

**2008(4) RULE CHANGE**

**CHAPTER 32**

**THE COLORADO APPELLATE RULES**

**APPEALS FROM JUDGMENTS AND ORDERS OF TRIAL COURTS AND  
AGENCIES**

**Rule 4. Appeal as of Right -- When Taken**

(a) **Appeals in Civil Cases (Other than Appeals or Appellate Review Within C.A.R. [3.1](#), [3.2](#), [3.3](#) and [3.4](#)).** Except as provided in Rule 4(e), in a civil case in which an appeal is permitted by law as of right from a trial court to the appellate court, the notice of appeal required by C.A.R. [3](#) shall be filed with the appellate court with an advisory copy served on the clerk of the trial court within forty-five days of the date of the entry of the judgment, decree, or order from which the party appeals. In appeals from district court review of agency actions, such notice of appeal shall be in addition to the statutory forty-five-day notice of intent to seek appellate review filed with the district court required by C.R.S. [24-4-106](#)(9). If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within fourteen days of the date on which the first notice of appeal is filed, or within the time otherwise prescribed by this section (a), whichever period last expires.

The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion filed in the trial court by any party pursuant to the Colorado Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this section (a) commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: (1) Granting or denying a motion under C.R.C.P. [59](#) for judgment notwithstanding verdict; (2) granting or denying a motion under C.R.C.P. [59](#), to amend findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under C.R.C.P. [59](#), to alter or amend the judgment; (4) denying a motion for a new trial under C.R.C.P. [59](#); (5) expiration of a court granted extension of time to file motion(s) for post-trial relief under C.R.C.P. [59](#), where no motion is filed. The trial court shall continue to have jurisdiction to hear and decide a motion under C.R.C.P. [59](#) regardless of the filing of a notice of appeal, provided the C.R.C.P. [59](#) motion is timely filed under C.R.C.P. [59](#)(a) and

determined within the time specified in C.R.C.P. 59(j). During such time, all proceedings in the appellate court shall be stayed. A judgment or order is entered within the meaning of this section (a) when it is entered pursuant to C.R.C.P. 58. If notice of the entry of judgment, decree, or order is transmitted to the parties by mail or E-Service, the time for the filing of the notice of appeal shall commence from the date of the mailing or E-Service of the notice.

Upon a showing of excusable neglect, the appellate court may extend the time for filing the notice of appeal by a party for a period not to exceed thirty days from the expiration of the time otherwise prescribed by this section (a). Such an extension may be granted before or after the time otherwise prescribed by this section (a) has expired; but if a request for an extension is made after such time has expired, it shall be made by motion with such notice as the court shall deem appropriate.

#### **Rule 12. Docketing the Appeal and Fees; Proceedings in Forma Pauperis; Filing of the Record**

**(a) Docketing the Appeal; Fees of Clerk.** At the time of the filing of the notice of appeal or the time of filing any documents with an appellate court before the filing of the notice of appeal, the appellant shall pay to the clerk of the appellate court a-the docket fee of \$150.00 as required by section 13-4-112(1) and the clerk shall enter the appeal upon the docket. If an appellant is authorized to prosecute the appeal without prepayment of fees, the clerk shall enter the appeal on the docket at the written request of that party. The party appealing shall docket the case as nearly as possible under the title given to the action in the trial court, with the appellant identified as such, but if such title does not contain the name of the appellant, the appellant's name, identified as appellant, shall be added to the title. Unless necessary to show the relationship of the parties, such caption shall not include the names of parties not involved in the appeal. The docket fee for an appellee as required by section 13-4-112(1) shall be \$75.00 to be paid upon the entry of appearance of the appellee. After an initial appellant or appellee has paid the docket fee, any additional appellants or, appellees or cross-appellants entering an appearance by an attorney who is not already of record in the case, shall also pay a-the docket fee in the amount set forth above as required by section 13-4-112(1). A cross-appellant shall pay a-\$75.00-the docket fee, in addition to the appellee's fee, amount at the time the

cross-appeal is filed. Extension of time shall not be granted for paying docket fees.

(b), (c) and (d) [No Change.]

