

AGENDA

COLORADO SUPREME COURT COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Friday, June 24, 2022, 1:30 p.m.
Ralph L. Carr Colorado Judicial Center
2 E.14th Ave., Denver, CO 80203

Fourth Floor, Supreme Court Conference Room

- I. Call to order
- II. Approval of April 8, 2022, minutes [Pages 3 to 5]
- III. Announcements from the Chair
 - A. General
- IV. Present Business
 - A. C.R.C.P. 42.1—Proposed Rule Changes—(Judge Jones)) [Page 6]
 - B. C.R.C.P. 23—Proposed Rule Changes in Light of Proposed C.A.R. 3.3—(Judge Jones) [Pages 7 to 8]
 - C. Colorado Rules for Magistrates—Proposed Rule Changes—(Magistrate Tims) [Pages 9 to 33]
 - D. C.R.C.P. 16.2—Simplified Process for Dissolution of Marriage in Low-Income/Low-Conflict Situations—(Judge Brody)
 - E. Proposed Amendments in FED Actions—(Judge Espinosa) [Pages 34 to 39]
 - F. C.R.C.C.P. Forms 4 and 5—Appeal Forms Workgroup Request—(Kayla Cooley) [Pages 40 to 44]
 - G. Proposed Changes to Forms 29 and 30 Relating to SB 22-0086—(Jose Vasquez) [Pages 45 to 53]
 - H. The Professionals and Legal Services Group and Potential Rule Changes Arising Out of Its Work—(Judge Espinosa)

V. Adjourn—**Next meeting is September 23, 2022, at 1:30 pm.**

Jerry N. Jones, Chair
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720-625-5335

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
April 8, 2022, Minutes**

A quorum being present, the Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure was called to order by Judge Jerry N. Jones at 1:30 p.m. in the Supreme Court Conference Room. Members present at the meeting were:

Name	Present	Not Present
Judge Jerry N. Jones, Chair	X	
Mandy Allen		X
Judge Michael Berger		X
Judge Karen Brody	X	
Miko Ando Brown		X
Damon Davis	X	
David R. DeMuro	X	
Judge Paul R. Dunkelman		X
Judge Stephanie Dunn	X	
Judge J. Eric Elliff	X	
Judge Adam Espinosa	X	
Peter Goldstein		X
Magistrate Lisa Hamilton-Fieldman	X	
Michael J. Hofmann		X
Judge Thomas K. Kane		X
John Lebsack	X	
Bradley A. Levin	X	
Professor Christopher B. Mueller	X	
Brent Owen	X	
John Palmeri	X	
Lucas Ritchie	X	
Chief Judge Gilbert M. Román	X	
Judge (Ret.) Sabino Romano		X
Genevieve Rotella		X
Judge Stephanie Scoville		X
Lee N. Sternal	X	
Magistrate Marianne Tims		X
Jose L. Vasquez	X	
Judge Juan G. Villaseñor		X
Ben Vinci	X	
Judge (Ret.) John R. Webb		X
J. Gregory Whitehair	X	
Judge Christopher Zenisek	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Jeremy Botkins		X

I. Attachments & Handouts

- April 8, 2022, agenda packet.

II. Announcements from the Chair

- The January 28, 2022, minutes were approved as submitted.
- Chair Judge Jones welcomed new member Luke Ritchie. Judge Jones then provided updates on subcommittees: regarding the document retention subcommittee, the supreme court will create a uniform policy for document retention for all of the court's committees; therefore, this subcommittee will not be formed. The pronouns and PALs subcommittees both need additional volunteers.
- Justice Gabriel shared background on the document retention policy. The court is looking at, subject to legal counsel advising otherwise, keeping official records of committees, such as minutes, agendas, and memos, along with anything of historical interest. Justice Gabriel also noted that Judge Davidson has decided to retire from this Committee after serving since 1988. While Judge Davidson was not in attendance, Justice Gabriel will ensure she is honored properly.

III. Present Business

A. FED Actions

Judge Jones shared that during the email vote on the FED rules and form, several members shared comments. Based on these comments, Judge Jones thought it best to discuss the comments in a meeting. Judge Espinosa, Subcommittee Chair, said that the subcommittee today brings proposed changes to C.R.C.P. 55 and 355 along with the forms and a memo. Judge Espinosa explained that there are various meanings of *close of business* throughout rules and in different courts. The subcommittee agreed it best to follow the statute's language and not define close of business. Judge Jones noted the two remaining issues: First, should *close of business* be defined in a particular way, or should the Committee stick with the language of statute? Second, should the language refer to the ability to avoid default by filing an answer before the close of business on the appearance date? One member noted that there are multiple options possible, and because of that inconsistency, the language should be left to the legislature or a court's interpretation. Justice Gabriel said that the problem here is that the legislature did not define their term, and the court cannot legislate by rule. Ultimately, this is a legislative problem. The court might get stuck interpreting this at some point, but if the Committee recommends and the court adds language that isn't in the statute, the court might be accused of amending the statute by rule, which is not allowed. One member noted that it is not clear that a party can file an answer by the close of business. Another member noted that the summons must have specific language as required by the statute, and this presented an intractable issue for the subcommittee in drafting the language of the summons. Much of the discussion considered how much guidance a pro se litigant facing eviction needs compared to how the Committee can best follow the language of the statute. Judge Jones suggested a vote on two questions: 1. Should the Committee define close of business? 2. Should the Committee include language in the summons that tells the defendant more explicitly that if the defendant fails to not appear at the date and time, the defendant may avoid a default by filing an answer by close of business?

The Committee unanimously voted not to add the *close of business* language.

A motion and second were taken to revise the summons to articulate more clearly that a defendant can avoid default by filing an answer before the close of business. A member noted that the issue lies in the statute, and the language in the statute does not comport. There is no way to write in the form that this is what the legislature meant to say. The member continued that the language must follow the statute and we should let the legislature make the necessary changes. Another member noted that this is an access to justice issue because most tenants are self-represented. The Committee returned to the motion on the table to revise the summons to more clearly indicate that a party can avoid entry of default even if the party does not appear on the date and time indicated by filing an answer by the close of business. The proposed amendment failed by a vote of 4 to 14.

Then, there was a motion and second to move the date and time to paragraph 2 in the Summons. This would still comply with the statute but provide clarity by eliminating the first two clauses of paragraph one. A friendly amendment was suggested to remove the language *your options are below*. The motion was approved 14 to 6.

A motion and second were made to amend the rules and forms on the proposal as a whole. After members suggested a few nit edits, the motion passed unanimously 18-0.

Judge Jones will write a transmittal letter that indicates the various points of contention and submit these proposals to the court and expressed his thanks to the subcommittee members for all their work.

B. Summary of Other Pending Matters

Judge Jones said that the both the Magistrate Rules Subcommittee and the Rule 16.2 Subcommittee will present proposals at the next meeting.

Future Meetings

June 24, 2022; September 23, 2022; and November 4, 2022

The Committee adjourned at 3:31 p.m.

Rule 42.1. Consolidated Multidistrict Litigation

(a) – (c) [NO CHANGE]

(d) Order to Show Cause; Hearing; Response. When the transfer of multidistrict litigation is being considered, an order shall be entered by the Panel directing the parties in each action to show cause why the action or actions should not be transferred. A hearing shall be set at the time the show cause order is entered. Any party may file a response to the show cause order and an accompanying brief within 14 days after the order is entered, unless otherwise provided in the order. Within 7 days of receipt of a party's response or brief, any party may file a reply brief limited to new matters.

(1) Except by permission of the Panel, briefs shall not exceed five (5) pages, exclusive of appendices. An original ~~and seven (7) copies~~ of each brief shall be filed with the Clerk of the Panel.

(2) Each side shall be allowed fifteen (15) minutes of oral argument at the hearing, unless extended by the Panel.

(e) - (l) [NO CHANGE]

Rule 3.3. Appeals of Grant or Denial of Class Certification

An appeal from a [written, signed, and dated](#) order granting or denying class certification under C.R.C.P. 23(f) may be allowed pursuant to the procedures set forth in that rule and C.R.S. § 13-20-901.

Rule 23. Class Actions

(a) - (e) [NO CHANGE]

(f) **Appeals.** An appeal from a written, signed, and dated order granting or denying class certification under this rule may be allowed pursuant to the procedures set forth in C.R.S. § 13-20-901 (2003).

(g) [NO CHANGE]

Rule 1. Scope and Purpose.

These rules are designed to govern the selection, assignment and conduct of magistrates in civil and criminal proceedings in the Colorado court system. Although magistrates may perform functions which judges also perform, a magistrate at all times is subject to the direction and supervision of the chief judge or presiding judge.

We do not propose any change to Rule 1 C.R.M.

Rule 2. Application.

These rules apply to all proceedings conducted by magistrates in district courts, county courts, small claims courts, Denver Juvenile Court and Denver Probate Court, as authorized by law, except for proceedings conducted by water referees, as defined in Title 37, Article 92, C.R.S., and proceedings conducted by masters governed by C.R.C.P. 53.

We do not propose any change to Rule 2 C.R.M.

Rule 3. Definitions.

The following definitions shall apply:

- (a) Magistrate: Any person other than a judge authorized by statute or by these rules to enter orders or judgments in judicial proceedings.
- (b) Chief Judge: The chief judge of a judicial district.
- (c) Presiding Judge: The presiding judge of the Denver Juvenile Court, the Denver Probate Court, or the Denver County Court.
- (d) Reviewing Judge: A judge designated by a chief judge or a presiding judge to review the orders or judgments of magistrates in proceedings to which the Rules for Magistrates apply.
- (e) Order or Judgment: All rulings, decrees or other decisions of a judge or a magistrate made in the course of judicial proceedings.
- (f) Consent:

One of our primary tasks was to simplify these Rules so that they can be more easily understood by everyone from court of appeals judges, to district court and county court judges, magistrates, lawyers, and self-represented litigants. Our initial thought was to cut out the with and without consent difference, leaving only a list of functions for magistrates. Instead, we have preserved the consent / nonconsent distinction, but made the appellate pathway uniform.

The preliminary proposal of having only a single list of functions for a magistrate garnered immediate push-back because each Judicial District uses their magistrates differently. We wanted to be sure to give each chief judge the flexibility needed to assign tasks to his or her magistrates to best conduct the court's business. Each jurisdiction uses the resource of their magistrate(s) according to their own business model; rarely does a magistrate hear only one type of case. By and large the difference between a county court magistrate and a district court magistrate becomes non-existent as there often is a single magistrate fulfilling both roles.

To that end, we have opted to leave certain functions as possible magistrate functions so long as the parties consent to it. We believe this approach will result in flexibility for the chief judges, lawyers and self-represented parties, conceding that some "judge shopping" may result. We agree that is worth the predictability of how these Rules will impact practice in a magistrate's division.

Regardless of whether a hearing is conducted by a magistrates because no consent was required OR because parties have consented to the magistrate's jurisdiction, these Rules require the litigant/lawyer to first seek review with the district court as a prerequisite to appealing to the court of appeals.

