deleted:** shall

**Deleted:** s(s)

**Deleted:** The provisions of this C.A.R. 5(e) shall not apply to an attorney who has filed an opening or answer brief pursuant to C.A.R. 31

information, and belief, this document, or specified section(s), is (A) well-grounded in fact based upon a reasonable inquiry of the self-represented party by the attorney, (B) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (C) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." The attorney in providing such drafting assistance may rely on the self-represented party's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney must make an independent reasonable inquiry into the facts. The attorney's violation of this subsection (e)(2) may subject the attorney to sanctions provided by C.A.R. 38. Providing limited legal services to a self-represented party under this subsection (e)(2) does not constitute an entry of appearance by the attorney for purposes of this rule and does not authorize or require the service of papers upon the attorney.

(3) **Limited Legal Services Not Requiring Entry of Appearance or Disclosure of Attorney Assistance.** The following forms of assistance by an attorney to a self-represented party in a civil appellate proceeding are not subject to the requirements of subsections (e)(1) and (2) of this rule: (A) assistance in filling out pre-printed or electronically published forms that are issued by the judicial branch; (B) oral assistance or advice given to the self-represented party regarding the self-represented party's case; and (C) short-term legal assistance offered to a self-represented party through a nonprofit or court-sponsored program that does not create an expectation by either the client or the lawyer that legal assistance will continue. Providing limited legal services to a self-represented party under this subsection (e)(3) does not authorize or require the service of papers upon the attorney.

**(f) Termination of Representation.** When an attorney has entered an appearance, other than a limited appearance pursuant to C.A.R. 5(e)(1), on behalf of a party in an appellate court without having previously represented that party in the matter in any other court, the attorney's representation of the party will terminate at the conclusion of the part(s) of the proceeding in the appellate court in which the attorney has appeared, unless otherwise directed by the appellate court or agreed to by the attorney and the party represented. Counsel may file a notice of such termination of representation in any other court.

**COMMENT**

The purpose of C.A.R. 5(e)(1) is to establish a procedure similar to that set forth in C.R.C.P. 121 Section 1-1(5). The purpose of C.A.R. 5(e)(2) and (3) is to establish a procedure similar to that set forth in C.R.C.P. 11(b).

**Deleted:** shall

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**Deleted:** olorado Rule of Civil Procedure

**Deleted:** This procedure provides assurance that an attorney who makes a limited appearance for a pro se party in a specified appellate case proceeding(s), at the request of and with the consent of the pro se party, can withdraw from the case upon filing a notice of completion of the limited appearance, without leave of court.

**Deleted:** The purpose of C.A.R. 5(f) is to make clear that when an attorney appears for a party, whom he or she has not previously represented, in an appellate court and the proceedings in that court have concluded, the attorney is not obligated to represent the party in any other proceeding on remand or in any review of the appellate court's decision by any other court. Nothing in this provision would prevent the attorney from entering a limited or general appearance on behalf of the party in another court (for example, on a writ of certiorari to the supreme court), if agreed to by the attorney and the party.

## CAR 5. Entry of Appearance and Withdrawal

**(a) Entry of Appearance.** An attorney enters an appearance in any matter before an appellate court when the attorney files an entry of appearance or signs a document filed with the appellate court. An entry of appearance must identify the party for whom the appearance is made and provide the attorney's office address, telephone number, email address, and attorney registration number. An entry of appearance by an attorney who is a member or an employee of a law firm, professional corporation, or clinic relieves other members or employees of the same law firm, professional corporation, or clinic from needing to file an entry of appearance in the same proceeding unless the court indicates otherwise. An attorney who enters an appearance and wishes to withdraw must comply with this rule.

