

Rule Change 2016(05)

**COLORADO APPELLATE RULES**  
**Rules 35, 40, 41, 41.1 and 42**

**Rule 35. Determination of Appeal**

**(a) ~~[Deleted].~~ Disposition of Appeal.** The appellate court may, in whole or in part, dismiss an appeal; affirm, vacate, modify, or reverse, or set aside a lower court judgment; and may remand any portion of the case judgment to the lower court for further proceedings. When reviewing a ruling or judgment dismissing criminal charges, the appellate court may approve or disapprove of the judgment if retrial of the defendant is prohibited. The appellate court may dismiss an appeal or affirm a lower court judgment without opinion, but it must issue a written opinion when vacating, modifying, reversing, setting aside, or remanding any portion of the lower court judgment.

**(b) Equally Divided Supreme Court.** When the supreme court acting en banc is equally divided in an opinion, the judgment being appealed will stand affirmed.

**(c) Harmless Error.** The appellate court may disregard any error or defect not affecting the substantial rights of the parties.

**(~~db~~) Advancement on Docket.** Any pending action may be advanced on the docket and may be disposed of in such order as the court ~~shall determine~~ deems appropriate. ~~In matters of great public importance t~~The court may make such orders relating to the time and necessity for the filing of printed, typewritten, mimeographed or otherwise reproduced briefs, and the time and necessity for oral argument as it deems the circumstances demand.

**(~~c~~) Affirmation.** ~~When an appeal is dismissed the appellate court may affirm the judgment. When the appeal is dismissed, or the judgment is affirmed, the clerk of the trial court, upon the filing in his office of the remittitur, shall issue execution upon the judgment and proceed as though no appeal had been prosecuted.~~

**(~~d~~) Reversal.** ~~On reversing a judgment the appellate court may order a retrial only of specified questions of fact. On a partial reversal it may enter such judgment as it shall deem proper or may remand the cause for further proceedings. Upon remand for further proceedings the payment of costs by the appellee shall not be a condition thereof, but the costs recovered upon appeal shall await final determination of the case. If final determination be adverse to appellant, his costs recovered on appeal shall be offset against the judgment finally recovered against him.~~

~~(e) Disposition of Cause. In all cases on appeal the appellate court may enter final judgment and may issue execution thereon, or may remand the cause to the trial court in order that execution may there be issued or that other proceedings may be had therein. Any judgment may be affirmed without written opinion, but on reversal the court shall give its reasons for such action, except in cases where it renders judgment or directs what judgment shall be entered in the trial court. When the Supreme Court acting en banc is equally divided in an opinion, the judgment appealed from shall stand affirmed. The appellate court shall disregard any error or defect not affecting the substantial rights of the parties.~~

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

No opinion of the Court of Appeals opinion shall be designated for official publication unless it satisfies one or more of the following standards:

- (1) the opinion lays down establishes a new rule of law, or alters or modifies an existing rule, or applies an established rule to a novel fact situation;
- (2) the opinion involves a legal issue of continuing public interest;
- (3) the majority opinion, dissent, or special concurrence directs attention to the shortcomings of existing common law or inadequacies in statutes; or
- (4) the opinion resolves an apparent conflict of authority.

**(f) Unpublished Opinions of Court of Appeals.** An opinion of the Court of Appeals opinion not designated for official publication must contain the following notation shall bear, on the title page; the legend, “NOT PUBLISHED PURSUANT TO C.A.R. 35(ef).”

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

**(ge) Effect of Denial of Writ of Certiorari.** The supreme court’s Denial of a writ of certiorari by the Supreme Court shall does not constitute not necessarily be taken as

approval of ~~any opinion of the~~ lower court~~Court of Appeals~~ judgment.

(hf) References to Minors and Sexual Assault Victims. Opinions and orders issued by the appellate courts will refer to sexual assault victims and minors in a manner consistent with C.A.R. 32(f).

## COMMENTS

### 2016

[1] Prior subsections (c), entitled, “Affirmation;” (d), entitled, “Reversal;” and (e), entitled, “Disposition of Cause;” were deleted to reflect current appellate practice, for readability, and because portions of these prior subsections addressed functions of the trial court rather than functions of an appellate court. The relevant substance of those prior subsections, however, has been relocated to new subsections (a), entitled “Disposition of Appeal;” (b) entitled “Equally Divided Supreme Court;” and (c), entitled “Harmless Error.”