(1) Consent in District Court:

(A) For the purposes of the rules, where consent is necessary a party is deemed to have consented to a proceeding before a magistrate if **he or she is advised of the right to have the proceeding before a district court judge and, after entering an appearance or filing a responsive pleading:**

(i) The party has affirmatively consented in writing or on the record; or

(ii) The party has been provided notice of the referral, setting, or hearing of a proceeding before a magistrate and failed to file a written objection within 14 days of such notice; or

(iii) The party failed to appear at a proceeding after having been provided notice of that proceeding.

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

(2) Consent in County Court:

(A) When the exercise of authority by a magistrate in any proceeding is statutorily conditioned upon a waiver of a party pursuant to C.R.S. section 13-6-501, such waiver shall be executed in writing or given orally in open court by the party or the party's attorney of record, and shall state specifically that the party has waived the right to proceed before a judge and shall be filed with the court.

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

(3) Consent in Small Claims Court:

(A) A party will be deemed to accept the jurisdiction of the Small Claims Court unless the party objects pursuant to C.R.S. section 13-6-405 and C.R.C.P. 511 (b).

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

Rule 4. Qualifications, Appointment, Evaluation and Discipline.

The following rules shall apply to all magistrates and proceedings before magistrates:

(a) To be appointed, a magistrate must be a licensed Colorado attorney with at least five years of experience, except in Class "C" or "D" counties the chief judge shall have the discretion to appoint a qualified licensed attorney with less than 5 years experience to perform all magistrate functions.

(b) All magistrates shall be attorneys-at-law licensed to practice law in the State of Colorado, except that in the following circumstances a magistrate need not be an attorney:

(1) A magistrate appointed to hear only Class A and Class B traffic infractions in a county court;

(2) A county court judge authorized to act as a magistrate in a small claims court;

(3) A county court judge authorized to act as a county court magistrate.

(c) All magistrates shall be appointed, evaluated, retained, discharged, and disciplined, if necessary, by the chief or presiding judge of the district, with the concurrence of the chief justice.

(d) Any person appointed pursuant to these rules as a district court, county court, probate court, juvenile court, or small claims court magistrate may, if qualified, and in the discretion of the chief or presiding judge, exercise any of the magistrate functions authorized by these rules.

Qualification of magistrates is statutory:

- County court magistrates: C.R.S. section 13-6-501
- District court magistrates: C.R.S. section 13-5-201
- Juvenile magistrates: C.R.S. sections 19-1-108, and 13-8-109 for Denver Juvenile Court
- Small claims magistrates: C.R.S. sections 13-6-405

Questions have been asked about how magistrates are evaluated and how a chief judge becomes aware of performance. Each magistrate serves at the pleasure of, and is ultimately supervised by, the chief judge of each judicial district. Complaints are customarily directed to the chief judge.

Each year, all magistrates are evaluated on essential functions developed by SCAO on a scale of 1 (unacceptable) to 6 (meritorious) and each evaluation becomes part of the magistrate's personnel file. All of the judges in a district have an opportunity to provide input to the chief judge.

Many jurisdictions complete a 360-degree review where persons who regularly appear before the magistrate can anonymously provide input. Most of the responders are attorneys, but the 360-degree review can also include probation officers, social workers, and CASA volunteers. Internal users (court clerks and fellow magistrates) are also asked for input. We are not aware of input being sought from or provided by litigants themselves.

We do not propose any change to Rule 4 C.R.M.

Rule 5. General Provisions.

(a) An order or judgment of a magistrate in any judicial proceeding shall be effective upon the date of the order or judgment and shall remain in effect pending review by a reviewing judge unless stayed by the magistrate or by the reviewing judge. ~~Except for correction of clerical errors pursuant to C.R.C.P. 60 (a), a magistrate has no authority to consider a petition for rehearing.~~ An order or judgment becomes final for purposes of magistrate judicial review as stated in C.R.M. 7.

The proposal above is to allow *limited* reconsideration by the magistrate, which, under the current rules, a magistrate has no ability to entertain.

(b) A magistrate may issue citations for contempt, conduct contempt proceedings, and enter orders for contempt for conduct occurring either in the presence or out of the presence of the magistrate, in any civil or criminal matter, without consent. Any order of a magistrate finding a person in contempt shall upon request be reviewed in accordance with the procedures for review set forth in rule 7 or rule 9 herein.

(c) A magistrate shall have the power to issue bench warrants for the arrest of non-appearing persons, to set bonds in connection therewith, and to conduct bond forfeiture proceedings.

(d) A magistrate shall have the power to administer oaths and affirmations to witnesses and others concerning any matter, thing, process, or proceeding, which is pending, commenced, or to be commenced before the magistrate.

(e) A magistrate shall have the power to issue all writs and orders necessary for the exercise of their jurisdiction established by statute or rule, and as provided in section 13-1-115, C.R.S.

(f) No magistrate shall have the power to decide whether a state constitutional provision, statute, municipal charter provision, or ordinance is constitutional either on its face or as applied. Questions pertaining to the constitutionality of a state constitutional provision, statute, municipal charter provision, or ordinance may, however, be raised for the first time on review of the magistrate's order or judgment.

~~(g) For any proceeding in which a district court magistrate may perform a function only with consent under C.R.M. 6, the notice — which must be written except to the extent given orally to parties who are present in court — shall state that all parties must consent to the function being performed by the magistrate.~~

~~(1) If the notice is given in open court, then all parties who are present and do not then object shall be deemed to have consented to the function being performed by the magistrate.~~

~~(2) Any party who is not present when the notice is given and who fails to file a written objection within 7 days of the date of written notice shall be deemed to have consented.~~

This proposal removes 5(g), as it is dealt with at Rule 3(f). As the Rules exist today, they are internally inconsistent; removing the current Rule 5(g) will resolve the conflict. Rule 5(h) is renumbered below.

~~(h)~~ [Effective Until July 1, 2021.] All magistrates in the performance of their duties shall conduct themselves in accord with the provisions of the Colorado Code of Judicial Conduct. Any complaint alleging that a magistrate, who is an attorney, has violated the provisions of the Colorado Code of Judicial Conduct may be filed with the Office of Attorney Regulation Counsel for proceedings pursuant to C.R.C.P. 251.1, et seq. Such proceedings shall be conducted to determine whether any violation of

the Code of Judicial Conduct has occurred and what discipline, if any, is appropriate. These proceedings shall in no way affect the supervision of the Chief Judge over magistrates as provided in C.R.M. 1.

(hg) [Effective July 1, 2021.] All magistrates in the performance of their duties shall conduct themselves in accord with the provisions of the Colorado Code of Judicial Conduct. Any complaint alleging that a magistrate, who is an attorney, has violated the provisions of the Colorado Code of Judicial Conduct may be filed with the Office of Attorney Regulation Counsel for proceedings pursuant to C.R.C.P. 242. Such proceedings shall be conducted to determine whether any violation of the Code of Judicial Conduct has occurred and what discipline, if any, is appropriate. These proceedings shall in no way affect the supervision of the Chief Judge over magistrates as provided in C.R.M. 1.

Rule 6. Functions of District Court Magistrates.

By allowing parties the ability to consent to certain functions being heard or conducted by a magistrate, Rule 6 remains the same. The areas that gave the most concern – Rules 16 and 16.1, problem solving court authority, and probate practice – are resolved by leaving this Rule intact.

(a) **Functions in Criminal Cases:** A district court magistrate may perform any or all of the following functions in criminal proceedings:

(1) No consent necessary:

(A) Conduct initial appearance proceedings, including advisement of rights, admission to bail, and imposition of conditions of release pending further proceedings.

(B) Appoint attorneys for indigent defendants and approve attorney expense vouchers.

(C) Conduct bond review hearings.

(D) Conduct preliminary and dispositional hearings pursuant to C.R.S. sections 16-5-301 (1) and 18-1-404 (1).

(E) Schedule and conduct arraignments on indictments, informations, or complaints.

(F) Order presentence investigations.

(G) Set cases for disposition, trial, or sentencing before a district court judge.

(H) Issue arrest and search warrants, including nontestimonial identifications under Rule 41.1.

(I) Conduct probable cause hearings pursuant to rules promulgated under the Interstate Compact for Adult Offender Supervision, C.R.S. sections 24-60-2801 to 2803.

(J) Any other function authorized by statute or rule.

(2) Consent necessary:

(A) Enter pleas of guilty.

(B) Enter deferred prosecution and deferred sentence pleas.

(C) Modify the terms and conditions of probation or deferred prosecutions and deferred sentences.

(D) Impose stipulated sentences to probation in cases assigned to problem solving courts.

(b) Functions in Matters Filed Pursuant to Colorado Revised Statutes Title 14 and Title 26:

(1) No Consent Necessary

(A) A district court magistrate shall have the power to preside over all proceedings arising under Title 14, except as described in section 6 (b)(2) of this Rule.

(B) A district court magistrate shall have the power to preside over all motions to modify permanent orders concerning property division, maintenance, child support or allocation of parental responsibilities, except petitions to review as defined in C.R.M. 7.

(C) A district court magistrate shall have the power to determine an order concerning child support filed pursuant to Section 26-13-101 et seq.

(D) Any other function authorized by statute.

(2) Consent Necessary: With the consent of the parties, a district court magistrate may preside over contested hearings which result in permanent orders concerning property division, maintenance, child support or allocation of parental responsibilities.

(c) Functions in Civil Cases: A district court magistrate may perform any or all of the following functions in civil proceedings:

(1) No consent necessary

(A) Conduct settlement conferences.

(B) Conduct default hearings, enter judgments pursuant to C.R.C.P. 55, and conduct post-judgment proceedings.

(C) Conduct hearings and enter orders authorizing sale, pursuant to C.R.C.P. 120.

(D) Conduct hearings as a master pursuant to C.R.C.P. 53.

(E) Hear and rule upon all motions relating to disclosure, discovery, and all C.R.C.P. 16 and 16.1 matters.

This is the current version of C.R.M. 6(c)(1)(E). If the consensus is that ALL things pertaining to Rules 16 and 16.1 should require consent, this provision can easily be moved to C.R.M. 6(c)(2).

(F) Conduct proceedings involving protection orders pursuant to C.R.S. section 13-14-101 et seq.

(G) Any other function authorized by statute.

(2) Consent Necessary: A magistrate may perform any function in a civil case except that a magistrate may not preside over jury trials.

We have had some debate whether this should also prohibit a magistrate hearing a civil trial or whether parties ought to be able to consent. Language can be added to the end of this Rule if the consensus is parties should not be allowed to consent to a magistrate hearing a civil trial to the court.

(d) Functions in Juvenile Cases: A juvenile court magistrate shall have all of the powers and be subject to the limitations prescribed for juvenile court magistrates by the provisions of Title 19, Article

1, C.R.S. Unless otherwise set forth in Title 19, Article 1, C.R.S., consent in any juvenile matter shall be as set forth in C.R.M. 3 (f)(1).

(e) **Functions in Probate and Mental Health Cases:**

(1) No consent necessary:

(A) Perform any or all of the duties which may be delegated to or performed by a probate registrar, magistrate, or clerk, pursuant to C.R.P.P. 4 and C.R.P.P. 5.

(B) Hear and rule upon petitions for emergency protective orders and petitions for temporary orders.

(C) Any other function authorized by statute.

(2) Consent Necessary

(A) Hear and rule upon all matters filed pursuant to C.R.S. Title 15.

(B) Hear and rule upon all matters filed pursuant to C.R.S. Title 25 and Title 27.

