

Rule Change #1999(13)

CHAPTER 35

COLORADO RULES FOR MAGISTRATES

New Rule Effective January 1, 2000

Rule 1. Scope and Purpose

These rules are designed to govern the selection, assignment and conduct of magistrates in civil and criminal proceedings in the Colorado court system. Although magistrates may perform functions which judges also perform, a magistrate at all times is subject to the direction and supervision of the chief judge or presiding judge.

Rule 2. Application

These rules apply to all proceedings conducted by magistrates in district courts, county courts, small claims courts, Denver Juvenile Court and Denver Probate Court, as authorized by law, except for proceedings conducted by water referees, as defined in Title 37, Article 92, C.R.S., and proceedings conducted by masters governed by C.R.C.P. 53.

Rule 3. Definitions

The following definitions shall apply:

- (a) **Magistrate:** Any person other than a judge authorized by statute or by these rules to enter orders or judgments in judicial proceedings.
- (b) **Chief Judge:** The chief judge of a judicial district.
- (c) **Presiding Judge:** The presiding judge of the Denver Juvenile Court, the Denver Probate Court, or the Denver County Court.
- (d) **Reviewing Judge:** A judge designated by a chief judge or a presiding judge to review the orders or judgments of magistrates in proceedings to which the Rules for Magistrates apply.
- (e) **Order or Judgment:** All rulings, decrees or other decisions of a judge or a magistrate made in the course of judicial proceedings.

Rule 4. Qualifications, Appointment, Evaluation and Discipline

The following rules shall apply to all magistrates and proceedings before magistrates:

- (a) To be appointed, a magistrate must be a licensed Colorado attorney with at least five years of experience, except in Class "C" or "D" counties the chief judge shall have the discretion to appoint a qualified licensed attorney with less than 5 years experience to perform all magistrate functions.
- (b) All magistrates shall be attorneys at law licensed to practice law in the State of Colorado, except that in the following circumstances a magistrate need not be an attorney:
 - (1) A magistrate appointed to hear only Class A and Class B traffic infractions in a county court;
 - (2) A county court judge authorized to act as a magistrate in a small claims court;
 - (3) A county court judge authorized to act as a county court magistrate.
- (c) All magistrates shall be appointed, evaluated, retained, discharged, and disciplined, if necessary, by the chief or presiding judge of the district, with the concurrence of the chief justice.
- (d) Any person appointed pursuant to these rules as a district court, county court, probate court, juvenile court, or small claims court magistrate may, if qualified, and in the discretion of the chief or presiding judge, exercise any of the magistrate functions authorized by these rules.

Rule 5. General Provisions

- (a) Consent:
 - (1) Consent in District Court:
 - (A) For the purposes of the rules, a party is deemed to have consented to a proceeding before a magistrate if:
 - (i) The party has affirmatively consented in writing or on the record; or

- (ii) The party failed to appear at a proceeding after having been provided notice of that proceeding.
- (B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

(2) Consent in County Court:

- (A) When the exercise of authority by a magistrate in any proceeding is statutorily conditioned upon a waiver of a party pursuant to C.R.S. section 13-6-501, such waiver shall be executed in writing or given orally in open court by the party or the party's attorney of record, and shall state specifically that the party has waived the right to proceed before a judge and shall be filed with the court.
- (B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

(3) Consent in Small Claims Court:

- (A) A party will be deemed to accept the jurisdiction of the Small Claims Court unless the party objects pursuant to C.R.S. section 13-6-405 and requests a transfer to county court pursuant to C.R.C.P. 511(b).
- (b) An order or judgment of a magistrate in any judicial proceeding shall be effective upon the date of the order or judgment and shall remain in effect pending review by a reviewing judge unless stayed or modified by the magistrate or by the reviewing judge.
- (c) A magistrate may issue citations for contempt, conduct contempt proceedings, and enter orders for contempt for conduct occurring either in the presence or out of the presence of the magistrate, in any civil or criminal matter, with or without consent. Any order of a magistrate finding a person in contempt shall upon request be reviewed in accordance with the procedures for review set forth in rule 7 or rule 9 herein.
- (d) A magistrate shall have the power to issue bench warrants for the arrest of non-appearing persons, to set bonds in connection therewith, and to conduct bond forfeiture proceedings.

- (e) A magistrate shall have the power to administer oaths and affirmations to witnesses and others concerning any matter, thing, process, or proceeding, which is pending, commenced, or to be commenced before the magistrate.
- (f) All magistrates shall have the power to issue all writs and orders necessary for the exercise of their jurisdiction established by statute or rule, and as provided in section 13-1-115, C.R.S.
- (g) No magistrate shall have the power to decide whether a state constitutional provision, statute, municipal charter provision, or ordinance is constitutional either on its face or as applied. Questions pertaining to the constitutionality of a state constitutional provision, statute, municipal charter provision, or ordinance may, however, be raised for the first time on review of the magistrate's order or judgment.

