

Rule Change #1998(14)

**Chapter 32. Colorado Appellate Rules
Original Jurisdiction
Certification of Questions of Law
Rule 21. Procedure in Original Actions**

The entire existing C.A.R. Rule 21 is repealed and readopted as follows. This repeal and readoption is adopted November 19, 1998, effective January 1, 1999.

BY THE COURT:

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

Rule Change #1998(14)

C.A.R. 21. Procedure in Original Actions

(a) Original Jurisdiction Under the Constitution.

(1) This rule applies only to the original jurisdiction of the Supreme Court to issue writs as provided in Section 3 of Article VI of the Colorado Constitution and to the exercise of the Supreme Court's general superintending authority over all courts as provided in Section 2 of Article VI of the Colorado Constitution. Relief under this rule is extraordinary in nature and is a matter wholly within the discretion of the Supreme Court. Such relief shall be granted only when no other adequate remedy, including relief available by appeal or under C.R.C.P. 106, is available.

(2) Petitions to the Supreme Court in the nature of mandamus, certiorari, habeas corpus, quo warranto, injunction, prohibition and other forms of writs cognizable under the common law are subject to this rule. The petitioner need not designate a specific form of writ when seeking relief under this rule.

(b) How Sought; Proposed Respondents. Petitioner shall file a petition for a rule to show cause specifying the relief sought and shall request the court to issue to one or more proposed respondents a rule to show cause why the relief requested should not be granted. The proposed respondent should be the real party in interest.

(c) Docketing of Petition and Fees; Form of Pleadings; Briefs. Upon the filing of a petition for a rule to show cause, petitioner shall pay to the clerk of the Supreme Court a docket fee in the amount prescribed by law for proceedings on appeal. All papers filed under this rule shall comply with C.A.R. 32.

(d) Number of Copies to be Filed and Served. An original and ten copies of each petition, motion, brief or other paper shall be filed. One set of supporting documents shall be filed.

(e) Content of Pleadings and Service.

(1) The petition shall be titled, “In Re [Caption of Underlying Proceeding].” If there is no underlying proceeding, the petition shall be titled, “In Re [Petitioner v. Proposed Respondent].”

(2) Petitioner shall have the burden to show that a rule to show cause should be issued. To enable the court to determine whether a rule to show case should be issued, the petition shall disclose in sufficient detail the following:

(A) The identity of the petitioner and of the proposed respondent, together with their party status in the proceeding below (e.g., plaintiff, defendant, etc.);

(B) The identity of the court or other tribunal below, the case name and case number or other identification of the proceeding below, if any, and identification of any other related proceeding;

- (C) The identity of the persons or entities against whom relief is sought;
- (D) The ruling, action, or failure to act complained of and the relief being sought;
- (E) The reasons why no other adequate remedy is available;
- (F) The issues presented;
- (G) The facts necessary to understand the issues presented;
- (H) Argument and points of authority explaining why a rule to show cause should be issued and why relief requested should be granted; and
- (I) A list of supporting documents, or an explanation of why supporting documents are not available.

(3) The petition shall include the names, addresses, and telephone and fax numbers, if any, of all parties to the proceeding below; or, if a party is represented by counsel, the attorney's name, address, and telephone and fax number.

(4) The petition shall be served upon each party and proposed respondent and the court or tribunal below.

(f) Supporting Documents. A petition shall be accompanied by a separate, indexed set of available supporting documents adequate to permit review. Some or all of the following documents may be necessary:

- (1) The order or judgment from which relief is sought;
- (2) Documents and exhibits submitted in the proceeding below that are necessary for a complete understanding of the issues presented;
- (3) A transcript of the proceeding leading to the order or judgment below.

(g) Stay; Jurisdiction.

(1) The filing of a petition under this rule does not stay any proceeding below or the running of any applicable time limit. If the petitioner seeks a temporary stay in connection with the petition pending the court's determination whether to issue a rule to show cause, a stay ordinarily shall be sought in the first instance from the court or tribunal. If a request for stay below is impracticable or not promptly ruled upon or is denied, the petitioner may file a separate motion for a temporary stay in the Supreme Court supported by accompanying materials justifying the requested stay.

(2) Issuance of a rule to show cause by the Supreme Court automatically stays all proceedings below until final determination of the original proceeding in the Supreme Court unless the court, sua sponte, or upon motion, lifts such stay in whole or in part.

(h) No Initial Responsive Pleading to Petition Allowed. Unless requested by the Supreme Court, no responsive pleading to the petition shall be filed prior to the court's determination of whether to issue a rule to show cause.

(i) Denial; Rule to Show Cause.

(1) The court in its discretion may issue a rule to show cause or deny the petition without explanation and without an answer by any respondent.

(2) The clerk, by first class mail, shall serve the rule to show cause on all persons ordered or invited by the court to respond and shall provide copies to the judge or other officer in the proceeding below.

(j) Response to Rule to Show Cause.

(1) The court in its discretion may invite or order any person in the proceeding below to respond to the rule to show cause within a fixed time, and may invite amicus curiae

participation. Any person in the proceedings below may request permission to respond to the rule to show cause but may not respond unless invited or ordered to do so by the court. Those ordered by the court to respond are the respondent.

(2) The response to any order of the court shall conform to section (c) and (d) of this rule.

(3) Two or more respondents may answer jointly.

(k) **Reply to Response to Rule to Show Cause.** Petitioner may submit a reply brief within the time fixed by the court.

(l) **No Oral Argument.** There shall be no oral argument unless ordered by the court.

(m) **Opinion Discretionary.** The court, upon review, in its discretion may discharge the rule or make it absolute, in whole or in part, with or without opinion.

(n) **Petition for Rehearing.** In all proceedings under this Rule 21, where the Supreme Court has issued an opinion discharging a rule or making a rule absolute, a petition for rehearing may be filed in accordance with the provisions of C.A.R. 40.