(f) A district court magistrate shall not perform any function for which consent is required under any provision of this Rule unless the oral or written notice complied with ~~Rule 5 (g)~~ 3(f).

Rule 7. Review of District Court Magistrate Orders or Judgments.

C.R.M. 7 is where we make the bulk of our proposed changes. Our subcommittee was charged with making these Rules clear, internally consistent, and easier to navigate. We believe the answers to these tasks are simple: directions on how to get into a magistrate's division (functions that are assigned to magistrates, and functions to which litigants can consent to have assigned to magistrates) and a single path to appeal from any order or judgment issued by a magistrate regardless of consent.

The subcommittee discussed extensively that litigants before a magistrate may have difficulty understanding their right to seek review of an order or judgment and can easily lose that right by not following the technical requirements of the rules. This is true of any appeal. For instance, appeals must be filed within a specific timeframe, or the appeal is denied. Or an appeal will be denied or dismissed without prejudice if the order or judgment is not final. These technical requirements are based on sound reasons such as ensuring finality and maintaining judicial economy by not allowing piecemeal appeals. In weighing the desire to make requests for judicial review easier against the reasoning for imposing limits on appeals, the subcommittee concluded that the problems created by relaxing the rules were substantial and that the technical requirements should not be compromised. We cannot conceive of a way to save a litigant from him or herself if that litigant does not diligently pursue appeal.

(a) ~~Orders or judgments entered when consent not necessary.~~ Magistrates shall include in **every** any order or judgment **the following language: except as otherwise provided by statute, the order or judgment may not be filed with the court of appeals unless a petition for review has been filed with the district court provided in this Rule 7 no later than 28 days of the date the order or judgment becomes reviewable.** ~~entered in a proceeding in which consent is not necessary a written notice that the order or judgment was issued in a proceeding where no consent was necessary, and that any appeal must be taken within 21 days pursuant to Rule 7 (a).~~

~~(b)(1)~~ Unless otherwise provided by statute, this Rule is the exclusive method to obtain review of a district court magistrate's order or judgment issued in a proceeding in which consent of the parties is not necessary.

~~(c)(2)~~ The Each chief judge shall designate one or more district judges to review orders or judgments of district court magistrates entered when consent is not necessary.

~~(d)(3)~~ Only a final order or judgment of a magistrate is reviewable only if (1) the order or judgment fully resolves the issue or claim before the magistrate and (2) the order or judgment under this Rule. A final order or judgment is that which fully resolves an issue or claim. is written, dated, and signed by a magistrate. A minute order that is signed and dated by a magistrate shall constitute a written order or judgment.

~~(4)~~ A final order or judgment is not reviewable until it is written, dated, and signed by the magistrate. A Minute Order which is signed by a magistrate will constitute a final written order or judgment.

~~(e)(5)~~ A party may obtain review of a magistrate's final order or judgment by filing a petition to for review such final order or judgment with the reviewing judge no later than 28 14 days subsequent to the final order or judgment if the parties are present when the magistrate's order is entered, or 21 days from the date the final order or judgment is mailed or otherwise transmitted to the parties from the date the order or judgment becomes reviewable.

Because many of the functions a magistrate hears involve pro se litigants (more than 75% of a magistrate's caseload are cases that have fewer than two attorneys involved), we wanted to give parties and counsel seven more days to seek review while also building in a limited ability for the magistrate to reconsider his or her order.

~~(f)~~ Within seven days of the date the order or judgment became reviewable any party may file with the magistrate either a C.R.C.P. 121, section 1-15(11) motion to reconsider or a C.R.C.P. 60(a) motion to correct clerical errors. Copies of the motion shall be served on all parties by the moving party. Within seven days after being served with a motion, any party may file an opposition, which shall be served on all parties. The moving party may not file a reply. These dates cannot be extended. The motion shall be deemed denied for all purposes if it is not decided by the magistrate within 21 days of the date the order or judgment became reviewable.

~~(g)~~ If the magistrate grants, in whole or in part, either a C.R.C.P. 121, section 1-15(11) motion to reconsider or a C.R.C.P. 60(a) motion to correct clerical errors, a petition for review of the amended order or judgment must still be filed within 28 days of the date the original order or judgment became reviewable.

~~(6)~~ A request for extension of time to file a petition for review must be made to the reviewing judge within the 21 day time limit within which to file a petition for review. A motion to correct clerical errors filed with the magistrate pursuant to C.R.C.P. 60 (a) does not constitute a petition for review and will not operate to extend the time for filing a petition for review.

~~(h)(7)~~ A petition for review shall state with particularity the alleged errors in the magistrate's order or judgment and may be accompanied by a memorandum brief statement of discussing the authorities relied upon to support the petition. If a transcript of the proceedings before the magistrate is not available when the petition is filed, the petition shall state whether a transcript has been requested. Copies of the petition and any supporting brief statement shall be served on all parties by the party seeking review. Within 14 days after being served with a petition for review, a party may file a memorandum brief in opposition an opposition, which shall state whether a transcript has been ordered by the opposing party and shall be served on all parties. This date cannot be extended unless the district court finds exceptional circumstances. The moving party may not file a reply.

~~(i)(8)~~ Judicial review shall be limited to consideration of the petition for review, any oppositions and the record of the proceedings before the magistrate as is available. The reviewing judge shall

~~consider the petition for review on the basis of the petition and briefs filed, together with such review of the record as is necessary. If a transcript of the proceedings before the magistrate was not requested, the reviewing judge shall presume that the record would support the magistrate's findings of fact. The reviewing judge also may conduct further proceedings, take additional evidence, or order a trial de novo in the district court. An order entered under 6 (c)(1) which effectively ends a case shall be subject to de novo review.~~

~~(j)(9)~~ Findings of fact made by the magistrate may not be altered **shall be accepted by the reviewing judge** unless **they are** clearly erroneous. The failure of the petitioner to file a transcript of the proceedings before the magistrate is not grounds to deny a petition for review but, under those circumstances, the reviewing judge shall presume that the record would support the magistrate's order. **Conclusions of law made by a magistrate and any order entered under C.R.M. 6(c) which effectively ends a case shall be subject to de novo review.**

Based on the discussion regarding civil cases and magistrates entering initial orders that impact the rest of the case (i.e. limiting discovery, experts, etc.), we propose such orders are subject to de novo review by the district court.

~~(k)(10)~~ The reviewing judge shall adopt, reject, or modify the ~~initial~~ **final** order or judgment of the magistrate by written order, which order shall be the order or judgment of the district court. **Any petition that has not been decided within 63 days of the filing date of (1) the petition for review or (2) the transcript if one has been requested, whichever is later, shall, without further action by the reviewing judge, be deemed denied for all purposes including Rule 4(a) of the Colorado Appellate Rules and the time for appeal shall commence as of that date.**

There has been considerable concern that petitions for judicial review can languish with the district court for months or even years. District court judges have a variety of priorities – especially in light of the COVID backlog – that can put reviews at the bottom of their pile. We propose language similar to C.R.C.P. 59(j) so that there can be a deemed denied date if no written order has been issued. While it negates a level of review by the district court, it also allows litigants to seek redress with the Court of Appeals. Based on the subcommittee's discussions, we believe a party's right to appeal is more important than avoiding any potential abuse by a district court judge who refuses to act.

~~(l)(11)~~ Appeal of ~~an~~ **a reviewable** order or judgment of a district court magistrate may not be taken to the appellate court **after entry of a final order or judgment** unless a timely petition for review has been filed and decided by a ~~reviewing~~ **district** court in accordance with these Rules.

In our November submission, we had proposed the language: only issues addressed in a magistrate's reviewable order or judgment that were raised in a timely petition for review can be appealed to the court of appeals. Given the discussion that ensued, we propose to keep the same language that already exists in C.R.M. 7(a)(11).

~~(m)(12)~~ If timely review in the district court is not requested, the order or judgment of the magistrate shall become the order or judgment of the district court. Appeal of such district court order or judgment to the ~~appellate~~ court **of appeals** is barred.

Rule 7(b) is stricken in its entirety. We propose that one appears before the magistrate because the proceeding is a function of a magistrate OR because the parties have consented to appear there. Nevertheless, it is our recommendation that one seeks review of any magistrate decision, however it came about, exclusively via judicial review.

~~(b) Orders or judgments entered when consent is necessary. Any order or judgment entered with consent of the parties in a proceeding in which such consent is necessary is not subject to review under Rule 7 (a), but shall be appealed pursuant to the Colorado Rules of Appellate Procedure in the same manner as an order or judgment of a district court. Magistrates shall include in any order or judgment entered in a proceeding in which consent is necessary a written notice that the order or judgment was issued with consent, and that any appeal must be taken pursuant to Rule 7 (b).~~

Rule 8. Functions of County Court Magistrates.

Because there is statutory authority that a county court magistrate's order is reviewable in the same manner as a county court judge's, this section is far less cumbersome than for district court magistrates in Rules 6 and 7.

Lee Sternal is dissatisfied with the process for county court judge (and therefore county court magistrate) appeals that go only to the district court judge. However, because it is statutory (C.R.S. section 13-6-310) any modification is beyond the scope of this subcommittee.

Additionally, a civil infractions practice now exists. By statute magistrates have authority to hear these proceedings.

(a) Functions in Criminal Cases: A county court magistrate may perform any or all of the following functions in a criminal proceeding:

(1) No consent necessary:

(A) Appoint attorneys for indigent defendants and approve attorney expense vouchers.

(B) Conduct proceedings in traffic infraction matters.

(C) Conduct advisements and set bail in criminal and traffic cases.

(D) Issue mandatory protection orders pursuant to C.R.S. section 18-1-1001.

(E) Any other function authorized by statute.

(2) Consent necessary:

(A) Conduct hearings on motions, conduct trials to court, accept pleas of guilty, and impose sentences in misdemeanor, petty offense, and traffic offense matters.

(B) Conduct deferred prosecution and deferred sentence proceedings in misdemeanor, petty offense, and traffic offense matters.

(C) Conduct misdemeanor and petty offense proceedings pertaining to wildlife, parks and outdoor recreation, as defined in Title 33, C.R.S.

(D) Conduct all proceedings pertaining to recreational facilities districts, control and licensing of dogs, campfires, and general regulations, as defined in Title 29, Article 7, C.R.S. and Title 30, Article 15, C.R.S.

(b) Functions in Civil Cases: A county court magistrate may perform any or all of the following functions in a civil proceeding:

(1) No consent necessary:

(A) Conduct proceedings with regard to petitions for name change, pursuant to C.R.S. section 13-15-101.

(B) Perform the duties which a county court clerk may be authorized to perform, pursuant to C.R.S. section 13-6-212.

(C) Serve as a small claims court magistrate, pursuant to C.R.S. section 13-6-405.

(D) Conduct proceedings involving protection orders, pursuant to C.R.S. sections 13-14-101 et seq. and conduct proceedings pursuant to C.R.C.P. 365.

(E) Any other function authorized by statute.

(2) Consent necessary:

(A) Conduct civil trials to court and hearings on motions.

(B) Conduct default hearings, enter judgments pursuant to C.R.C.P. 355, and conduct post-judgment proceedings.

We do not propose any change to Rule 8 C.R.M.