**(b) Withdrawal without Leave of Court.** An attorney may withdraw from a case without leave of the appellate court by filing a notice of withdrawal confirming that the withdrawing attorney has complied with all outstanding appellate court orders and one of the following applies:

(1) the party represented by the withdrawing attorney will continue to be represented by co-counsel who has already entered an appearance pursuant to subsection (a); or

(2) the notice of withdrawal includes a substitution of counsel, signed by both the withdrawing and replacement attorneys, containing the information required for an entry of appearance under subsection (a) for replacement counsel; or

(3) the withdrawing attorney is a member or employee of a law firm, professional corporation, or clinic, and another attorney from the same law firm, professional corporation, or clinic will represent the party. Withdrawal of an attorney pursuant to this subsection relieves the other attorneys of the same law firm, professional corporation, or clinic from needing to file an entry of appearance or withdrawal in the same proceeding unless the court indicates otherwise.

**(c) Withdrawal with Leave of Court.** If not covered by subsection (b), an attorney may withdraw from a case only with the appellate court's approval. Such approval rests in the appellate court's sound discretion, and will not be granted until a motion to withdraw or a Form Motion to Withdraw [JDF Form 1905 SC] has been filed and served on the client and the other parties of record or their attorneys and either (i) both the client and all counsel for the other parties consent in writing at or after the time of service of the motion, or (ii) at least 14 days have expired after service of the motion.

Every motion to withdraw must contain the following advisements to the client:

(1) that the attorney wishes to withdraw;

(2) that the appellate court retains jurisdiction;

(3) that the client has the burden of keeping the appellate court and other parties informed where notices, pleadings, or other documents may be served;

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

(5) that, if the client fails or refuses to meet these burdens, the appellate court may impose appropriate sanctions, including dismissal of the case;

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

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

(8) of the client's last known address, telephone number, and email address and that process may be served on the client at the client's last known address; and

(9) of the client's right to object within 14 days of the date of service of the motion to withdraw.

**(d) Objections to Motion to Withdraw.** The client and opposing parties have 14 days after the service of a motion to withdraw within which to file an objection to the withdrawal.

**(e) Limited Legal Services.** An attorney may provide limited legal services to a self-represented party involved in a civil appellate proceeding in accordance with Colo. R.P.C. 1.2(c) and the following provisions.

(1) **Limited Legal Services Requiring Entry of Appearance and Withdrawal.** An attorney may make a limited appearance for a self-represented party in a civil appellate proceeding if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the part(s) of the proceeding for which the attorney appears. At the conclusion of such part(s) of the proceeding, the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance. Service on an attorney who makes a limited appearance for a party will be valid only in connection with the specific part(s) of the proceeding for which the attorney appears.

(2) **Limited Legal Services Requiring Disclosure of Attorney Assistance without Entry of Appearance.** An attorney may provide drafting assistance to a self-represented party involved in a civil appellate proceeding without filing a notice of limited appearance. Documents filed by the self-represented party that were prepared with the drafting assistance of the attorney must include the attorney’s name, address, telephone number, e-mail address, and registration number. The attorney must provide a signed attorney disclosure certification to the self-represented party for the self-represented party to file with the court as an attachment to the document(s). The certification must indicate whether the attorney provided drafting assistance for the entire document or for specific sections only, and if for specific sections, indicate which sections. The certification also must contain the following statement: “In helping to draft the document filed by the self-represented party, the attorney certifies that, to the best of the attorney’s knowledge,

information, and belief, this document, or specified section(s), is (A) well-grounded in fact based upon a reasonable inquiry of the self-represented party by the attorney, (B) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (C) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." The attorney in providing such drafting assistance may rely on the self-represented party's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney must make an independent reasonable inquiry into the facts. The attorney's violation of this subsection (e)(2) may subject the attorney to sanctions provided by C.A.R. 38. Providing limited legal services to a self-represented party under this subsection (e)(2) does not constitute an entry of appearance by the attorney for purposes of this rule and does not authorize or require the service of papers upon the attorney.

(3) **Limited Legal Services Not Requiring Entry of Appearance or Disclosure of Attorney Assistance.** The following forms of assistance by an attorney to a self-represented party in a civil appellate proceeding are not subject to the requirements of subsections (e)(1) and (2) of this rule: (A) assistance in filling out pre-printed or electronically published forms that are issued by the judicial branch; (B) oral assistance or advice given to the self-represented party regarding the self-represented party's case; and (C) short-term legal assistance offered to a self-represented party through a nonprofit or court-sponsored program that does not create an expectation by either the client or the lawyer that legal assistance will continue. Providing limited legal services to a self-represented party under this subsection (e)(3) does not authorize or require the service of papers upon the attorney.

