

2008(5) RULE CHANGE

**THE COLORADO RULES OF CIVIL PROCEDURE
FOR
COURTS OF RECORD IN COLORADO**

CHAPTER 1
SCOPE OF RULES, ONE FORM OF ACTION,
COMMENCEMENT OF ACTION, SERVICE OF PROCESS,
PLEADINGS, MOTIONS AND ORDERS

Rule 4. Process

(a) through (g) [NO CHANGE.]

(h) Manner of Proof. Proof of service shall be made as follows:

(1) If served personally, by a ~~duly acknowledged~~ statement, certified by the sheriff, marshal or similar governmental official, or statement duly acknowledged under oath by any other person completing the service as to date, place, and manner of service;

(h)(2) through (k) [NO CHANGE.]

CHAPTER 15
REMEDIAL WRITS AND CONTEMPT

**(New) Rule 106.5. Correctional Facility Quasi-Judicial
Hearing Review**

(a) Scope. This rule applies to every action brought by an inmate to review a decision resulting from a quasi-judicial hearing of any facility of the Colorado Department of Corrections ("CDOC") or any private facility in Colorado involving a CDOC inmate for events that occurred at the facility. To the extent this rule does not cover procedures in such cases, the parties shall follow C.R.C.P. 106(a)(4). All other provisions of C.R.C.P. 106(a)(4) shall apply except where modified by this Rule 106.5. The provisions of C.R.C.P. 106(b) and C.R.C.P. 5 shall govern all cases brought under this Rule 106.5.

(b) Designation of Defendant. Only the Executive Director of the CDOC and the Warden of the facility shall be named as Defendants and shall be listed as such. The District Court shall dismiss any other Defendant.

(c) Venue. All actions under this rule shall be filed in the district court in the county in which the quasi-judicial agency action occurred, even if the inmate is no longer assigned to that facility at the time the complaint is filed.

(d) Service of Process.

(1) If the inmate does not qualify for *in forma pauperis* status, the rules relating to service of process set forth in C.R.C.P. 4(e)(10) shall apply, but only the Warden, the Executive Director of the Department of Corrections, and the Attorney General shall be served.

(2) If the inmate files a motion to proceed *in forma pauperis* status and that motion is granted, service of process shall be accomplished in the following manner: The clerk of the District Court shall scan the complaint and serve it by electronic means on the Attorney General, the Executive Director of the Department of Corrections, and the Warden of the Facility (or the designee of each of these officials), along with a notice indicating the fact of the inmate's filing and the date received by the Court. Each person notified shall send an acknowledgment by electronic means indicating that the specified official has received the electronic notice and the scanned copy of the complaint.

(e) Response of Defendant. Within 20 days after the date on which the Attorney General sends acknowledgment that it has received the notice and complaint from the Clerk of the District Court, the Defendants shall file either (1) an answer to the complaint and a certified copy of the record as explained below, or (2) a motion in response to the complaint.

(f) Notice to Submit Record. The facility shall file the certified record and affidavit of certification directly to the Court no later than the deadline to file an answer or motion as indicated above. This obligation to submit the record shall not apply if the Attorney General notifies the Warden within 10 days of the electronic service that a

motion to dismiss the complaint for lack of subject matter jurisdiction has been filed, in which event the filing of the record shall be suspended pending disposition of the motion.

(g) Contents of the Record. The certified record submitted by the Warden to the District Court shall contain all material related to the proceeding at the facility to permit the Court to address the issues raised in the complaint. The record shall include the Notice of Charges, the Disposition of Charges, the Offender Appeal Form, all exhibits offered at the hearing, and the current applicable version of the Code of Penal Discipline. If any part of the proceeding was recorded, a copy of the recording shall be provided.

(h) Cost of the Record. The cost of preparation of the record shall initially be paid by the Warden but, upon the filing of the certified record with the Court, the Warden shall immediately deduct the cost of preparation of the record, including the recording, from the inmate's account. If there are insufficient funds in that account, the Warden shall apply a charge to that account. In no event shall the filing of the record be delayed because the inmate has no assets and no means by which to pay the cost of certification of the record.

(i) Briefs.

(1) If counsel for the Defendants files a motion to dismiss, the inmate shall have 15 days after service of the motion to file a brief in response, and the defense counsel shall have 10 days after service of the response to file a reply.

(2) If the defense counsel files an answer and the Warden files the certified record, the inmate shall have 40 days following notice of filing of the record in which to file a brief. In this event, the brief shall set forth the reasons why the inmate believes that the District Court should rule that the Warden has exceeded his or her jurisdiction or abused his or her discretion. The inmate must set forth in the brief specific references to the record that support the inmate's position. Defense counsel shall have 30 days after service of the brief to file a response and the inmate shall have 15 days after service of the response to file a reply.

(j) **Time Periods.** The parties shall follow the time periods set forth above unless the Court, on motion and for good cause shown, enters an order altering those time periods.

(k) **Promulgation of Rule.** A copy of this Rule 106.5 shall be made available in the law library of every facility operated by the Colorado Department of Corrections and every private prison in Colorado that houses CDOC inmates.

CHAPTER 25
THE COLORADO RULES OF COUNTY COURT PROCEDURE

Rule 304. Service of Process

(a) through (f) [NO CHANGE.]

(g) **Manner of Proof.** Proof of service shall be made as follows:

(1) If served personally, by a ~~duly acknowledged~~ statement, certified by the sheriff, marshal or similar governmental official, or statement duly acknowledged under oath by any other person completing the service as to date, place, and manner of service.

(g)(2) through (j) [NO CHANGE.]

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

BY THE COURT:

Nancy E. Rice
Justice, Colorado Supreme Court