Rule 9. Review of County Court and Small Claims Court Magistrate Orders or Judgments.

(a) An order or judgment of a county or small claims court magistrate shall be the order or judgment of the county or small claims court.

(b) Any party to a proceeding before a county court magistrate shall appeal an order or judgment entered by the magistrate in that proceeding in the manner authorized by statute or rule for the appeal of orders or judgments of the county court.

(c) Any party to a proceeding before a small claims court magistrate shall appeal an order or judgment entered by the magistrate in that proceeding in the manner authorized by statute or rule for the appeal of orders or judgments of the small claims court.

We do not propose any change to Rule 9 C.R.M.

Rule 10. Preparation, Use, and Retention of Record.

(a) Record of Proceedings: Except as provided in C.R.C.P. 16.2 (c)(2)(e), a verbatim record of all proceedings and trials conducted by magistrates shall be maintained by either electronic devices or by stenographic means. The magistrate shall be responsible for maintaining such record and, in the event of subsequent review, for certifying its authenticity.

(b) Use of the Record: If otherwise admissible, a certified transcript of the testimony of a witness at a trial or other proceeding before a magistrate may be admitted as evidence in a later trial or proceeding.

(c) Custody and Retention of Record: A reporter's notes or the electronic recordings of trial or other proceedings conducted by a magistrate shall be the property of the state, and shall be retained by the appropriate court for a period prescribed in the Colorado Judicial Department Records Management manual. During the period of retention, notes and recordings shall be made available to the reporter of record, or to any other reporter or person the court may designate. During the trial or the taking of other matters on the record, the notes and recordings shall be considered the property of the state, even though in custody of the reporter, judge, or clerk. After the trial and review or appeal period, the reporter shall list, date and index all notes and recordings and shall properly pack them for storage. Where no reporter is used, the clerk of the court shall perform this function. The court shall provide storage containers and space.

We do not propose any change to Rule 10 C.R.M.

Rule 11. Title of Rules and Abbreviation.

The title to these rules shall be Colorado Rules for Magistrates and may be abbreviated as C.R.M.

We do not propose any change to Rule 11 C.R.M.

Rule 3. Definitions.

The following definitions shall apply:

(a) Magistrate: Any person other than a judge authorized by statute or by these rules to enter orders or judgments in judicial proceedings.

(b) Chief Judge: The chief judge of a judicial district.

(c) Presiding Judge: The presiding judge of the Denver Juvenile Court, the Denver Probate Court, or the Denver County Court.

(d) Reviewing Judge: A judge designated by a chief judge or a presiding judge to review the orders or judgments of magistrates in proceedings to which the Rules for Magistrates apply.

(e) Order or Judgment: All rulings, decrees or other decisions of a judge or a magistrate made in the course of judicial proceedings.

(f) Consent:

(1) Consent in District Court:

(A) For the purposes of the rules, where consent is necessary a party is deemed to have consented to a proceeding before a magistrate if [he or she is advised of the right to have the proceeding before a district court judge, and after entering an appearance or filing a responsive pleading:](#)

(i) The party has affirmatively consented in writing or on the record; or

(ii) The party has been provided notice of the referral, setting, or hearing of a proceeding before a magistrate and failed to file a written objection within 14 days of such notice; or

(iii) The party failed to appear at a proceeding after having been provided notice of that proceeding.

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

(2) Consent in County Court:

(A) When the exercise of authority by a magistrate in any proceeding is statutorily conditioned upon a waiver of a party pursuant to C.R.S. section 13-6-501, such waiver shall be executed in writing or given orally in open court by the party or the party's attorney of record, and shall state specifically that the party has waived the right to proceed before a judge and shall be filed with the court.

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

(3) Consent in Small Claims Court:

(A) A party will be deemed to accept the jurisdiction of the Small Claims Court unless the party objects pursuant to C.R.S. section 13-6-405 and C.R.C.P. 511 (b).

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

Rule 5. General Provisions.

(a) An order or judgment of a magistrate in any ~~judicial~~ proceeding shall be effective upon the date of the order or judgment and shall remain in effect pending review by a reviewing judge unless stayed by the magistrate or by the reviewing judge. ~~Except for correction of clerical errors pursuant to C.R.C.P. 60 (a), a magistrate has no authority to consider a petition for rehearing. An order or judgment becomes final for purposes of judicial review as stated in C.R.M. 7.~~

(b) A magistrate may issue citations for contempt, conduct contempt proceedings, and enter orders for contempt for conduct occurring either in the presence or out of the presence of the magistrate, in any civil or criminal matter, without consent. Any order of a magistrate finding a person in contempt shall upon request be reviewed in accordance with the procedures for review set forth in rule 7 or rule 9 herein.

(c) A magistrate shall have the power to issue bench warrants for the arrest of non-appearing persons, to set bonds in connection therewith, and to conduct bond forfeiture proceedings.

(d) A magistrate shall have the power to administer oaths and affirmations to witnesses and others concerning any matter, thing, process, or proceeding, which is pending, commenced, or to be commenced before the magistrate.

(e) A magistrate shall have the power to issue all writs and orders necessary for the exercise of their jurisdiction established by statute or rule, and as provided in section 13-1-115, C.R.S.

(f) No magistrate shall have the power to decide whether a state constitutional provision, statute, municipal charter provision, or ordinance is constitutional either on its face or as applied. Questions pertaining to the constitutionality of a state constitutional provision, statute, municipal charter provision, or ordinance may, however, be raised for the first time on review of the magistrate's order or judgment.

~~**(g)** For any proceeding in which a district court magistrate may perform a function only with consent under C.R.M. 6, the notice — which must be written except to the extent given orally to parties who are present in court — shall state that all parties must consent to the function being performed by the magistrate.~~

~~**(1)** If the notice is given in open court, then all parties who are present and do not then object shall be deemed to have consented to the function being performed by the magistrate.~~

~~**(2)** Any party who is not present when the notice is given and who fails to file a written objection within 7 days of the date of written notice shall be deemed to have consented.~~

(hg) [Effective Until July 1, 2021.] All magistrates in the performance of their duties shall conduct themselves in accord with the provisions of the Colorado

Code of Judicial Conduct. Any complaint alleging that a magistrate, who is an attorney, has violated the provisions of the Colorado Code of Judicial Conduct may be filed with the Office of Attorney Regulation Counsel for proceedings pursuant to C.R.C.P. 251.1, et seq. Such proceedings shall be conducted to determine whether any violation of the Code of Judicial Conduct has occurred and what discipline, if any, is appropriate. These proceedings shall in no way affect the supervision of the Chief Judge over magistrates as provided in C.R.M. 1.

(g) [Effective July 1, 2021.] All magistrates in the performance of their duties shall conduct themselves in accord with the provisions of the Colorado Code of Judicial Conduct. Any complaint alleging that a magistrate, who is an attorney, has violated the provisions of the Colorado Code of Judicial Conduct may be filed with the Office of Attorney Regulation Counsel for proceedings pursuant to C.R.C.P. 242. Such proceedings shall be conducted to determine whether any violation of the Code of Judicial Conduct has occurred and what discipline, if any, is appropriate. These proceedings shall in no way affect the supervision of the Chief Judge over magistrates as provided in C.R.M. 1.

Rule 6. Functions of District Court Magistrates.

(a) Functions in Criminal Cases: A district court magistrate may perform any or all of the following functions in criminal proceedings:

(1) No consent necessary:

(A) Conduct initial appearance proceedings, including advisement of rights, admission to bail, and imposition of conditions of release pending further proceedings.

(B) Appoint attorneys for indigent defendants and approve attorney expense vouchers.

(C) Conduct bond review hearings.

(D) Conduct preliminary and dispositional hearings pursuant to C.R.S. sections 16-5-301 (1) and 18-1-404 (1).

(E) Schedule and conduct arraignments on indictments, informations, or complaints.

(F) Order presentence investigations.

(G) Set cases for disposition, trial, or sentencing before a district court judge.

(H) Issue arrest and search warrants, including nontestimonial identifications under Rule 41.1.

(I) Conduct probable cause hearings pursuant to rules promulgated under the Interstate Compact for Adult Offender Supervision, C.R.S. sections 24-60-2801 to 2803.

(J) Any other function authorized by statute or rule.

(2) Consent necessary:

(A) Enter pleas of guilty.

- (B)** Enter deferred prosecution and deferred sentence pleas.
- (C)** Modify the terms and conditions of probation or deferred prosecutions and deferred sentences.
- (D)** Impose stipulated sentences to probation in cases assigned to problem solving courts.
- (b)** Functions in Matters Filed Pursuant to Colorado Revised Statutes Title 14 and Title 26:
 - (1)** No Consent Necessary
 - (A)** A district court magistrate shall have the power to preside over all proceedings arising under Title 14, except as described in section 6 (b)(2) of this Rule.
 - (B)** A district court magistrate shall have the power to preside over all motions to modify permanent orders concerning property division, maintenance, child support or allocation of parental responsibilities, except petitions to review as defined in C.R.M. 7.
 - (C)** A district court magistrate shall have the power to determine an order concerning child support filed pursuant to Section 26-13-101 et seq.
 - (D)** Any other function authorized by statute.
 - (2)** Consent Necessary: With the consent of the parties, a district court magistrate may preside over contested hearings which result in permanent orders concerning property division, maintenance, child support or allocation of parental responsibilities.
- (c)** Functions in Civil Cases: A district court magistrate may perform any or all of the following functions in civil proceedings:
 - (1)** No consent necessary
 - (A)** Conduct settlement conferences.
 - (B)** Conduct default hearings, enter judgments pursuant to C.R.C.P. 55, and conduct post-judgment proceedings.
 - (C)** Conduct hearings and enter orders authorizing sale, pursuant to C.R.C.P. 120.
 - (D)** Conduct hearings as a master pursuant to C.R.C.P. 53.
 - (E)** Hear and rule upon all motions relating to disclosure, discovery, and all C.R.C.P. 16 and 16.1 matters.
 - (F)** Conduct proceedings involving protection orders pursuant to C.R.S. Section 13-14-101 et seq.
 - (G)** Any other function authorized by statute.
 - (2)** Consent Necessary: A magistrate may perform any function in a civil case except that a magistrate may not preside over jury trials.
- (d)** Functions in Juvenile Cases: A juvenile court magistrate shall have all of the powers and be subject to the limitations prescribed for juvenile court magistrates by the provisions of Title 19, Article 1, C.R.S. Unless otherwise set forth in Title 19, Article 1, C.R.S., consent in any juvenile matter shall be as set forth in C.R.M. 3 (f)(1).
- (e)** Functions in Probate and Mental Health Cases:

(1) No consent necessary:

(A) Perform any or all of the duties which may be delegated to or performed by a probate registrar, magistrate, or clerk, pursuant to C.R.P.P. 4 and C.R.P.P. 5.

(B) Hear and rule upon petitions for emergency protective orders and petitions for temporary orders.

(C) Any other function authorized by statute.

(2) Consent Necessary

(A) Hear and rule upon all matters filed pursuant to C.R.S. Title 15.

(B) Hear and rule upon all matters filed pursuant to C.R.S. Title 25 and Title 27.

(f) A district court magistrate shall not perform any function for which consent is required under any provision of this Rule unless the oral or written notice complied with Rule ~~5(g)~~ 3(f).