**(f) Termination of Representation.** When an attorney has entered an appearance, other than a limited appearance pursuant to C.A.R. 5(e)(1), on behalf of a party in an appellate court without having previously represented that party in the matter in any other court, the attorney's representation of the party will terminate at the conclusion of the part(s) of the proceeding in the appellate court in which the attorney has appeared, unless otherwise directed by the appellate court or agreed to by the attorney and the party represented. Counsel may file a notice of such termination of representation in any other court.

**COMMENT**

The purpose of C.A.R. 5(e)(1) is to establish a procedure similar to that set forth in C.R.C.P. 121 Section 1-1(5). The purpose of C.A.R. 5(e)(2) and (3) is to establish a procedure similar to that set forth in C.R.C.P. 11(b).

| | |
|---|---|
| Colorado Court of Appeals<br>2 East 14th Avenue<br>Denver, CO 80203 | |
| Plaintiff\|Petitioner: _____,<br>☐ Appellant or ☐ Appellee<br>&<br>Defendant\|Respondent: _____<br>☐ Appellant or ☐ Appellee | ⮝ FOR COURT USE ⮝ |
| My Name: _____<br>Street Address: _____<br>City: _____ State: _____ Zip: _____<br>Phone: _____<br>E-Mail: _____ | Court of Appeals Case Number: _____<br>District Court Case Number: _____<br>County: _____ |

# Certification and Attorney Disclosure

This form is to be completed by the attorney providing drafting assistance and filed with the document(s) by the self-represented party.

In helping to draft this document filed by the self-represented party, I certify that, to the best of the my knowledge, information, and belief, this document is (1) well-grounded in fact based upon a reasonable inquiry of the self-represented party by myself, (2) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (3) not interposed for any improper

purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

☐ The attorney provided drafting assistance with the entire document.

or

☐ The attorney provided drafting assistance for only the following section(s) of the document:

_____

_____

_____

_____

*Note: this certification does not constitute an entry of appearance by the attorney in this matter*

Date: _____

_____
Attorney Signature

_____
Attorney Name, Atty Reg. #

_____
Address

_____
Phone

_____
E-mail

**Rule 12. Docketing the Proceeding and Fees; Proceedings in Forma Pauperis**

**(a) [NO CHANGE]**

**(b) Waiver of Filing Fees in Appellate Court Proceedings.**

(1) *In the Supreme Court.*

(A) By Motion.

(a) In the Trial Court. A party may file in the trial court a motion to proceed on appeal in forma pauperis in the supreme court, together with an affidavit showing inability to pay the filing fee and costs. If the trial court denies the motion, the trial court must state in writing the reasons for the denial.

(b) In the Supreme Court. A party may file in the supreme court a motion to waive the filing fee, together with an affidavit showing inability to pay the filing fee and costs.

(B) Prior Approval. Notwithstanding the provisions of the preceding paragraph, the court ~~will~~ may waive the filing fee for a party who has been permitted to proceed in forma pauperis in ~~an~~ the underlying action in the trial court or the court of appeals or who has been permitted to proceed there as one who is financially unable to obtain an adequate defense in a criminal case. Any party proceeding under this subparagraph must attach a copy of the lower court's order granting leave to proceed in forma pauperis to the notice of appeal or initiating pleading.

**Commented [mm1]:** Added at request of SC Clerk's Office to give discretion if significant amount of time has passed since lower court granted IFP status and to prevent parties from submitting IFP orders in unrelated cases.

(2) *In the Court of Appeals.* Any request to proceed in forma pauperis in the court of appeals must first be sought in the trial court. Any lower court order granting in forma pauperis status must have been entered no earlier than 12 months before the filing of a notice of appeal or other initiating pleading. A party may file in the court of appeals a motion to reconsider a trial court's denial of a motion to proceed in forma pauperis in the court of appeals. The motion and affidavit must be filed at the time of filing the notice of appeal or other initiating pleading.