(e) **Filing of the Record.** Upon receipt of the record or papers authorized to be filed in lieu of the record under the provisions of C.A.R. 11(c) and (g) following timely transmittal, the clerk shall file the record. The clerk shall immediately give notice to all parties of the date on which the record was filed.

## GENERAL PROVISIONS

### Rule 25. Filing and Service

(a), (b) and (c) [No Change.]

(d) **Manner of Service.** Service may be personal or by mail or E-Service. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing. E-Service is complete upon the time and date of transmission by the E-Service provider.

### (New) Rule 30. E-Filing

(a) **Definitions.**

(1) **Document.** A pleading, motion, brief, writing or other paper filed or served under Colorado Appellate Rules.

(2) **E-Filing/Service System.** The E-Filing/Service System ("**E-System**") approved by the Colorado Supreme Court for filing and service of documents via the Internet through the Court-authorized E-System provider.

(3) **Electronic Filing.** Electronic filing ("**E-Filing**") is the transmission of documents to the clerk of the court, and from the court, via the E-System.

(4) **Electronic Service.** Electronic service ("**E-Service**") is the transmission of documents to any party in a case via the E-System. Parties who have subscribed to the E-System have agreed to receive service via the E-System.

(5) **E-System Provider.** The E-Service/E-Filing System Provider authorized by the Colorado Supreme Court.

(6) **S/Name.** A symbol representing the signature of the person whose name follows the "S/" on the electronically or otherwise signed form of the E-Filed or E-Served document.

**(b) Types of Cases Applicable.** E-Filing and E-Service are permissible in all civil, domestic, probate and agency appellate proceedings.

**(c) To Whom Applicable.**

(1) Attorneys licensed to practice law in Colorado may register to use the E-System.

(2) Where the system and necessary equipment are in place to permit it, pro se parties and government entities and agencies may register to use the E-System.

**(d) E-Filing-Date and Time of Filing.** A document transmitted to the E-System Provider by 11:59 p.m. Colorado time shall be deemed to have been filed with the clerk of the court on that date.

**(e) E-Service-When Required - Date and Time of Service.** Documents submitted to the court through E-Filing shall be served under C.A.R. 25 by E-Service. A document transmitted to the E-System Provider for service by 11:59 p.m. Colorado time shall be deemed to have been served on that date. E-Service shall entitle the party being served an additional 3 days as provided by C.A.R. 26(c), when such additional time is available.

**(f) Filing Party to Maintain the Signed Copy-Paper Document Not to Be Filed- Duration of Maintaining of Document.** A printed or printable copy of an E-Filed or E-Served document with original or scanned signatures shall be maintained by the filing party and made available for inspection by other parties or the court upon request, but shall not be filed with the court. When these rules require a party to maintain a document, the filer is required to maintain the document for a period of two years after the final resolution of the action, including the final resolution of all appeals.

**(g) Documents Requiring E-Filed Signatures.** For all E-Filed and E-Served documents, signatures of attorneys and parties may be in S/Name typed form to satisfy signature requirements, once the necessary signatures have been obtained on a paper form of the document. Attorneys and parties may also use an electronic ink signature.

**(h) Documents under Seal.** A motion for leave to file documents under seal may be E-Filed. Documents to be filed under seal pursuant to an order of the court may be E-Filed at the direction of the court; however, the filing party may object to this procedure.

**(i) Transmitting of Orders, Notices, Opinions and Other Court Entries.** Appellate courts shall distribute orders, notices, opinions, and other court entries using the E-

System in cases where E-Filings were received from any party.

**(j) Form of E-Filed Documents.** The requirements found in C.A.R. 28, 31, and 32 shall apply to E-Filed documents. A document shall not be transmitted to the clerk of the court by any other means unless the court at any later time requests a printed copy.

**(k) E-Filing May be Mandated.** The Chief Justice may mandate, or, with the permission of the Chief Justice, the Chief Judge of the court of appeals may mandate E-Filing for specific case classes or types of cases. An appellate justice or judge may mandate E-Filing and E-Service for a specific case for submitting documents to the court and serving documents on case parties. Where E-Filing is mandatory, the court may thereafter accept a document in paper form and the court shall scan the document and upload it to the E-Service Provider. After notice to an attorney that all future documents are to be E-Filed, the court may charge a fee of \$50 per document for the service of scanning and uploading a document filed in paper form. Where E-Filing and E-Service are mandatory an appellate justice or judge may exclude pro se parties from mandatory E-Filing requirements.