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Rule 7. Review of District Court Magistrate Orders or Judgments.

~~(a) Orders or judgments entered when consent not necessary.~~ Magistrates shall include in any every order or judgment the following language: Except as otherwise provided by statute, the order or judgment may not be filed with the court of appeals unless a petition for review has been filed with the district court as provided in this Rule 7 no later than 28 days of the date the order or judgment becomes reviewable. ~~entered in a proceeding in which consent is not necessary a written notice that the order or judgment was issued in a proceeding where no consent was necessary, and that any appeal must be taken within 21 days pursuant to Rule 7 (a).~~

~~(1b) Unless otherwise provided by statute, this Rule is the exclusive method to obtain review of a district court magistrate's order or judgment issued in a proceeding in which consent of the parties is not necessary.~~

~~(2c) The Each~~ chief judge shall designate one or more district judges to review orders or judgments of district court magistrates ~~entered when consent is not necessary.~~

~~(3d) Only a~~ An final order or judgment of a magistrate is reviewable only if (1) the order or judgment fully resolves the issue or claim before the magistrate and (2) the order or judgment under this Rule. ~~A final order or judgment is that which fully resolves an issue or claim.~~

~~(4) A final order or judgment is not reviewable until it is written, dated, and signed by the magistrate. A Mminute Oorder which that is signed and dated~~ by a magistrate will constitute a final written order or judgment.

~~(5e) A party may obtain review of a magistrate's final order or judgment by filing a petition to for review such final order or judgment with the reviewing judge no later than 14 28 days subsequent to the final order or judgment if the parties are present when the magistrate's order is entered, or 21 days~~

from the date the ~~final order or judgment is mailed or otherwise transmitted to the parties~~ becomes reviewable.

(f) Within seven days of the date the order or judgment became reviewable any party may file with the magistrate either a C.R.C.P. 121, section 1-15(11) motion to reconsider or a C.R.C.P. 60(a) motion to correct clerical errors. Copies of the motion shall be served on all parties by the moving party. Within seven days after being served with a motion, any party may file an opposition, which shall be served on all parties. The moving party may not file a reply. These dates cannot be extended. The motion shall be deemed denied for all purposes if it is not decided by the magistrate within 21 days of the date the order or judgment became reviewable.

(g) If the magistrate grants, in whole or in part, either a C.R.C.P. 121, section 1-15(11) motion to reconsider or a C.R.C.P. 60(a) motion to correct errors, a petition for review of the amended order or judgment must still be filed within 28 days of the date the original order or judgment became reviewable.

~~(6) A request for extension of time to file a petition for review must be made to the reviewing judge within the 21 day time limit within which to file a petition for review. A motion to correct clerical errors filed with the magistrate pursuant to C.R.C.P. 60 (a) does not constitute a petition for review and will not operate to extend the time for filing a petition for review.~~

~~(7) A petition for review shall state with particularity the alleged errors in the magistrate's order or judgment and may be accompanied by a memorandum brief~~ brief statement of discussing the authorities relied upon to support the petition. If a transcript of the proceedings before the magistrate is not available when the petition is filed, the petition shall state whether a transcript has been requested. Copies of the petition and any supporting ~~brief statement~~ shall be served on all parties by the party seeking review. Within 14 days after being served with a petition for review, a party may file an ~~memorandum brief in opposition,~~ which shall state whether a transcript has been ordered by the opposing party and shall be served on all parties. This date cannot be extended unless the district court finds exceptional circumstances. The moving party may not file a reply.

~~(8) The judicial reviewing judge shall consider the petition for review, any opposition, and the record of the proceedings before the magistrate as is available. on the basis of the petition and briefs filed, together with such review of the record as is necessary. The reviewing judge also may conduct further proceedings, take additional evidence, or order a trial de novo in the district court. An order entered under 6 (c)(1) which effectively ends a case shall be subject to de novo review. If a transcript of the proceedings before the magistrate was not requested, the reviewing judge shall presume that the record would support the magistrate's findings of fact.~~

~~(9i)~~ Findings of fact made by the magistrate ~~may not be altered~~ shall be accepted by the reviewing judge unless they are clearly erroneous. The failure of the petitioner to file a transcript of the proceedings before the magistrate is not grounds to deny a petition for review but, under those circumstances, the reviewing judge shall presume that the record would support the magistrate's order. Conclusions of law made by a magistrate and any order entered under C.R.M. 6(c) which effectively ends a case shall be subject to de novo review.

~~(10k)~~ The reviewing judge shall adopt, reject, or modify the ~~initial-final~~ order or judgment of the magistrate by written order, which order shall be the order or judgment of the district court. Any petition that has not been decided within 63 days of the filing date of (1) the petition for review or (2) the transcript if one has been requested, whichever is later, shall, without further action by the reviewing judge, be deemed denied for all purposes including Rule 4(a) of the Colorado Appellate Rules and the time for appeal shall commence as of that date.

~~(11l)~~ Appeal of an reviewable order or judgment of a district court magistrate may not be taken to the appellate court after entry of a final order or judgment unless a timely petition for review has been filed and decided by a reviewing-district court in accordance with these Rules.

~~(12m)~~ If timely review in the district court is not requested, the order or judgment of the magistrate shall become the order or judgment of the district court. Appeal of such district court order or judgment to the appellate court of appeals is barred.

~~(b)~~ ~~Orders or judgments entered when consent is necessary. Any order or judgment entered with consent of the parties in a proceeding in which such consent is necessary is not subject to review under Rule 7 (a), but shall be appealed pursuant to the Colorado Rules of Appellate Procedure in the same manner as an order or judgment of a district court. Magistrates shall include in any order or judgment entered in a proceeding in which consent is necessary a written notice that the order or judgment was issued with consent, and that any appeal must be taken pursuant to Rule 7 (b).~~

Rule 3. Definitions.

The following definitions shall apply:

(a) Magistrate: Any person other than a judge authorized by statute or by these rules to enter orders or judgments in judicial proceedings.

(b) Chief Judge: The chief judge of a judicial district.

(c) Presiding Judge: The presiding judge of the Denver Juvenile Court, the Denver Probate Court, or the Denver County Court.

(d) Reviewing Judge: A judge designated by a chief judge or a presiding judge to review the orders or judgments of magistrates in proceedings to which the Rules for Magistrates apply.

(e) Order or Judgment: All rulings, decrees or other decisions of a judge or a magistrate made in the course of judicial proceedings.

(f) Consent:

(1) Consent in District Court:

(A) For the purposes of the rules, where consent is necessary a party is deemed to have consented to a proceeding before a magistrate if he or she is advised of the right to have the proceeding before a district court judge, and after entering an appearance or filing a responsive pleading:

(i) The party has affirmatively consented in writing or on the record; or

(ii) The party has been provided notice of the referral, setting, or hearing of a proceeding before a magistrate and failed to file a written objection within 14 days of such notice; or

(iii) The party failed to appear at a proceeding after having been provided notice of that proceeding.

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

(2) Consent in County Court:

(A) When the exercise of authority by a magistrate in any proceeding is statutorily conditioned upon a waiver of a party pursuant to C.R.S. section 13-6-501, such waiver shall be executed in writing or given orally in open court by the party or the party's attorney of record, and shall state specifically that the party has waived the right to proceed before a judge and shall be filed with the court.

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

(3) Consent in Small Claims Court:

(A) A party will be deemed to accept the jurisdiction of the Small Claims Court unless the party objects pursuant to C.R.S. section 13-6-405 and C.R.C.P. 511 (b).

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

Rule 5. General Provisions.

(a) An order or judgment of a magistrate in any proceeding shall be effective upon the date of the order or judgment and shall remain in effect pending review by a reviewing judge unless stayed by the magistrate or by the reviewing judge. An order or judgment becomes final for purposes of judicial review as stated in C.R.M. 7.

(b) A magistrate may issue citations for contempt, conduct contempt proceedings, and enter orders for contempt for conduct occurring either in the presence or out of the presence of the magistrate, in any civil or criminal matter, without consent. Any order of a magistrate finding a person in contempt shall upon request be reviewed in accordance with the procedures for review set forth in rule 7 or rule 9 herein.

(c) A magistrate shall have the power to issue bench warrants for the arrest of non-appearing persons, to set bonds in connection therewith, and to conduct bond forfeiture proceedings.

(d) A magistrate shall have the power to administer oaths and affirmations to witnesses and others concerning any matter, thing, process, or proceeding, which is pending, commenced, or to be commenced before the magistrate.

(e) A magistrate shall have the power to issue all writs and orders necessary for the exercise of their jurisdiction established by statute or rule, and as provided in section 13-1-115, C.R.S.

(f) No magistrate shall have the power to decide whether a state constitutional provision, statute, municipal charter provision, or ordinance is constitutional either on its face or as applied. Questions pertaining to the constitutionality of a state constitutional provision, statute, municipal charter provision, or ordinance may, however, be raised for the first time on review of the magistrate's order or judgment.

(g) [Effective Until July 1, 2021.] All magistrates in the performance of their duties shall conduct themselves in accord with the provisions of the Colorado Code of Judicial Conduct. Any complaint alleging that a magistrate, who is an attorney, has violated the provisions of the Colorado Code of Judicial Conduct may be filed with the Office of Attorney Regulation Counsel for proceedings pursuant to C.R.C.P. 251.1, et seq. Such proceedings shall be conducted to determine whether any violation of the Code of Judicial Conduct has occurred and what discipline, if any, is appropriate. These proceedings shall in no way affect the supervision of the Chief Judge over magistrates as provided in C.R.M. 1.

(g) [Effective July 1, 2021.] All magistrates in the performance of their duties shall conduct themselves in accord with the provisions of the Colorado Code of Judicial Conduct. Any complaint alleging that a magistrate, who is an attorney, has violated the provisions of the Colorado Code of Judicial Conduct may be filed with the Office of Attorney Regulation Counsel for

proceedings pursuant to C.R.C.P. 242. Such proceedings shall be conducted to determine whether any violation of the Code of Judicial Conduct has occurred and what discipline, if any, is appropriate. These proceedings shall in no way affect the supervision of the Chief Judge over magistrates as provided in C.R.M. 1.

Rule 6. Functions of District Court Magistrates.

(a) Functions in Criminal Cases: A district court magistrate may perform any or all of the following functions in criminal proceedings:

(1) No consent necessary:

(A) Conduct initial appearance proceedings, including advisement of rights, admission to bail, and imposition of conditions of release pending further proceedings.

(B) Appoint attorneys for indigent defendants and approve attorney expense vouchers.

(C) Conduct bond review hearings.

(D) Conduct preliminary and dispositional hearings pursuant to C.R.S. sections 16-5-301 (1) and 18-1-404 (1).

(E) Schedule and conduct arraignments on indictments, informations, or complaints.

(F) Order presentence investigations.

(G) Set cases for disposition, trial, or sentencing before a district court judge.

(H) Issue arrest and search warrants, including nontestimonial identifications under Rule 41.1.

(I) Conduct probable cause hearings pursuant to rules promulgated under the Interstate Compact for Adult Offender Supervision, C.R.S. sections 24-60-2801 to 2803.

(J) Any other function authorized by statute or rule.

(2) Consent necessary:

(A) Enter pleas of guilty.

