

RULE CHANGE 2009(10)

CHAPTER 29

COLORADO RULES OF CRIMINAL PROCEDURE

Rule 41. Search, Seizure, and Confession

(a) through (c) [No change.]

(d) Issuance, Contents, Execution, and Return of Warrant.

(1) through (4) [No change.]

(5) Execution and Return.

(I) through (V) [No change.]

(VI) A search warrant shall be executed within ten calendar days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge upon request shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) through (h) [No change.]

Rule 41.1. Court Order for Nontestimonial Identification

(a) through (e) [No change.]

(f) Execution and Return.

(1) [No change.]

(2) The order may be executed and returned only within ten calendar days after its date.

(3) through (7) [No change.]

(g) through (i) [No change.]

Rule 45. Time

(a) Computation. In computing any period of time, the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. The term "calendar days" shall mean consecutive days including Saturdays, Sundays, and holidays. ~~When~~ Unless otherwise specifically ordered, when a period of time prescribed or allowed is less than ~~seven~~ eleven days and not specified as "calendar days", intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(b) through (d) [No change.]

(e) Additional Time After Certain Kinds of Service by Mail. ~~Whenever~~ Unless otherwise specifically ordered, whenever a party has the right or is required to do an act within a prescribed period after the service of a notice or other paper and ~~upon him~~ the notice or other paper is served ~~upon him~~ by mail or as authorized under Colorado Rules of Civil Procedure 5(b)(2)(C) or (D), three calendar days shall be added to the prescribed period after the period would otherwise expire under subdivision (a) of this Rule. If the third of the added days is a Saturday, Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday.

(f) [No change.]

Comment

The amendment to Rule 45(e) clarifies the method for extending the time to respond after service by mail, leaving with the clerk of court, or electronic or

other means consented to by the party served. Three days are added after the prescribed period otherwise expires under Rule 45(a). This is different than the parallel civil rule, C.R.C.P. 6(e), which has taken the approach of adding the three days before applying the provisions of subsection (a).

The effect of invoking the day that the rule would otherwise expire under Rule 45(a) can be illustrated by assuming that the thirtieth day of a thirty-day period is a Saturday. Under Rule 45(a) the period expires on the next day that is not a Sunday or legal holiday. If the following Monday is a legal holiday, under Rule 45(a) the period expires on Tuesday. Three days are then added—Wednesday, Thursday, and Friday as the third and final day to act unless that is a legal holiday. If, however, the prescribed period ends on a Friday, the three added days are Saturday, Sunday, and Monday, which is the third and final day to act unless it is a legal holiday. If Monday is a legal holiday, the next day that is not a legal holiday is the third and final day to act.

Application of Rule 45(e) to a period that is less than eleven days can be illustrated by a paper that is served by mailing on a Friday. If ten days are allowed to respond, intermediate Saturdays, Sundays, and legal holidays are excluded in determining when the period expires under Rule 45(a). If there is no legal holiday, the period expires on the Friday two weeks after the paper was mailed. The three added Rule 45(e) days are Saturday, Sunday, and Monday, which is the third and final day to act unless it is a legal holiday. If Monday is a legal holiday, the next day that is not a legal holiday is the final day to act.

Amended and adopted by the Court, En Banc, May 7, 2009, effective July 1, 2009.

By the Court:

Alex J. Martinez

Justice, Colorado Supreme Court