Rule 6. Functions of District Court Magistrates

- (a) Functions in Criminal Cases: A district court magistrate may perform any or all of the following functions in criminal proceedings:
 - (1) Without consent:
 - (A) Conduct initial appearance proceedings, including advisement of rights, admission to bail, and imposition of conditions of release pending further proceedings.
 - (B) Appoint attorneys for indigent defendants and approve attorney expense vouchers.
 - (C) Conduct bond review hearings.
 - (D) Conduct preliminary and dispositional hearings pursuant to C.R.S. sections 16-5-301(1) and 18-1-404(1).
 - (E) Schedule and conduct arraignments on indictments and informations.
 - (F) Order presentence investigations.
 - (G) Set cases for disposition, trial, or sentencing before a district court judge.
 - (H) Issue arrest and search warrants.
 - (I) Conduct probable cause hearings pursuant to C.R.S. sections 24-60-301 to -309, the Uniform Act for Out-of-State Parolee Supervision.
 - (2) With consent:
 - (A) Enter pleas of guilty.

- (B) Enter deferred prosecution and deferred sentence pleas.
 - (C) Modify the terms and conditions of probation or deferred prosecutions and deferred sentences.
- (b) Functions in Family Law Cases: A district court magistrate may perform any or all of the duties specified in C.R.S. sections 13-5-301, to -305.
- (c) Functions in Civil Cases: A district court magistrate may perform any or all of the following functions in civil proceedings:
 - (1) Without consent:
 - (A) Conduct settlement conferences.
 - (B) Conduct default hearings, enter judgments pursuant to C.R.C.P. 55, and conduct post judgment proceedings.
 - (C) Conduct hearings and enter orders authorizing sale, pursuant to C.R.C.P. 120.
 - (D) Conduct hearings as a master pursuant to C.R.C.P. 53.
 - (E) Act as a mediator or arbitrator, pursuant to C.R.C.P. 109.
 - (F) Hear and rule upon all motions relating to disclosure, discovery, and all C.R.C.P. 16(b) matters.
 - (2) With Consent: A magistrate may perform any function in a civil case except that a magistrate may not preside over jury trials.
- (d) Functions in Juvenile Cases: A juvenile court magistrate shall have all of the powers and be subject to the limitations prescribed for juvenile court magistrates by the provisions of Title 19, Article 1, C.R.S., and proceedings conducted by juvenile court magistrates shall be governed by the provisions of Title 19, C.R.S.
- (e) Functions in Probate and Mental Health Cases: A district court magistrate may perform any or all of the following functions in probate and mental health cases:
 - (1) Without consent:
 - (A) Perform any or all of the duties which may be delegated to or performed by a probate registrar, magistrate, or clerk, pursuant to C.R.P.P. 34 and C.R.P.P. 35.

- (B) Hear and rule upon petitions for emergency protective orders and petitions for temporary orders.
 - (2) With consent:
 - (A) Hear and rule upon all matters filed pursuant to C.R.S. Title 15.
 - (B) Hear and rule upon all matters filed pursuant to C.R.S. Title 25 and Title 27.
- (f) A district court magistrate may perform any other function specifically authorized by statute.

Rule 7. Review of District Court Magistrate Orders or Judgments

- (a) Orders or judgments entered without consent: The chief judge shall designate one or more district judges to review orders or judgments of district court magistrates entered without consent of the parties.
- (1) A party may obtain review of the magistrate's order or judgment by filing a motion to review such order or judgment with the reviewing judge no later than fifteen days, unless a shorter period of time has been set by statute, subsequent to the date of the order or judgment. A motion for review shall state with particularity the alleged errors in the magistrate's order or judgment and may be accompanied by a memorandum brief discussing the authorities relied upon to support the motion. Copies of the motion and any supporting brief shall be served on all other parties by the party seeking review. Within ten days after being served with a motion for review a party may file a memorandum brief opposing the motion.
 - (2) The reviewing judge shall consider a motion for review on the basis of the motions and briefs filed, together with such review of the record as may be necessary. Findings of fact made by the magistrate may not be altered unless clearly erroneous. The reviewing judge may conduct further proceedings, take additional evidence, or order a trial de novo in the district court. The reviewing judge shall adopt, reject, or modify the initial order or judgment of the magistrate by written order, which order shall be the order or judgment of the district court.