(B) Enter deferred prosecution and deferred sentence pleas.

(C) Modify the terms and conditions of probation or deferred prosecutions and deferred sentences.

(D) Impose stipulated sentences to probation in cases assigned to problem solving courts.

(b) Functions in Matters Filed Pursuant to Colorado Revised Statutes Title 14 and Title 26:

(1) No Consent Necessary

(A) A district court magistrate shall have the power to preside over all proceedings arising under Title 14, except as described in section 6 (b)(2) of this Rule.

(B) A district court magistrate shall have the power to preside over all motions to modify permanent orders concerning property division,

maintenance, child support or allocation of parental responsibilities, except petitions to review as defined in C.R.M. 7.

(C) A district court magistrate shall have the power to determine an order concerning child support filed pursuant to Section 26-13-101 et seq.

(D) Any other function authorized by statute.

(2) Consent Necessary: With the consent of the parties, a district court magistrate may preside over contested hearings which result in permanent orders concerning property division, maintenance, child support or allocation of parental responsibilities.

(c) Functions in Civil Cases: A district court magistrate may perform any or all of the following functions in civil proceedings:

(1) No consent necessary

(A) Conduct settlement conferences.

(B) Conduct default hearings, enter judgments pursuant to C.R.C.P. 55, and conduct post-judgment proceedings.

(C) Conduct hearings and enter orders authorizing sale, pursuant to C.R.C.P. 120.

(D) Conduct hearings as a master pursuant to C.R.C.P. 53.

(E) Hear and rule upon all motions relating to disclosure, discovery, and all C.R.C.P. 16 and 16.1 matters.

(F) Conduct proceedings involving protection orders pursuant to C.R.S. Section 13-14-101 et seq.

(G) Any other function authorized by statute.

(2) Consent Necessary: A magistrate may perform any function in a civil case except that a magistrate may not preside over jury trials.

(d) Functions in Juvenile Cases: A juvenile court magistrate shall have all of the powers and be subject to the limitations prescribed for juvenile court magistrates by the provisions of Title 19, Article 1, C.R.S. Unless otherwise set forth in Title 19, Article 1, C.R.S., consent in any juvenile matter shall be as set forth in C.R.M. 3 (f)(1).

(e) Functions in Probate and Mental Health Cases:

(1) No consent necessary:

(A) Perform any or all of the duties which may be delegated to or performed by a probate registrar, magistrate, or clerk, pursuant to C.R.P.P. 4 and C.R.P.P. 5.

(B) Hear and rule upon petitions for emergency protective orders and petitions for temporary orders.

(C) Any other function authorized by statute.

(2) Consent Necessary

(A) Hear and rule upon all matters filed pursuant to C.R.S. Title 15.

(B) Hear and rule upon all matters filed pursuant to C.R.S. Title 25 and Title 27.

(f) A district court magistrate shall not perform any function for which consent is required under any provision of this Rule unless the oral or written notice complied with Rule 3(f).

Rule 7. Review of District Court Magistrate Orders or Judgments.

(a) Magistrates shall include in every order or judgment the following language: Except as otherwise provided by statute, the order or judgment may not be filed with the court of appeals unless a petition for review has been filed with the district court as provided in this Rule 7 no later than 28 days of the date the order or judgment becomes reviewable.

(b) Unless otherwise provided by statute, this Rule is the exclusive method to obtain review of a district court magistrate's order or judgment.

(c) Each chief judge shall designate one or more district judges to review orders or judgments of district court magistrates.

(d) An order or judgment of a magistrate is reviewable only if (1) the order or judgment fully resolves the issue or claim before the magistrate and (2) the order or judgment is written, dated, and signed by the magistrate. A minute order that is signed and dated by a magistrate will constitute a final written order or judgment.

(e) A party may obtain review of a magistrate's order or judgment by filing a petition for review with the reviewing judge no later than 28 days from the date the order or judgment becomes reviewable.

(f) Within seven days of the date the order or judgment became reviewable any party may file with the magistrate either a C.R.C.P. 121, section 1-15(11) motion to reconsider or a C.R.C.P. 60(a) motion to correct clerical errors. Copies of the motion shall be served on all parties by the moving party. Within seven days after being served with a motion, any party may file an opposition, which shall be served on all parties. The moving party may not file a reply. These dates cannot be extended. The motion shall be deemed denied for all purposes if it is not decided by the magistrate within 21 days of the date the order or judgment became reviewable.

(g) If the magistrate grants, in whole or in part, either a C.R.C.P. 121, section 1-15(11) motion to reconsider or a C.R.C.P. 60(a) motion to correct errors, a petition for review of the amended order or judgment must still be filed within 28 days of the date the original order or judgment became reviewable.

(h) A petition for review shall state with particularity the alleged errors in the magistrate's order or judgment and may be accompanied by a brief statement of the authorities relied upon to support the petition. If a transcript of the proceedings before the magistrate is not available when the petition is filed, the petition shall state whether a transcript has been requested. Copies of the petition and any supporting statement shall be served on all parties by the party seeking review. Within 14 days after being

served with a petition for review, a party may file an opposition, which shall state whether a transcript has been ordered by the opposing party and shall be served on all parties. This date cannot be extended unless the district court finds exceptional circumstances. The moving party may not file a reply.

(i) Judicial review shall be limited to consideration of the petition for review, any opposition, and the record of the proceedings before the magistrate as is available. If a transcript of the proceedings before the magistrate was not requested, the reviewing judge shall presume that the record would support the magistrate's findings of fact.

(j) Findings of fact made by the magistrate shall be accepted by the reviewing judge unless they are clearly erroneous. Conclusions of law made by a magistrate and any order entered under C.R.M. 6(c) which effectively ends a case shall be subject to de novo review.

(k) The reviewing judge shall adopt, reject, or modify the final order or judgment of the magistrate by written order, which order shall be the order or judgment of the district court. Any petition that has not been decided within 63 days of the filing date of (1) the petition for review or (2) the transcript if one has been requested, whichever is later, shall, without further action by the reviewing judge, be deemed denied for all purposes including Rule 4(a) of the Colorado Appellate Rules and the time for appeal shall commence as of that date.

(l) Appeal of a reviewable order or judgment of a district court magistrate may not be taken to the appellate court after entry of a final order or judgment unless a timely petition for review has been filed and decided by a district court in accordance with these Rules.

(m) If timely review in the district court is not requested, the order or judgment of the magistrate shall become the order or judgment of the district court. Appeal of such district court order or judgment to the court of appeals is barred.

michaels, kathryn

From: espinosa, adam
Sent: Tuesday, June 7, 2022 3:22 PM
To: jones, jerry
Cc: michaels, kathryn
Subject: Eviction Subcommittee Materials for the Civil Rules Committee Meeting scheduled for June 24, 2022
Attachments: Rule 16.5 final marked up copy 6 7 2022.docx; Rule 16.5 final clean copy 6 7 2022.docx; Rule 316.5 Mark up 6 7 22.docx; Rule 316.5 Clean 6 7 22.docx; Rule 16.5 Mark Up Version 2 5 17 2022.docx

Hi Judge Jones,

The Eviction Subcommittee of the Civil Rules Committee met four times since the last larger Civil Rules Committee meeting on April 8, 2022. We have been working through our review and possible amendments to the District Court rules to conform with the recently enacted eviction laws and to reflect existing eviction laws. We have two additional proposals which are attached to this email.

First, we are recommending the creation of a Rule 16.5 to address the specific statutory requirements in eviction cases including the unique request for documents provision and trial scheduling provisions. Proposed Rule 16.5 largely mirrors the language and content of Rule 316.5, which we recommended last year and has been adopted by the Court. In fact, we used Rule 316.5 as a template for the creation of Rule 16.5. I have attached a marked-up version of Rule 316.5 to compare the changes we made to Rule 316.5 in creating the proposed Rule 16.5. That document is titled, "Rule 16.5 Mark Up Version 2 5 17 2022."

Next, we decided to do a look back at the current Rule 316.5 to determine if any amendments need to be made to that rule in light of our proposed Rule 16.5. We concluded that only one minor edit needs to be made to Rule 316.5 to the jury notebook provision.

I have attached clean and marked up versions of proposed Rule 16.5 and Rule 316.5 for the Committee to consider and to vote on at our next meeting scheduled for June 24, 2022.

Our subcommittee continues to work hard on this important project, and we believe we have to review and consider amendments to Rules 4 and 12 to conclude our work on this subcommittee. However, some subcommittee members have asked that we review JDF Forms 109 (Unlivable Conditions at Home/Warranty of Habitability) and 102 (Stipulation for FED/Eviction) also. We plan to take those up unless we are directed not to do so. Please let me know if you have any questions or concerns.

Best,
Adam



Adam J. Espinosa
District Court Judge,
Second Judicial District
Lindsey-Flanigan Courthouse, 5E
Denver, CO, 80202
(303) 606-2737
adam.espinosa@judicial.state.co.us

Rule 316.5. Pretrial Procedure – Forcible Entry and Detainer Proceedings for Possession Cases -- Requests for Documents and Conference.

(a) Purpose and Scope. This rule applies to Forcible Entry and Detainer proceedings for possession, unless otherwise provided by statute, by agreement of the parties, or by order of the court.

(b) Requests for Documents.

(1) Either party may request all documents in the other party's possession relevant to the current action. To make this request, a party must complete, file, and send Form JDF 1857 SC (Request for Documents in Eviction Cases) to the opposing party.

(2) Any party failing to comply with a court order requiring such party to provide documentation relevant to the current action shall be subject to imposition of appropriate sanctions.

(c) Trial Scheduling and Pretrial Conferences. Except as provided by statute, if the defendant files an answer, the court shall schedule a possession trial no sooner than seven days, but not more than ten days, after the answer is filed, unless (1) the defendant requests a waiver of this requirement in the defendant's answer or after filing the answer, (2) the court sets the trial date beyond ten days if either party demonstrates good cause for an extension or if the court otherwise finds justification for the extension. Prior to such trial, the court may in its discretion and upon reasonable notice order a pretrial conference. Conferences by telephone or videoconference are encouraged. Following a pretrial conference, the court may issue an order which may include limitations on the issues to be raised and the witnesses and exhibits to be allowed at trial, entry of judgment, or dismissal, if appropriate. Failure to appear at a pretrial conference may result in appropriate sanctions, including an award of attorney's fees and expenses incurred by the appearing party. Courts may encourage the parties to engage in mediation.

(d) Pretrial Discovery. Any party may request that discovery be permitted to assist in the preparation for trial. The request shall be made only during the pretrial conference. The discovery may include depositions, requests for admission, interrogatories, physical or mental examinations, or requests for production or inspection. If the court enters a discovery order, it shall set forth the extent and terms of the discovery as well as the time for compliance. If the court fails to specify any term, then the provisions of C.R.C.P. 30, 32, 33, 34, 35, and 36 shall be followed as to the missing term.

(e) Resolution of Disputes. All issues regarding discovery shall be resolved on or before the day of trial and shall not cause any undue delay in the proceedings. No party shall be entitled to seek protective orders following the conference. Unless otherwise ordered by the court, a dispute over compliance with the discovery order shall be resolved at the time of trial, and the court may impose appropriate sanctions, including attorney's fees and costs, against the non-complying party.

