

Rule Change 2005 (10)

COLORADO RULES OF CIVIL PROCEDURE

(New) CHAPTER 17B

(New) APPOINTED JUDGES

(New) Rule 122. Case Specific Appointment of Appointed Judges Pursuant to C.R.S. § 13-3-111.

(a) Appointed Judges.

(1) At any time after a civil action, excluding juvenile delinquency proceedings, is filed in a trial court of record, upon agreement of all parties that a specific retired or resigned justice of the Supreme Court, or a retired or resigned judge of any other court of record within the state of Colorado be appointed to hear the action and upon agreement that one or more of the parties shall pay the agreed upon compensation of the selected justice or judge, together with all other compensation and expenses incurred, the Chief Justice may appoint such justice or judge who consents to perform judicial duties for such action.

(2) The decision as to whether such justice or judge shall be appointed to judicial duties, pursuant to subsection (1) of this section, shall be entirely within the discretion of the Chief Justice. The Chief Justice has the authority to reject or approve any deviations from these rules agreed to by the parties. The Chief Justice may require such undertakings as in his or her opinion may be necessary to ensure that proceedings held pursuant to this section shall be without expense to the state of Colorado.

(3) The compensation and expenses paid to an Appointed Judge shall be at the rate agreed upon by the parties and the Appointed Judge and rate of compensation must be approved by the Chief Justice at the time of making the appointment.

(4) The Appointed Judge shall have the same authority as a full-time sitting judge. Orders, decrees, verdicts and judgments entered by an Appointed Judge shall have the same force and effect and may be enforced or appealed in the same manner as any other order, decree, verdict, or judgment.

(b) Qualifications. To be eligible to serve as an Appointed Judge, a person must be a Senior Judge, a retired or resigned justice of the Supreme Court, or a retired or resigned judge of the court of appeals, a district court, probate court, juvenile court or county court, who has served as a judge in one or more of said courts for a total of at least six years. If a

judge has served in the Colorado State Court System and as a judge in the Federal Court System, those years of service may be combined for the purpose of meeting the six year requirement. Such person must be currently licensed to practice law in Colorado.

(c) Motion for Appointment. A request for the appointment of an Appointed Judge shall be made by a joint motion filed by all parties to a case and shall be signed as approved by the Appointed Judge. The original of such motion shall be filed with the Supreme Court with a copy filed in the originating court - the court of record in which the case was originally filed. Such motion shall include:

(1) The name of the Appointed Judge;

(2) The rate of compensation agreed to be paid to the Appointed Judge;

(3) The Appointed Judge's agreement to be bound by Canon 9 of the Colorado Code of Judicial Conduct and the Appointed Judge's agreement that the Chief Justice may ask the Office of Attorney Regulation Counsel and the Colorado Commission on Judicial Discipline for any record of his or her imposed discipline, or pending disciplinary proceeding, if any;

(4) A realistic estimate of all compensation and expenses for the Appointed Judge, any needed personnel, rental of an appropriate facility outside the courthouse, if needed, in which to hold the proceedings, payment for any requested jury, and all other anticipated compensation and expenses, including travel, lodging and meals, and provisions assuring that all such compensation and expenses will be paid by the parties; and

(5) An agreement as to who is responsible for initial payment of the compensation and expenses of the action, and who is responsible for payment of the compensation and expenses upon final judgment;

(6) The agreement of the parties and the Appointed Judge that none of the compensation and expenses shall be paid by the state of Colorado;

(7) A copy signed by the Appointed Judge of the following oath: "I, (name of Appointed Judge), do solemnly swear or affirm by the ever living God, that I will support the Constitution of the United States and of the State of Colorado, and faithfully perform the duties of the office upon which I am about to enter."

(8) Any other matters the parties desire to be considered by the Chief Justice in exercising his or her discretion.

(9) A form order approving the appointment.

(10) A statement acknowledging that the Chief Justice may approve or reject the order or, upon the agreement of all the

parties and of the Appointed Judge, may change any of the provisions of the order.

The parties shall file the Chief Justice's ruling on the motion in the case file in the originating court.

(d) Duration of Appointment. The appointment shall last for so long as the parties specify in the motion and order of appointment. In the absence of such specification, the appointment shall last until entry of a final, appealable judgment, order or decree or, in dissolution actions, until the entry of Permanent Orders.