**(c) [NO CHANGE]**

**Rule 21. ~~Procedure in~~ Original Proceedings in the Supreme Court**

**(a) ~~–~~ In General~~Original Jurisdiction Under the Constitution~~.**

(1) *Original Jurisdiction Under the Constitution.* 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.

(2) *Extraordinary Nature and Availability of Relief.* 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 is available, including relief available by appeal ~~or~~, under C.R.C.P. 106~~,~~ or Crim. P. 35~~is available~~.

(~~2~~3) *Forms of Writs Subject to this Rule.* Petitions ~~to the supreme court in the nature of~~ for writs of habeas corpus~~,~~ 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~~Initiating an Original Proceeding.** The p~~P~~etitioner must file a petition for a rule to show cause specifying the relief sought and ~~must~~ requesting the court to issue to one or more proposed respondents, as set forth in subsection (e)(1), 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) Docket~~ing of Petition and~~ Fees~~; Form of Pleadings~~.** Upon the filing of a petition for a rule to show cause, the petitioner must pay to the clerk of the supreme court the docket fee of $225.00 and comply with C.A.R. 12. ~~All documents filed under this rule must comply with C.A.R. 32.~~

**(d) ~~Content~~ Form, Caption, and Title of the Petition ~~and Service~~.**

(1) *Form.* Unless otherwise provided, a petition for rule to show cause and all documents filed under this rule must comply with the requirements of C.A.R. 28(g) for opening briefs and C.A.R. 32.

(2) *Caption and Title.*

(A) If there is no underlying proceeding, the petition must be captioned, "In Re [Petitioner v. Proposed Respondent(s)]."

(B) ~~there~~If there exists an underlying proceeding, the petition must be ~~titled~~ captioned with the full, exact, and unmodified caption given by the lower court or tribunal in the underlying proceeding, "In Re [Caption of Underlying Proceeding]." Only one case may be listed as the underlying proceeding in the caption. ~~If there is no underlying proceeding, the petition must be titled, "In Re [Petitioner v. Proposed Respondent]."~~

(C) The petition should be titled "Petition for Rule to Show Cause Pursuant to C.A.R. 21."

**(e~~2~~) Contents of the Petition.** The petitioner has the burden of showing that the court should issue a

**Commented [mm1]:** Suggest removing because C.A.R. 21 does not cover certiorari proceedings.

**Commented [mm2]:** Changed the order of writs to parallel article 3, section 6 "The supreme court shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction, and such other original and remedial writs as may be provided by rule of court with authority to hear and determine the same...." Writs of prohibition are not included in the constitutional list, but are still included in the rule.

Also recommend removing "certiorari" because C.A.R. 49-57 governs those proceedings.

**Commented [mm3]:** Suggest breaking apart first paragraph because it discusses three different concepts: original jurisdiction under the constitution, availability of the relief, and writs subject to the rule.

**Commented [mm4]:** Suggest moving discussion of identity of proposed respondents to section on content of petition.

**Commented [mm5]:** Suggest moving to "form" section—seems misplaced to include with fees.

**Commented [mm6]:** Suggest having "service" as its own heading below.

**Commented [mm7]:** Added at request of clerk's office. JPOD allows for entry of only one underlying case for each original proceeding. If there are related cases, the parties should explain in the body of the petition (see comment below), but only list one case as the underlying case in the caption.

**Commented [mm8]:** Addition requested by clerk's office to clarify the difference between a caption and how a document should be titled.

rule to show cause. To enable the court to determine whether to issue a rule to show cause ~~should be issued~~, the body of the petition must set forth ~~disclose~~ in sufficient detail the following:

(1) ~~(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.). ~~:~~The proposed respondent(s) should be the real party (or parties) in interest against whom relief is sought. When a petition seeks a writ of mandamus or prohibition directed to a court or tribunal, the proposed respondents should be the lower court or tribunal, if appropriate, and all parties to the underlying proceeding other than the petitioner;

(2~~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;~~

(3~~D~~) the ruling, action, or failure to act complained of and the relief being sought;

(4~~E~~) the reasons why no other adequate remedy is available;

(5~~F~~) the issues presented;

(6~~G~~) the facts necessary to understand the issues presented;

(7~~H~~) argument and points of authority explaining why the court should issue a rule to show cause and grant the relief requested; and

(8~~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, and 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, and email address (if any)~~, and fax number (if any)~~.