~~(e) Juror Notebooks. The court may order the use of juror notebooks. If notebooks are to be used, counsel for each party shall confer about items to be included in juror notebooks and at the pretrial conference or other date set by the court make a joint submission to the court of items to be included in the juror notebook.~~

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(b) Requests for Documents.

(1) Either party may request all documents in the other party's possession relevant to the current action. To make this request, a party must complete, file, and send Form JDF 187 SC (Request for Documents in Eviction Cases) to the opposing party.

(2) Any party failing to comply with a court order requiring such party to provide documentation relevant to the current action shall be subject to imposition of appropriate sanctions.

(c) Trial Scheduling and Pretrial Conferences. Except as provided by statute, if the defendant files an answer, the court shall schedule a possession trial no sooner than seven days, but not more than ten days, after the answer is filed, unless (1) the defendant requests a waiver of this requirement in the defendant's answer or after filing the answer, (2) the court sets the trial date beyond ten days if either party demonstrates good cause for an extension or if the court otherwise finds justification for the extension. Prior to such trial, the court may in its discretion and upon reasonable notice order a pretrial conference. Conferences by telephone or videoconference are encouraged. Following a pretrial conference, the court may issue an order which may include limitations on the issues to be raised and the witnesses and exhibits to be allowed at trial, entry of judgment, or dismissal, if appropriate. Failure to appear at a pretrial conference may result in appropriate sanctions, including an award of attorney's fees and expenses incurred by the appearing party. Courts may encourage the parties to engage in mediation.

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Rule 316.5. Pretrial Procedure – Forcible Entry and Detainer Cases -- Requests for Documents and Conference.

(a) Requests for Documents.

(1) Either party may request all documents in the other party's possession relevant to the current action. To make this request, a party must complete, file, and send Form JDF 185 SC (Request for Documents in Eviction Cases) to the opposing party.

(2) Any party failing to comply with a court order requiring such party to provide documentation relevant to the current action shall be subject to imposition of appropriate sanctions.

(b) Trial Scheduling and Pretrial Conferences. Except as provided by statute, if the defendant files an answer, the court shall schedule a trial no sooner than seven days, but not more than ten days, after the answer is filed, unless (1) the defendant requests a waiver of this requirement in the defendant's answer or after filing the answer, (2) the court sets the trial date beyond ten days if either party demonstrates good cause for an extension or if the court otherwise finds justification for the extension. Prior to trial, the court may in its discretion and upon reasonable notice order a pretrial conference. Conferences by telephone or videoconference are encouraged. Following a pretrial conference, the court may issue an order which may include limitations on the issues to be raised and the witnesses and exhibits to be allowed at trial, entry of judgment, or dismissal, if appropriate. Failure to appear at a pretrial conference may result in appropriate sanctions, including an award of attorney's fees and expenses incurred by the appearing party. Courts may encourage the parties to engage in mediation.

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Appeal Forms Workgroup
Request to Civil Rules Committee
April 14th, 2022

The Appeal Forms workgroup is requesting the following updates to County to District appeal forms- 4CRCCP Notice of Appeal and JDF 5CRCCP Designation of Record.

CRCCP Form 4 SC - Notice of Appeal

- Update language on Certificate of Mailing to read “I certify that a true copy of the Notice of Appeal and the Designation on Appeal was mailed, postage prepaid, to....”
- Add “Rule 411” to the footer of the document or other language indicating it is County Civil.

CRCCP Form 5 SC – Designation of Record

- Change document title from “Designation of Record on Appeal” to “Designation of Transcripts”.
- Update language throughout the body of document-Please see attached “Proposed Changes CRCCP 5 Form” document.
- OR new document for the purpose of designation of transcripts and make CRCCP Designation of Record on Appeal obsolete.

<input type="checkbox"/> County Court _____ County, Colorado Court Address: _____ <hr/> Plaintiff(s): _____ v. Defendant(s): _____	▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): _____ Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____	Case Number: _____ Division _____ Courtroom _____
NOTICE OF APPEAL	

To: The County Court in and for the County of _____, State of Colorado and the above named _____.

Please take notice that the undersigned will file an appeal.

- By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.
 By checking this box, I am acknowledging that I have made a change to the original content of this form.

Said appeal will be docketed in the District Court pursuant to Rule 411, Rules of County Court Civil Procedure.

Done this _____ day of _____, 20 _____.

 Signature(s) of Appellant(s)

 Signature of Attorney for Appellant(s), if applicable

 Name, Address(es) of Appellant(s)

 Telephone Number(s) of Appellant(s)

CERTIFICATE OF MAILING

I certify that a true copy of the Notice of Appeal and the Designation ~~of Record~~ on Appeal was mailed, postage prepaid, to _____ (opposing party(ies) or attorney), at _____ (address), on _____ (date).

 Appellant(s) or Attorney for Appellant(s)

County Court _____ County, Colorado Court Address:	▲ COURT USE ONLY ▲
Plaintiff(s): v. Defendant(s):	
Attorney or Party Without Attorney (Name and Address):	Case Number:
Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____	Division _____ Courtroom _____
DESIGNATION OF RECORD ON APPEAL TRANSCRIPTS	

1. [I would like the following transcripts included in the Record on Appeal:](#)

[\(For an event that lasted more than one day, please list each day separately.\)](#)

Type of Event (Examples: Motions Hearing, Trial Day 1, Conference)	Date	Start Time	Court Reporter Name (If Any)
1)			
2)			
3)			
4)			
5)			
6)			
7)			
8)			
9)			

2. [I will submit a Transcript Request Form to the District Court along with this Designation.](#)

3. [I Understand:](#)

- [I will have to pay for each transcript I list.](#)
- [I will **NOT** attach any transcripts to this document.](#)
- [This document just lists the transcripts to be included in the appeal.](#)
- [The transcriptionist will send the transcripts to the District Court.](#)
- [The transcripts are sent when they are completed and only if I fully pay for them.](#)

4. I certify that on (date) _____, I (check one)

mailed | hand delivered | E-filed

a copy of this document to:

1) Name: _____

Address: _____

City: _____ State: _____ Zip: _____

2) Name: _____

Address: _____

City: _____ State: _____ Zip: _____

5. Respectfully submitted on (dated) _____, by

Print Name: _____

Signature: _____

The clerk will prepare for the District Court a record on appeal which shall include the following:

- 1. All original process and pleadings on file in the trial court.
- 2. All exhibits.
- 3. Jury instructions.
- 4. Judgments and orders of the Court.
- 5. Reporter's original transcript - excluding transcript of jury voir dire, opening statements, and closing summation, but including all evidence.

By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.

By checking this box, I am acknowledging that I have made a change to the original content of this form.

Please prepare and certify with all convenient speed.

Requested this _____ day of _____, 20____.

_____ Appellant(s) or Attorney for Appellant(s)

Amount deposited \$_____ for record.

Appeal bond in the amount of \$_____ filed.

michaels, kathryn

From: jvasquez@colegalserv.org on behalf of Jose Vasquez <jvasquez@colegalserv.org>
Sent: Friday, April 22, 2022 9:46 AM
To: jones, jerry
Cc: michaels, kathryn
Subject: [External] Registered: Re: Newly enacted changes to exemptions resulting from SB 22-0086
Attachments: Form 30 Claim of Exemption to Writ of Garnishment with Notice R5-11 revisions.docx; Form29SC revisions.docx



You have received an encrypted email from **Jose Vasquez**. To reply to this message encrypted, please [click here](#).

CAUTION: This email originated from outside of the Judicial Department. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Judge Jones,

It appears that only forms that were impacted by the changes in SB 22-0086 and that the changes that will be need to be made are minimal.

Form 29 SC - Writ of Garnishment with Notice of Exemption

The exemption protecting a cumulative amount of \$4,000 in a depository account or accounts which expired June 12, 2021, has been made permanent, though the amount is now \$2,500.00.

Form 30 SCSC - R1-18 CLAIM OF EXEMPTION TO WRIT OF GARNISHMENT WITH NOTICE

Since the exemption for monies in a depository account is accumulative and can involve more than one account, the current form does not provide enough room in the event that there is more than one account in which monies have been held. Thus, there needs to be more room to permit the debtor to add more than one account in the form.

I have attached drafts of both forms which contain proposed suggestions for changes. As you can see in Form 30 SC, I added language informing the debtor that if there is more than one account in which monies are held that they can include that in the lines above or add a separate sheet. The other option would be to repeat the above information but that would lengthen the form to more than one page and then it goes into the question of if not repeating the information once whether it makes sense to repeat it three or more times.

Please let me know if you have any questions about the forms or if there is anything else I can do to help.

Jose L. Vasquez

Supervising Attorney, Consumer Law Unit

jvasquez@colegalserv.org

COLORADO LEGAL SERVICES

1905 Sherman Street, Suite 400

Denver, CO 80203

Phone: 303-866-9356

Fax 303-830-7860

Google Voice Number: (970) 591-2255



Please note that I am currently working remotely. While I check my office voicemail messages periodically, please contact me at my Google Voice number listed above if you need to reach me immediately.

The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

Colorado Legal Services Clients - IMPORTANT NOTICE!

This email is protected by attorney-client privilege. "Attorney-client privilege" means that your attorney (CLS, or a volunteer attorney assisting you through CLS) must keep your information private unless you give your attorney permission to share it, or if the law requires it to be disclosed. Only you can waive this privilege. You gave CLS permission to send you information about your legal problem through email. But, the email provider you use could be forced to turn over your emails if a separate legal matter arose, and that could even include emails that CLS staff or volunteer attorneys have sent you in confidence. Therefore, it's best to not use personal email on a device that is not yours, whether it's at work or at another place such as a library. Also, you should never forward emails sent from CLS or your volunteer attorney to other people, even friends or family members, because the emails you share with them will no longer be protected by "attorney-client privilege."

From: Jose Vasquez <jvasquez@colegalserv.org>
Sent: Tuesday, April 19, 2022 2:47 AM
To: jones, jerry <jerry.jones@judicial.state.co.us>
Cc: michaels, kathryn <kathryn.michaels@judicial.state.co.us>
Subject: Re: Newly enacted changes to exemptions resulting from SB 22-0086

Judge Jones,

Thank you for your response to my email. I will get a draft for you and email it to you within the next couple of days.

Jose L. Vasquez

Supervising Attorney, Consumer Law Unit

jvasquez@colegalserv.org

COLORADO LEGAL SERVICES

1905 Sherman Street, Suite 400

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From: jones, jerry <jerry.jones@judicial.state.co.us>
Sent: Friday, April 15, 2022 2:39 AM
To: Jose Vasquez <jvasquez@colegalserv.org>
Cc: michaels, kathryn <kathryn.michaels@judicial.state.co.us>
Subject: Re: Newly enacted changes to exemptions resulting from SB 22-0086

Mr. Vasquez, thanks for the update. It looks like the form references types of exempt property but not amounts. What changes do you believe are necessary? Because I am out of the country it might be a little difficult for me to stay on top of this. Perhaps you could prepare a redline of the form?