(e) Compensation and Expenses. Upon the appointment of an Appointed Judge by the Chief Justice, the parties shall forthwith deposit in an agreed escrow or trust account to be administered by the Appointed Judge or some other person acceptable to the parties and the Appointed Judge, sufficient funds to pay the estimated compensation and expenses of the case for the duration of the appointment. If, at any time, the Appointed Judge determines that the funds on deposit are insufficient to cover all further compensation and expenses, the Appointed Judge may order the parties promptly to deposit sufficient additional funds to cover such amount. An Appointed Judge may withdraw from the appointment after reasonable notice and with permission of the Chief Justice if this order is not complied with, and the case proceedings shall revert to the originating court. Within a reasonable time after the conclusion of the Appointed Judge's duties on the case, the parties shall file in the record of the case in the originating court a report of the total compensation paid for the Appointed Judge's services and the total expenses paid by the parties in the case.

(f) Rules Applicable to Proceedings. Proceedings before an Appointed Judge shall be conducted pursuant to Rules applicable to the originating court. All filings shall be open records available for public review and inspection unless sealed upon motion and order, and all proceedings shall be open to the public in the same manner and pursuant to the same law applicable to the originating court.

(g) Record.

(1) The original of each filing in all proceedings before an Appointed Judge shall be filed with the clerk of the originating court and a copy shall be provided to the Appointed Judge.

(2) The parties and the Appointed Judge shall comply with all applicable rules and Chief Justice Directives relating to reporting, filing and maintaining the record.

(3) The originals of any reporter's notes or recording medium, along with any exhibits tendered, shall be filed with

the clerk of the originating court pursuant to C.R.C.P. 80(d). The parties shall pay the costs of a court reporter or for any recording equipment that is acceptable to all parties.

(h) Location of Proceedings.

(1) Unless consented to by the parties and ordered by the Appointed Judge for good cause, the location of evidentiary proceedings and trial of a matter subject to this rule shall be pursuant to C.R.C.P. 98.

(2) The parties and the Appointed Judge shall arrange for an appropriate facility in which proceedings shall be held. If available, a room in the courthouse may be used for one or more proceedings in the case. Use of available court rooms, equipment or facilities within the courthouse shall not be considered an expense to the state that the parties are required to bear or reimburse;

(3) Whenever proceedings are scheduled in advance, the Appointed Judge shall timely file a Notice of Hearing with the clerk of the originating court giving notice of the date, time, nature and location of the proceedings.

(4) Except when proceedings are taking place in a courthouse, the parties shall arrange for or assure that there is sufficient premises liability insurance to assure that any injury to a party, other participant or spectator at the proceedings is covered without expense to the state of Colorado. Such insurance shall name the state of Colorado as an additional insured.

(i) Jury Trials.

(1) The Colorado Uniform Jury Selection and Service Act applies to jury trials conducted pursuant to this rule.

(2) When a trial by jury has been properly demanded, before setting the case for trial the Appointed Judge shall coordinate the start of the trial with the jury commissioner and the district administrator for the originating court so that jurors are selected and voir dire is held in the courthouse to which the prospective jurors are summoned.

(3) If the trial is held outside the courthouse, the parties shall be responsible for offering transportation from the courthouse to the location of the trial for the duration of the trial. Such transportation shall be at no cost to the jurors or the state of Colorado. The parties shall arrange for or assure that there is sufficient liability insurance to assure that any injury to a juror related to such transportation is covered without expense to the state of Colorado. Such insurance shall name the state of Colorado as an additional insured.

(4) Not later than 3 days following the conclusion of their service as jurors, the parties shall pay the jurors at the

statutory rate pursuant to the Colorado Uniform Jury Selection and Service Act. The parties also shall pay all related expenses such as meals for the jurors and the costs of a bailiff. Payments made pursuant to this section should not be made through the court.

(5) If the trial is held outside the courthouse, jurors shall be instructed to the effect that such fact does not affect their responsibility and the importance of their service.

(6) In the event the jury is cancelled, postponed or a jury is waived, the Appointed Judge shall notify the jury commissioner as soon as possible.

(j) Removal. An Appointed Judge shall preside over all matters throughout the duration of the appointment unless the Appointed Judge recuses, is removed pursuant to C.R.C.P. 97, dies or becomes incapacitated. In any such circumstance, the case proceedings shall immediately revert to the originating court.

(k) Immunity. An Appointed Judge shall have immunity in the same manner and to the same extent as any other judge in the state of Colorado.

This Rule is hereby enacted and adopted by the Court, En Banc, this 23rd day of June, 2005 and shall be effective with regard to all cases pending in courts as of July 1, 2005 or filed in courts on or after July 1, 2005.

APPENDIX TO CHAPTER 24

COLORADO CODE OF JUDICIAL CONDUCT

(New) CANON 9

Appointed Judges, under C.R.C.P. 122 and section 13-3-111, C.R.S.