- (3) If timely review is not requested, the order or judgment of the magistrate shall become the order or judgment of the district court.
 - (4) A party to a proceeding conducted by a district court magistrate shall not be entitled to appellate review of any order or judgment entered in that proceeding, unless such party has filed a motion for review of the order or judgment pursuant to these Rules.
- (b) Orders or judgments entered with consent: Any order or judgment entered with the consent of the parties is not subject to review under Rule 7(a), but shall be appealed pursuant to the Colorado Appellate Rules in the same manner as orders or judgments of the district court.

Rule 8. Functions of County Court Magistrates

- (a) Functions in Criminal Cases: A county court magistrate may perform any or all of the following functions in a criminal proceeding:
- (1) Without consent:
 - (A) Appoint attorneys for indigent defendants and approve attorney expense vouchers.
 - (B) Conduct proceedings in traffic infraction matters.
 - (C) Conduct advisements and set bail in criminal and traffic cases.
 - (D) Issue restraining orders pursuant to C.R.S. section 18-1-1001.
 - (2) With consent:
 - (A) Conduct hearings on motions, conduct trials to court, accept pleas of guilty, and impose sentences in misdemeanor, petty offense, and traffic offense matters.
 - (B) Conduct deferred prosecution and deferred sentence proceedings in misdemeanor, petty offense, and traffic offense matters.
 - (C) Conduct misdemeanor and petty offense proceedings pertaining to wildlife, parks and outdoor recreation, as defined in Title 33, C.R.S.
 - (D) Conduct all proceedings pertaining to recreational facilities districts, control and licensing of dogs, campfires, and general regulations, as defined in Title 29, Article 7, C.R.S. and Title 30, Article 15, C.R.S.

- (b) Functions in Civil Cases: A county court magistrate may perform any or all of the following functions in a civil proceeding:
 - (1) Without consent:
 - (A) Conduct proceedings with regard to petitions for name change, pursuant to C.R.S. section 13-15-101.
 - (B) Perform the duties which a county court clerk may be authorized to perform, pursuant to C.R.S. section 13-6-212.
 - (C) Serve as a small claims court magistrate, pursuant to C.R.S. section 13-6-405.
 - (2) With consent:
 - (A) Conduct civil trials to court and hearings on motions.
 - (B) Conduct proceedings involving preliminary or permanent injunctions, pursuant to C.R.C.P. 365.
 - (C) Conduct default hearings, enter judgments pursuant to C.R.C.P. 355, and conduct post-judgment proceedings.
 - (D) Conduct proceedings involving temporary restraining orders, pursuant to C.R.S. section 13-14-101 to -102.
- (c) A county court magistrate may perform any other function specifically authorized by statute.

**Rule 9. Review of County Court and Small Claims Court
Magistrate Orders or Judgments**

- (a) An order or judgment of a county or small claims court magistrate shall be the order or judgment of the county or small claims court.
- (b) Any party to a proceeding before a county court magistrate shall appeal an order or judgment entered by the magistrate in that proceeding in the manner authorized by statute or rule for the appeal of orders or judgments of the county court.
- (c) Any party to a proceeding before a small claims court magistrate shall appeal an order or judgment entered by the magistrate in that proceeding in the manner authorized by statute or rule for the appeal of orders or judgments of the small claims court.

Rule 10. Preparation, Use, and Retention of Record

- (a) Record of Proceedings: A verbatim record of all proceedings and trials conducted by magistrates shall be maintained by either electronic devices or by stenographic means. The magistrate shall be responsible for maintaining such record and, in the event of subsequent review, for certifying its authenticity.
- (b) Use of the Record: If otherwise admissible, a certified transcript of the testimony of a witness at a trial or other proceeding before a magistrate may be admitted as evidence in a later trial or proceeding.
- (c) Custody and Retention of Record: A reporter's notes or the electronic recordings of trial or other proceedings conducted by a magistrate shall be the property of the state, and shall be retained by the appropriate court for a period prescribed in the Colorado Judicial Department Records Management manual. During the period of retention, notes and recordings shall be made available to the reporter of record, or to any other reporter or person the court may designate. During the trial or the taking of other matters on the record, the notes and recordings shall be considered the property of the state, even though in custody of the reporter, judge, or clerk. After the trial and review or appeal period, the reporter shall list, date and index all notes and recordings and shall properly pack them for storage. Where no reporter is used, the clerk of the court shall perform this function. The court shall provide storage containers and space.

Rule 11. Title of Rules and Abbreviation

The title to these rules shall be Colorado Rules for Magistrates and may be abbreviated as C.R.M.

Amended and Adopted by the Court, En Banc, September 30, 1999, effective January 1, 2000.

BY THE COURT:

**Nancy E. Rice
Justice, Colorado Supreme Court**