Judge Jones

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From: jvasquez@colegalserv.org <jvasquez@colegalserv.org> on behalf of Jose Vasquez <jvasquez@colegalserv.org>
Sent: Wednesday, April 13, 2022 10:45:35 PM
To: jones, jerry <jerry.jones@judicial.state.co.us>
Cc: michaels, kathryn <kathryn.michaels@judicial.state.co.us>
Subject: [External] Registered: Newly enacted changes to exemptions resulting from SB 22-0086



You have received an encrypted email from **Jose Vasquez**. To reply to this message encrypted, please [click here](#).

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Judge Jones,

On April 7, 2022, the Governor signed SB22-0086 which made several substantial changes to the Colorado exemptions, including the following:

- Increasing the homestead exemption from \$75,000/\$105,000 to \$250,000/\$350,000 if debtor or family =60+ or if debtor or family disabled];
- having the homestead exemption cover non-traditional housing (like tiny homes)
- reinstating the bank account exemption [up to \$2,500 regardless of the source of funds];
- increasing vehicle exemption from \$7,500/\$12,500 to \$12,000/\$25,000 [60+ or disabled];
- increasing household goods exemption from \$3,000/person to \$6,000/person;
- increase disability benefit exemption from \$4,000/mo. to \$5,000/mo;
- increase farm equipment/livestock exemption to \$100,000;
- add an exemption for future economic stimulus payments;
- add firearm/hunting equipment exemption [up to \$1,000];
- add exemption for health savings accounts [HSAs];
- add exemption for funds reserved for taxes & insurance on some reverse mortgages;
- keep exemptions on unemployment & child support even if funds commingled;

I am including a copy of the bill for reference, along with the following link to the bill and the summary:

<https://leg.colorado.gov/bills/sb22-086>

Homestead Exemption And Consumer Debt Protection | Colorado General Assembly

Concerning assets exempted from seizure in certain proceedings, and, in connection therewith, expanding the amount and application of the homestead exemption to include personal property that is actually used as a residence, increasing the scope and amount of assets that may be exempted, adding certain new exemptions, recreating and increasing an exemption for money in depository accounts, and ...

leg.colorado.gov

Since this bill is currently in effect, I was wondering if the Rules Committee could take a look at making changes to certain judicial forms related to debt collection, including Form 29SC (which I have attached) which

includes a partial list of exemptions that will need to be changed. I am not certain at the present time whether there are any other forms that need to be revised as a result of the passing of this bill but a review of any others might be helpful.

Please let me know if you have any questions or if I can be of any assistance.

Jose L. Vasquez

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<input type="checkbox"/> County Court <input type="checkbox"/> District Court _____ County, Colorado Court Address: _____ <hr/> Plaintiff(s)/Petitioner(s): v. Defendant(s)/Respondent(s):	▲ COURT USE ONLY ▲
Judgment Creditor's Attorney or Judgment Creditor (Name and Address): Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____	Case Number: Division Courtroom
Writ of Garnishment with Notice of Exemption and Pending Levy	

The Judgment creditor is (check one): a licensed collection agency pursuant to §5-16-101, et. seq., C.R.S.; represented by an attorney; or not represented by an attorney and is not a licensed collection agency pursuant to §5-16-101 et. seq., C.R.S.

Judgment Debtor's name, last known address, other identifying information: _____

- | | | |
|---|------|-------|
| 1. Original Amount of Judgment Entered _____ (date) | \$ | _____ |
| 2. Plus any Interest Due on Judgment (currently _____ % per annum) | + \$ | _____ |
| 3. Taxable Costs (including estimated cost of service of this Writ) | + \$ | _____ |
| 4. Less any Amount Paid | - \$ | _____ |
| 5. Principal Balance/Total Amount Due and Owing | = \$ | _____ |

- By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.
 By checking this box, I am acknowledging that I have made a change to the original content of this form.

Verification

I declare under penalty of perjury under the law of Colorado that the foregoing is true and correct and I am authorized to act for the Judgment Creditor.

 Printed name of Judgment Creditor

Address _____ City _____ State _____ Zip Code _____

Executed on the _____ day of _____, _____, at _____
 (date) (month) (year) (city or other location, and state OR country)

 Printed name of Authorized Party

 Signature of Authorized Party (Title and Phone No.)

Address _____ City _____ State _____ Zip Code _____

Writ of Garnishment with Notice of Exemption and Pending Levy

THE PEOPLE OF THE STATE OF COLORADO to the Sheriff of any Colorado County, or to any person 18 years or older and who is not a party to this action:

You are directed to serve a copy of this Writ of Garnishment upon _____, Garnishee,

with proper return of service to be made to the Court.

To The Garnishee:

You are hereby summoned as garnishee in this action and ordered:

- a. To answer the following questions under oath and file your answers with the Clerk of the Court (AND to mail a completed copy with your answers to the Judgment Creditor or attorney when a stamped envelope is attached) within 14 days following service of this Writ upon you.

Your failure to answer this writ with notice may result in the entry of a default against you.

- b. To hold pending court order the personal property of any kind (other than earnings of a natural person) in your possession or control, including the debts, credits, choses in action or money owed to the Judgment Debtor whether they are due at the time of the service of the writ or are to become due thereafter.

You Are Notified:

- a. This Writ with Notice applies to all personal property (other than earnings) owed to or owned by the Judgment Debtor and in your possession or control as of the date and time this Writ was served upon you.
- b. In no case may you withhold any personal property greater than the amount on Line 5 on the front of this Writ unless the personal property is incapable of being divided.
- c. After you file your answers to the following questions, and after receiving a separate notice or order from the court, **make checks payable** and mail to: the Judgment Creditor named above (May select only if the Judgment Creditor is a licensed collection agency pursuant to 5-16-101, et. seq., C.R.S.); the Judgment Creditor's Attorney (if applicable); or to the Clerk of the County Court or District Court in _____ (city), Colorado (Must select if the Judgment Creditor is not represented by an attorney AND is not a licensed collection agency pursuant to 5-16-101, et. seq., C.R.S.) at the address below:

Name: _____

Address: _____

Please Put the Case Number (Above) on the Front of the Check.

CLERK OF THE COURT

By Deputy Clerk: _____

Date: _____

Questions to be Answered by Garnishee

Judgment Debtor's Name: _____ **Case Number:** _____

The following questions MUST be answered by you under oath:

- a. On the date and time this Writ was served upon you, did you possess or control any personal property of the Judgment Debtor or did you owe any rents, payments, obligations, debts or moneys other than earnings to the Judgment Debtor?

YES NO

- b. If YES, list all items of personal property and their location(s) and/or describe the nature and amount of the debt or obligation: (Attach additional pages if necessary): _____

- c. Do you claim any setoff against any property, debt or obligation listed above? YES NO

- d. If you answered YES to question c, describe the nature and amount of the setoff claimed: (Attach additional pages if necessary): _____

Verification

I declare under penalty of perjury under the law of Colorado that I am authorized to act for the Garnishee and the foregoing is true and correct.

Name of Garnishee (Print) _____

Executed on the _____ day of _____, _____, at _____
(date) (month) (year) (city or other location, and state OR country)

(Printed name of Person Answering)

Signature of Person Answering

Notice to Judgment Debtor of Exemption and Pending Levy

This Writ with Notice is a Court order which may cause your property or money to be held and taken to pay a judgment entered against you. You have legal rights which may prevent all or part of your money or property from being taken. That part of the money or property which may not be taken is called "exempt property". A partial list of "exempt property" is shown below, along

with the law which may make all or part of your money or property exempt. The purpose of this notice is to tell you about these rights.

Partial List of Exempt Property

1. All or part of your property listed in Sections 13-54-101 and 102, C.R.S., including clothing, jewelry, books, burial sites, household goods, food and fuel, farm animals, seed, tools, equipment and implements, military allowances, stock-in-trade and certain items used in your occupation, bicycles, motor vehicles (greater for disabled persons), life insurance, income tax refunds, attributed to an earned income tax credit or child tax credit, money received because of loss of property or for personal injury, equipment that you need because of your health, or money received because you were a victim of a crime.
2. All or part of your earnings under Section 13-54-104, C.R.S.
3. Worker's compensation benefits under Section 8-42-124, C.R.S.
4. Unemployment compensation benefits under Section 8-80-103, C.R.S.
5. Group life insurance benefits under Section 10-7-205, C.R.S.
6. Health insurance benefits under Section 10-16-212, C.R.S.
7. Fraternal society benefits under Section 10-14-403, C.R.S.
8. Family allowances under Section 15-11-404, C.R.S.
9. Teachers' retirement fund benefits under Section 22-64-120, C.R.S.
10. Public employees' retirement benefits (PERA) under Sections 24-51-212 and 24-54-111, C.R.S.
11. Social Security benefits (OASDI, SSI) under 42 U.S.C. §407.
12. Railroad employee retirement benefits under 45 U.S.C. §231m.
13. Public assistance benefits (OAP, AFDC, TANF, AND, AB, LEAP) under Section 26-2-131, C.R.S.
14. Police Officer's and Firefighter's pension fund payments under Sections 31-30-1117 & 31-30.5-208 and 31-31-203, C.R.S.
15. Utility and security deposits under Section 13-54-102(1)(r), C.R.S.
16. Proceeds of the sale of homestead property under Section 38-41-207, C.R.S.
17. Veteran's Administration benefits under 38 U.S.C. §5301.
18. Civil service retirement benefits under 5 U.S.C. §8346.
19. Mobile homes and trailers under Section 38-41-201.6, C.R.S.
20. Certain retirement and pension funds and benefits under Section 13-54-102(1)(s), C.R.S.
21. A Court-ordered child support or maintenance obligation or payment under Section 13-54-102(1)(u), C.R.S.
22. Public or private disability benefits under Section 13-54-102(1)(v), C.R.S.
23. ~~Through February 1, 2021, up to four thousand dollars cumulative in a depository account or accounts in the name of the debtor.~~ Up to two thousand five hundred dollars cumulative in a depository account or accounts in the name of the debtor. under Section 13-54-102, C.R.S.

If the money or property which is being withheld from you includes any "exempt property," you must file within 14 days of receiving this notice a written Claim of Exemption with the Clerk of the Court describing what money or property you think is "exempt property" and the reason that it is exempt. YOU MUST USE THE APPROVED FORM attached to this Writ or a copy of it. When you file the claim, you must immediately deliver, by certified mail, return receipt requested, a copy of your claim to the Garnishee (person/place that was garnished) and to the Judgment Creditor's attorney, or if none, to the Judgment Creditor at the address shown on this Writ with Notice. Notwithstanding your right to claim the property as "exempt," no exemption other than the exemptions set forth in Section 13-54-104(3), C.R.S., may be claimed for a Writ which is the result of a judgment taken for arrearages for child support or for child support debt.

Once you have properly filed your claim, the court will schedule a hearing within 14 days. The Clerk of the Court will notify you and the Judgment Creditor or attorney of the date and time of the hearing, by telephone, by mail or in person.

When you come to your hearing, you should be ready to explain why you believe your money or property is "exempt property". If you do not appear at the scheduled time, your money or property may be taken by the Court to pay the judgment entered against you.

Remember that this is only a partial list of "exempt property"; you may wish to consult with a lawyer who can advise you of your rights. If you cannot afford one, there are listings of legal assistance and legal aid offices in the yellow pages of the telephone book.

You must act quickly to protect your rights. Remember, you only have 14 days after receiving this notice to file your claim of exemption with the Clerk of the Court.