[2] Because prior subsections (c), (d), and (e) were deleted, prior subsection (f), entitled, “Published Opinions of the Court of Appeals,” has been re-lettered to subsection (e). For readability and organization, the contents of prior subsection (f) have been divided into new subsections (e); (f), entitled, “Unpublished Opinions of the Court of Appeals;” and (g) entitled, “Effect of Denial of Writ of Certiorari.”

[3] New subsection (h) is consistent with C.A.R. 32(f) and 34, and is based on the legislative requirements set forth in Colo. Rev. Stat. §§ 19-1-102(1.7), 19-1-109(1), and 24-72-304(4)(a), and is consistent with longstanding court practice.

## Rule 40. Petition for Rehearing

(a) Time ~~to for~~ Fileing; Contents; Answer; Oral Argument; Action by Court if Granted.

(1) Time. ~~Unless the time is shortened or extended by order, A~~ petition for rehearing may be filed within 14 days after entry of judgment ~~unless the time is shortened or enlarged by order.~~

(2) Contents. The petition ~~must~~shall state with particularity ~~the each~~ points of law or fact ~~which in the opinion of~~ the petitioner believes the court has overlooked or misapprehended and ~~shall~~must include an argument ~~contain such argument~~ in support of the petition ~~as the petitioner desires to present. Oral argument in support of the petition will not be permitted.~~

(3) Answer. ~~Unless the court requests a response, n~~ No answer to a petition for rehearing ~~will be received unless requested by the court~~ is permitted.

(4) Oral Argument. ~~Oral argument is not permitted on a petitions for rehearing.~~

(5) Action by the Court. If a petition for rehearing is granted, the court may:

(A) ~~may~~ make a final disposition of the ~~cause~~ case without reargument;

(B) ~~, or may~~ restore ~~it~~ the case to the calendar for reargument or resubmission; or

(C) ~~issue any other order it deems appropriate~~ make such other orders as are deemed appropriate under the circumstances of the particular case.

(b) Form of Petition; Length. The petition ~~shall~~must comply in form with C.A.R. 32. The petition must include the following in the caption:

(1) If filed in the supreme court: the name of the author justice; the name of any justice who wrote or participated in a separate opinion; the name of any justice who did not participate in the case; whether the decision was en banc; and, if a departmental decision, the names of the participating justices.

(2) If filed in the court of appeals: the names of the author judge and participating judges, and the name of any judge who wrote or participated in a separate opinion.

~~, and shall include on the front cover there shall be the number and title of the case, the court from which the appeal was taken, the name of the trial judge, the name of the justice or judge who wrote the opinion, and, if in the Supreme Court, shall state whether the decision was en banc; and, if a departmental decision of the Supreme Court, or of a division of the Court of Appeals, the names of the justices or judges participating. Copies of the petition shall be served and filed as prescribed by C.A.R. 31 for the service and filing of briefs. Except by permission of court, a petition for rehearing shall must not exceed 1,900 words, excluding material not counted under C.A.R. 28(g)(1). ~~six pages, unless it contains no more than 1,900 words.~~~~

(c) **Petition for Rehearing in Supreme Court Proceedings.** A pPetitions for rehearing filed in proceedings before the supreme court must comply with their requirements of subsections (a) and (b) of this rule.

(1) **In Direct Appeals.** A petition for rehearing may be filed in a direct appeal to the supreme court only after issuance of an opinion. No petition for rehearing may be filed after issuance of an order affirming a lower court order.

(2) **In Proceedings Under C.A.R. Rule 21.** A petition for rehearing may be filed after issuance of an opinion discharging a rule to show cause or making a rule absolute. No petition for rehearing may be filed after denial of a petition without explanation.

(3) **In Certiorari Proceedings.** A petition for rehearing may be filed after issuance of an opinion on the merits of a granted petition for writ of certiorari, or when, after granting a writ of certiorari, the court later denies the writ as having been improvidently granted. No petition for rehearing may be filed after issuance of an order denying a petition for writ of certiorari.

(4) **In Interlocutory Appeals in Criminal Cases under C.A.R. 4.1.** No petition for rehearing shall be permitted in interlocutory appeals filed pursuant to C.A.R. 4.1(g).

## COMMENT

### 2016

Subsection (c), entitled “Petition for Rehearing in Supreme Court Proceedings” is new. It explains when a petition for rehearing may be filed, see also C.A.R. 21(n) and 54(b); reiterates that a petition for rehearing shall not be permitted in interlocutory appeals in

criminal cases, see C.A.R. 4.1((g); and clarifies that a petition for rehearing may not be filed after issuance of an order without explanation.