**(f~~4~~) Service.** The petition must be served ~~up~~on ~~each~~ every party and proposed respondent and, if the lower court or tribunal is a proposed respondent ~~applicable~~, upon the lower court or tribunal. All documents filed under this rule must be served in accordance with C.A.R. 25. If a case is filed through the court's E-System, E-Service on a party must be completed in the supreme court case; the supreme court will not accept service of documents made in the underlying proceeding or in the lower court.

~~(5) The petition must comply with the requirements of C.A.R. 28(g) for opening briefs and with C.A.R. 32.~~

**(g~~e~~) Supporting Documents.**

(1) Proceedings initiated under this rule are not subject to C.A.R. 10.

(2) A petition must be accompanied by a separate, indexed set of available supporting documents adequate to permit review, or the petition must include an explanation why the supporting documents are not available.

**Commented [mm9]:** Language added at the request of clerk's office to discourage parties from including this information in the caption or title of the petition.

**Commented [mm10]:** Already mentioned in (A).

**Commented [mm11]:** Discussed in supporting documents section

**Commented [mm12]:** Added at request of clerk's office.

**Commented [mm13]:** Contents moved up to (d)(1).

(3) The filing party is responsible for reviewing all supporting documents, including any attachments, exhibits, and appendices, to determine if the document contains information that should be excluded from public access pursuant to C.J.D. 05-01 section 4.60. Any supporting document filed by a party that is not accessible to the public pursuant to C.J.D. 05-01 section 4.60 must be accompanied by a motion to suppress or seal as prescribed in subsection (ge)(4). The filing party must certify compliance with this subsection as directed by C.A.R. 32(h).

Commented [mm14]: References to C.A.R. 21(e )(3) in C.A.R. 32(h) will need to be changed to (g)(3).

(4) Any document submitted as sealed or suppressed pursuant to C.J.D. 05-01 sections 3.07 and 3.08 must be filed as a separate supporting document and must be accompanied by a motion for leave to file the document as sealed or suppressed. The motion must:

(A) identify with particularity the specific document containing sensitive information;

(B) explain why the sensitive information cannot reasonably be redacted in lieu of filing the entire document as sealed or suppressed;

(C) articulate the substantial interest that justifies depriving the public of access to the document; and

(D) cite any applicable rule, statute, case law, or prior court order sealing or suppressing the document.

(5) In cases involving an underlying proceeding, the following documents must be included:

(A) the order or judgment from which relief is sought if applicable;

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

(C) a transcript of the proceeding leading to the underlying order or judgment if available.

**(hf) Stay~~; Jurisdiction~~.**

(1) *Pending a Decision to Issue a Rule to Show Cause.* 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 first ~~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) *Upon Issuance of a Rule to Show Cause.* 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.

**(ig) 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.

**(jh) ~~Denial; Rule to Show Cause.~~Ruling on Petition.**

(1) *Denial.* 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.

Commented [mm15]: Subsection (a)(2) discusses discretion.

(2) *Issuance of a Rule to Show Cause.* The court may issue a rule to show cause. The clerk will serve the rule to show cause on all persons ordered or invited by the court to respond and, if applicable, on the lower court or tribunal ~~judge or other officer~~ in the underlying proceeding.

**(k~~i~~) Response to Rule to Show Cause.**

(1) The court in its discretion may invite or order any ~~person~~ party, including a party in the underlying proceeding, to respond to the rule to show cause within a fixed time. Any p~~erson~~arty 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 respondents.

(2) The response to a rule to show cause must comply with the requirements of C.A.R. 28(g) for answer briefs and with C.A.R. 32.

(3) Two or more respondents may respond jointly.