A. Certain retired or resigned state judges or justices may be eligible for appointment to perform judicial duties on a case-specific basis pursuant to court rule and statute, and subject to the Chief Justice's discretion whether or not to appoint them. All of the parties to the case must consent to the appointment and pay all associated compensation and expenses. The Appointed Judges have the same authority as a full-time sitting judge, and the cases are subject to appeal. Hence, on the one hand, the Appointed Judge may handle only one or a few cases per year and be engaged in many other professional activities simultaneously, including the practice of law; and, on the other hand, the Appointed Judge has the

authority and mantle of the state judicial system for purposes of that case. Accordingly, the ethical considerations for Appointed Judges are different from those for other judicial officers, and this Canon 9 embodies the code of conduct applicable to Appointed Judges during any term of appointment of that person as an Appointed Judge. Any person who is under contract to serve as a senior judge, who also undertakes to serve as an Appointed Judge, is bound by Canons 1-8 of the Code of Judicial Conduct as set forth in Canon 8. Appointed Judges not under contract to serve as a Senior Judge are bound by this Canon 9 only.

B. The provisions of this Canon 9 apply to the Appointed Judge for the period of the appointment, and in his or her capacity as Appointed Judge:

CANON 9.1

AN APPOINTED JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. An Appointed Judge should personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Canon 9 should be construed and applied to further that objective.

CANON 9.2

AN APPOINTED JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY

A. An Appointed Judge should respect and comply with the law and should conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. An Appointed Judge should not allow family, social, or other relationships to influence the judge's judicial conduct or judgment, nor should an Appointed Judge convey or permit others to convey the impression that they are in a special position to influence him or her.

C. An Appointed Judge shall not hold membership in any organization that the Appointed Judge knows practices invidious discrimination on the basis of race, gender, religion, or national origin.

CANON 9.3

AN APPOINTED JUDGE SHOULD PERFORM THE DUTIES OF HIS OR HER OFFICE IMPARTIALLY AND DILIGENTLY

A. Adjudicative Responsibilities.

(1) An Appointed Judge should be faithful to the law and maintain professional competence in it. An Appointed Judge should be unswayed by partisan interest, public clamor, or fear of criticism.

(2) An Appointed Judge should maintain order and decorum in proceedings before him or her.

(3) An Appointed Judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the Appointed Judge deals in his or her official capacity, and should require similar conduct of lawyers and of

the Appointed Judge's staff, court officials, and others subject to the Appointed Judge's direction and control.

(4) An Appointed Judge should accord to every person who is legally interested in a proceeding, or his or her lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. An Appointed Judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before the Appointed Judge if the Appointed Judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

(5) An Appointed Judge should dispose promptly of the business of the case to which he or she is appointed.

(6) An Appointed Judge should abstain from public comment about the pending or impending proceeding in any case to which he or she is appointed, and should require similar abstention on the part of those personnel who are subject to the Appointed Judge's direction and control.

(7) An Appointed Judge may authorize and apply all provisions as set forth in Canon 3 A.(7) and 3A.(8) pertaining to the preparation and preservation of a record and expanded media coverage of that Appointed Judge's proceedings.

(8) An Appointed Judge shall perform judicial duties without bias or prejudice. An Appointed Judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to, bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials and other subject to the Appointed Judge's direction and control to do so.

(9) An Appointed Judge shall attempt, to the extent practicable, to make certain that lawyers in proceedings before the Appointed Judge abide by their duties under the Colorado Rules of Professional Conduct and, in particular, to refrain from manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel, or others. This Section 9.3 A.(9) does not preclude legitimate advocacy when race, gender, religion, national origin, disability, age, sexual orientation, socioeconomic status, or other similar factors, are issues in the proceeding before the Appointed Judge.

B. Administrative Responsibilities.

(1) An Appointed Judge should diligently discharge his or her administrative responsibilities and maintain professional

competence in judicial administration of the case to which he or she is appointed.

(2) An Appointed Judge should require his or her staff to observe the standards of fidelity and diligence that apply to the Appointed Judge.

(3) An Appointed Judge should take or initiate appropriate disciplinary measures against a lawyer for unprofessional conduct of which the Appointed Judge may become aware in the case to which he or she is appointed.

C. Disqualification.

Using Canon 3C. of the Code of Judicial Conduct as a guide, the Appointed Judge should disclose to parties seeking his or her appointment in a particular case all matters that might actually affect or be perceived to affect his or her impartiality as to that case, such that the parties may make a fully informed choice. The judge shall decline the appointment in any case in which he or she believes there is a conflict of interest that would cause disqualification pursuant to C.R.C.P. 97.