**(l) Relief in the Event of Technical Difficulties.**

(1) Upon satisfactory proof that E-Filing or E-Service of a document was not completed because of: (a) an error in the transmission of the document to the E-System Provider which was unknown to the sending party; (b) a failure of the E-System Provider to process the E-Filing when received, or (c) other technical problems experienced by the filer or E-System Provider, the court may enter an order permitting the document to be filed nunc pro tunc to the date it was first attempted to be sent electronically.

(2) Upon satisfactory proof that an E-Served document was not received by or unavailable to a party served, the court may enter an order extending the time for responding to that document.

**(m) Form of Electronic Documents.**

(1) **Electronic Document Format, Size and Density.** Electronic document format, size, and density shall be as specified by Chief Justice Directive #05-02, as amended.

(2) **Multiple Documents.** Multiple documents (including proposed orders) may be filed in a single electronic filing transaction. Each document in that filing must bear a separate document title.

ADDITIONAL INFORMATION ON RULE. The Court authorized service provider for the program is LexisNexis File and Serve ([www.lexisnexis.com/fileandserve](http://www.lexisnexis.com/fileandserve)).

## Rule 32. Form of Briefs and Appellate Documents

(a) **Standards for Non-Typewriter-Produced Briefs and Other Appellate Papers.** ~~Briefs~~Except for briefs and other appellate papers, ~~except for those~~ produced through the use of a typewriter, all briefs and appellate papers including those E-filed must comply with following standards:

(1), (2) and (3) [No Change.]

## Rule 35. Determination of Appeal

(a), (b), (c), (d) and (e) [No Change.]

(f) **Published Opinions of Court of Appeals.** A majority of all of the judges of the Court of Appeals shall determine which opinions of that court shall be designated for official publication. They shall be published in whatever official publication is designated by the Supreme Court. Those opinions designated for official publication shall be followed as precedent by the trial judges of the state of Colorado.

No opinion of the Court of Appeals shall be designated for official publication unless it satisfies one or more of the following standards: (1) the opinion lays down a new rule of law, or alters or modifies an existing rule, or applies an established rule to a novel fact situation; (2) the opinion involves a legal issue of continuing public interest; (3) the majority opinion, dissent, or special concurrence directs attention to the shortcomings of existing common law or inadequacies in statutes; (4) the opinion resolves an apparent conflict of authority.

An opinion of the Court of Appeals not designated for official publication shall bear, on the title page, the legend, "NOT PUBLISHED PURSUANT TO C.A.R. [35](#)(f)."

If the Supreme Court grants certiorari to a Court of Appeals opinion not designated for official publication, and if the Supreme Court announces an opinion in the case, the Court of Appeals' opinion shall not be published unless otherwise ordered by the Supreme Court.

Denial of certiorari by the Supreme Court shall not necessarily be taken as approval of any opinion of the Court of Appeals.

JURISDICTION ON WRIT OF CERTIORARI

Rule 52. Review on Certiorari - Time for Petitioning

(a) [No Change.]

(b) To Review Court of Appeals Judgment.

(1) and (2) [No Change.]

(3) Any petition for writ of certiorari to review a judgment of the Court of Appeals shall be filed in the Supreme Court within ~~thirty~~<sup>46</sup> days ~~after the expiration of the issuance~~ of the ~~time for filing a petition for rehearing in opinion of~~ the Court of Appeals, if no petition for rehearing is filed, or within thirty days after the denial of a petition for rehearing by the Court of Appeals. In workers' compensation and unemployment insurance cases, the time for filing a petition for certiorari in the Supreme Court is reduced to fifteen days.

Amended and Adopted by the Court, En Banc February 7, 2008, effective immediately.

BY THE COURT:

Nancy E. Rice  
Justice, Colorado Supreme Court