**(l~~j~~) Reply to Response to Rule to Show Cause.** The petitioner may submit a single reply brief within the time fixed by the court. A reply must comply with the requirements of C.A.R. 28(g) for reply briefs and with C.A.R. 32.

**(m~~k~~) Amicus Briefs.** Any amicus curiae may file a brief only by leave of the court after a case number has been assigned.

(1) *Before Ruling on a Petition.* Before the court rules on a petition~~issues a rule to show cause,~~ an amicus curiae may tender a brief supporting a petitioner, but the court may act on a petition at any time after the petition is filed, including before the submission of an amicus brief.

(2) *After Issuing a Rule to Show Cause.* If the court issues a rule to show cause, an amicus brief supporting a petitioner must be filed within seven days after the issuance of the show cause order, or such lesser time as the court may permit for the submission of amicus briefs. An amicus brief supporting a respondent must be tendered by the deadline for the respondent's response, or such lesser time as the court may permit for the submission of amicus briefs. An amicus curiae that does not support either party must file its brief no later than seven days after the issuance of a rule to show cause, or such lesser time as the court may permit for the submission of amicus briefs.

(3) *No Reconsideration.* The filing of an amicus brief within the deadlines established by this rule but after the court has acted on a petition is not a ground for reconsideration of the court's decision to issu~~ance~~e ~~of~~ a rule to show cause or deny~~ial~~ ~~of~~ a petition.

~~(1)~~ *Form of Amicus Briefs.* A brief submitted by an amicus curiae must comply with C.A.R. 29(a), (b), (c), (d), (f), and (g).

~~(2)~~

~~(3)~~(4)

**(l~~n~~) No Oral Argument.** There will be no oral argument unless ordered by the court.

**(o~~m~~) ~~Opinion Discretionary~~Disposition of a Rule to Show Cause.** The court, upon review, in its discretion may discharge the rule or make it absolute, in whole or in part, with or without opinion.

**(p~~n~~) Petition for Rehearing.** A petition for rehearing may be filed only ~~In all proceedings under this~~

**Commented [mm16]:** The court issues orders on the lower courts rather than specific judicial officers.

**Commented [mm17]:** Added at suggestion of clerk's office because any party, not just those in an underlying proceeding, may be ordered to respond to a rule to show cause.

**Commented [mm18]:** If the Committee prefers to leave the rule as written, given its recent amendments, please disregard the proposed changes, which were only suggested to be consistent with other subsections in C.A.R. 21. Please note the reference to C.A.R. 21(k) in C.A.R. 29(e) will need to be changed to 21(m).

The suggested changes are supported by the clerk's office for readability.

~~rule, where~~ when the ~~supreme~~ court has issued an opinion discharging a rule or an opinion making a rule absolute.~~,~~ Any~~a~~ petition for rehearing may be filed in accordance with ~~the provisions of~~ C.A.R. 40(c)(2). No petition for rehearing may be filed after denial of a petition without explanation, if a rule was discharged without opinion, or if a rule was made absolute without opinion.

**Commented [mm19]:** Similar to language in C.A.R. 40(c)(3) where no petitions for rehearing allowed if cert petition denied. Rehearing is only allowed if the court issued an opinion.

Please see companion changes to C.A.R. 40(c)(2).

## Rule 29. Brief of an Amicus Curiae

**(a) – (d) [NO CHANGE]**

(e) Time for Filing. An amicus curiae must file its brief within the deadline for filing the principal brief of the party being supported. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's opening brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer. The time for filing an amicus brief in an original proceeding shall be as provided under C.A.R. 21(mk).

**(f) - (g) [NO CHANGE]**

## Rule 32. Form of Briefs and Appellate Documents

**(a)–(g) NO CHANGE**

**(h) Certificate of Compliance.** Each brief must include, on a separate page immediately behind the caption page, a certificate that the brief complies with all requirements of C.A.R. 28 and C.A.R. 32, and, if applicable, C.A.R. 21(ge)(3), 28.1, or 29. For proceedings other than those involving C.A.R. 21(ge)(3), Forms 6 and 6A are the preferred forms for a certificate of compliance and will be regarded as meeting the requirements of C.A.R. 32(a)(4).