CANON 9.4

AN APPOINTED JUDGE SHOULD REFRAIN FROM FINANCIAL AND BUSINESS DEALINGS DIRECTLY RELATED TO THE CASE

(1) An Appointed Judge should refrain from financial and business dealings that relate directly to any issues in the case to which the Appointed Judge is appointed.

(2) Neither an Appointed Judge nor a member of the Appointed Judge's family residing in the Appointed Judge's household should accept a gift, bequest, favor, or loan from any party to or lawyer appearing in the case to which the Appointed Judge is assigned.

(3) For the purposes of this section "member of the Appointed Judge's family residing in the Appointed Judge's household" means any relative of an Appointed Judge by blood or marriage, or a person treated by the Appointed Judge as a member of his or her family, who resides in the Appointed Judge's household.

(4) Information acquired by the Appointed Judge in that person's judicial capacity should not be used or disclosed by him or her in financial dealings or for any other purpose not related to the Appointed Judge's judicial duties.

CANON 9.5

AN APPOINTED JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY INAPPROPRIATE TO THE TERMS OF HIS OR HER JUDICIAL APPOINTMENT

An Appointed Judge, during the term or his or her appointment shall not act as a leader or hold any office in a political organization, or personally solicit funds for a political organization, or make speeches for a political organization or candidate or publicly endorse a candidate for public office.

COMMENTARY

Canon 9 is designed for Appointed Judges who serve pursuant to section 13-3-111, C.R.S., and C.R.C.P. 122. Under these provisions, the Chief Justice may appoint a retired or resigned judge or justice to serve as an Appointed Judge. Because a Senior Judge is being compensated by the State of Colorado, cannot practice law, and can be assigned to a docket of cases rather than by agreement of the parties and appointment by the Chief Justice to a specific case, Canons 1-8 as set forth in

Canon 8 apply to a Senior Judge who also accepts appointment as an Appointed Judge.

In contrast, Canon 9 is a stand-alone provision for Appointed Judges who are not under contract to serve as Senior Judges. This canon is designed to recognize that persons not being compensated by the State of Colorado to serve as a judge may actively engage in a variety of community activities, including the practice of law. Accordingly, many provisions of the Code of Judicial Conduct are not suited to this unique type of judicial service authorized by the General Assembly. For example, such persons need not be encouraged to engage in quasi-judicial activities as set forth in Canons 4 and 5, or be required to file reports of compensation for quasi-judicial or extra-judicial activities as set forth in Canon 6, or be prohibited from participation in all forms of political activities that a judge compensated by the State of Colorado must refrain from under Canon 7. In addition, not all provisions of the other canons are appropriate for application to an Appointed Judge.

Thus, Canon 9 is designed to allow the Appointed Judge to continue his or her chosen activities in the community and yet be selected by the parties and the Chief Justice to serve as the judge on a particular case, as contemplated by section 13-3-111, C.R.S. To the extent they are relevant, annotations and case law under the Code of Judicial Conduct may be consulted in reference to like provisions of Canon 9.

Retired or resigned judges are encouraged to consider accepting assignment as an Appointed Judge on a pro bono basis in cases involving an indigent party.

THE FOLLOWING PROVISION OF THE CODE OF JUDICIAL CONDUCT IS AMENDED TO PROVIDE:

EFFECTIVE DATE OF COMPLIANCE

Canons 1 through 7 are hereby amended and adopted by the Court, En Banc, this 18th day of November 1988, effective January 1, 1989. Canon 8 is hereby enacted and adopted by the Court, En Banc this 18th day of November 1988, effective January 1, 1989, except as to Canon 8D, which will become effective on January 1, 1990.

A person to who this Code becomes applicable should arrange his or her affairs as soon as reasonable possible to comply with it.

Canon 9 is hereby enacted and adopted by the Court, En Banc, this 23rd day of June, 2005 and shall be effective with regard to Appointed Judges appointed on or after July 1, 2005.

**EFFECTIVE DATE OF RULE C.R.C.P. 122 AND
CANON 9 OF THE COLORADO CODE OF JUDICIAL CONDUCT**

C.R.C.P. 122 and Canon 9 of the Colorado Code of Judicial Conduct are hereby enacted and adopted by the Court, En Banc, June 23, 2005 and shall be effective so as to allow the appointment of an Appointed Judge in any case within the scope of C.R.C.P. 122 that is pending in a court as of July 1, 2005 or is filed in a court on or after July 1, 2005. C.R.C.P. 122 and Canon 9 do not apply to appointments of Appointed Judges made prior to July 1, 2005, which appointments shall continue to be effective according to their terms.

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Adopted by the Court, En Banc June 23, 2005 effective July 1, 2005.

BY THE COURT

**Gregory J. Hobbs, Jr., Justice
Colorado Supreme Court**