## Rule 40. Petition for Rehearing

**(a) – (b) NO CHANGE**

**(c) Petition for Rehearing in Supreme Court Proceedings.** A petition for rehearing filed in proceedings before the supreme court must comply with the requirements of subsections (a) and (b) of this rule.

(1) *In Direct Appeals.* A petition for rehearing may be filed in a direct appeal to the supreme court only after issuance of an opinion. No petition for rehearing may be filed after issuance of an order affirming a lower court order.

(2) *In Proceedings Under C.A.R. 21.* A petition for rehearing may be filed only when the court has ~~after~~ issued~~ance of~~ an opinion discharging a rule to show cause or an opinion making a rule absolute. No petition for rehearing may be filed after denial of a petition without explanation, if a rule was discharged without opinion, or if a rule was made absolute without opinion.

**Commented [mm1]:** Changes made to parallel C.A.R. 21(p).

(3) *In Certiorari Proceedings.* A petition for rehearing may be filed after issuance of an opinion on the merits of a granted petition for writ of certiorari, or when, after granting a writ of certiorari, the court later denies the writ as having been improvidently granted. No petition for rehearing may be filed after issuance of an order denying a petition for writ of certiorari.

(4) *In Interlocutory Appeals in Criminal Cases under C.A.R. 4.1.* No petition for rehearing shall be permitted in interlocutory appeals filed pursuant to C.A.R. 4.1.

COMMENT

2016

Subsection (c), entitled "Petition for Rehearing in Supreme Court Proceedings" is new. It explains when a petition for rehearing may be filed, see also C.A.R. 21(p~~n~~) and 54(b); reiterates that a petition for rehearing shall not be permitted in interlocutory appeals in criminal cases, see C.A.R. 4.1(g); and clarifies that a petition for rehearing may not be filed after issuance of an order without explanation.

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## Rule 41. Mandate

**(a) Contents.** The clerk of the court will issue the mandate with a copy of the appellate court judgment.

**(b) When Issued.** Unless the court grants or removes a stay, or otherwise changes the time by order, the mandate will issue as follows:

(1) *In the Court of Appeals.* Except as provided in subsections (A) and (B), the court of appeals mandate will issue no earlier than 42 days after entry of the judgment.

(A) If the court extends the time to file a petition for rehearing but no petition is filed within the extended period, the mandate will issue following the last day of the extended period for filing the petition for rehearing or after the day specified by this rule, whichever occurs later. The mandate will issue no earlier than 28 days after the court denies the petition for rehearing.

(B) In workers' compensation and unemployment insurance cases, the mandate will issue no earlier than 28 days after entry of the judgment, or 14 days after the court denies a timely petition for rehearing, whichever occurs later.

(2) *In the Supreme Court.* The supreme court mandate will issue no earlier than 14 days after entry of the judgment unless a petition for rehearing is not permitted, in which case the court may issue the mandate immediately. If a petition for rehearing is denied, or if the court extends the time to file a petition for rehearing but no petition is filed within the extended period, the mandate will issue no earlier than 2 days after entry of the order denying the petition or the extended deadline for filing a petition. The supreme court must issue the mandate immediately when a copy of a United States Supreme Court order denying a petition for writ of certiorari is filed.

**Commented [mm1]:** Added at request of SC clerk's office to clarify that the court may issue the mandate immediately in cases where a petition for rehearing is unavailable, i.e., denied cert petitions, interlocutory appeals under C.A.R. 4.1, and original proceedings where no opinion is issued.

(3) *Bill of Costs.* Consistent with C.A.R. 39(c)(2), any itemized and verified bill of costs and proof of service must be filed within 14 days after entry of the appellate mandate.

**(c)–(e) NO CHANGE**

### Credits

Amended effective September 1, 1984; January 1, 1999; January 1, 2001. Corrected effective January 4, 2001. Amended effective January 1, 2012; April 7, 2016. Amended February 24, 2022, effective July 1, 2022.