### **Rule 41. Issuance of Mandate**

**(a) Form Contents.** The clerk of the court will issue the mandate with a Unless the court directs that a formal mandate issue, the mandate consists of Aa certified copy of the appellate court judgment, and a copy of the court's opinion of the court, if any, and any direction concerning as to costs and fees shall constitute the mandate, unless the court directs that a formal mandate issue.

**(b) When Issued.** Unless the court grants or removes a stay, or otherwise changes the time by order, the mandate will issue as follows:

**(1) In the Court of Appeals.** Except as provided in subsections (A) and (B), the court of appeals mandate will issue no earlier than 42 days after entry of the judgment.

(A) If the court extends the time to file a petition for rehearing but no petition is filed within the extended period, the mandate will issue following the last day of the extended period for filing the petition for rehearing or after the day specified by this rule, whichever occurs later. The mandate will issue no earlier than 28 days after the court denies the petition for rehearing.

(B) In workers' compensation and unemployment insurance cases, the mandate will issue no earlier than 28 days after entry of the judgment, or 14 days after the court denies a timely petition for rehearing, whichever occurs later.

**(2) In the Supreme Court.** The supreme court mandate will issue no earlier than 14 days after entry of the judgment. If a petition for rehearing is denied, or if the court extends the time to file a petition for rehearing but no petition is filed within the extended period, the mandate will issue no earlier than 2 days after entry of the order denying the petition or the extended deadline for filing a petition. The supreme court must issue the mandate immediately when a copy of a United States Supreme Court order denying a petition for writ of certiorari is filed.

**(cb) Staying the Mandate.**

**(1) On Petition for Rehearing or Motion.** The timely filing of a petition for rehearing or motion for stay of mandate stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

**(2) Pending Petition for Writ of Certiorari in the Colorado Supreme Court.** The timely filing of a petition for writ of certiorari pursuant to C.A.R. 52 stays the court of appeals mandate until disposition of the petition.

**(3) Pending Petition for Writ of Certiorari in the United States Supreme Court.**

(A) A party may move to stay the appellate ~~supreme court~~ mandate pending the filing of a petition for a writ of certiorari in the United States Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.

(B) The court, or a judge or justice thereof, may stay issuance of the mandate until the petition for writ of certiorari is filed, or if review is timely sought, until the petition is ruled on, or, if review is granted, until final disposition of the case by the United States Supreme Court. A stay pending the filing of a petition for writ of certiorari must not exceed 90 days, unless the period is extended for good cause or unless the party who obtained the stay files a petition for the writ and so notifies the clerk of the appellate court, in writing, within the period of the stay, in which case the stay continues until disposition of the petition-.

(C) The court may require a bond or other security as a condition of granting or continuing a stay of the mandate.

~~**(bc) Time When Issued.** Unless the court grants or removes a stay, or otherwise changes the time by order, the mandate shall will issue as follows:~~

~~**(1) In the Court of Appeals.** Except as provided in subsections (A) and (B), the court of appeals mandate of the court of appeals shall will issue no earlier than 432 days after entry of the judgment.~~

~~(A) In workers' compensation and unemployment insurance cases, the mandate of the court of appeals shall issue thirty one days after entry of the judgment. The timely filing of a petition for rehearing will stay the mandate until the court has ruled on the petition. If the court extends the a motion for enlargement of time to file a petition for rehearing is granted but no petition for rehearing is filed within the extended period, the mandate may will issue following the last day of the extended period for filing the petition for rehearing or after the day specified by this rule, whichever occurs later.~~

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~~(2) If a petition for rehearing is denied, the mandate shall will issue no earlier than 298 days after the court denies after entry of the order denying the petition for rehearing.~~

~~(B) In workers' compensation and unemployment insurance cases, the mandate will issue no earlier than 28 days after entry of the judgment, or In workers' compensation and unemployment insurance cases, the mandate of the court of appeals shall issue 145 days after the court entry of the order denies denying a timely petition for rehearing, whichever occurs later.~~

~~(32) **In the Supreme Court.** The supreme court mandate of the supreme court shall will issue no earlier than 14 days after the entry of judgment. The timely filing of a petition for rehearing will stay the mandate until the court has ruled on the petition. If the a petition for rehearing is denied, or if the court extends the time to file a petition for rehearing but no petition is filed within the extended period, the mandate will shall issue 2two days after entry of the order denying the petition or the extended deadline for filing a petition. The supreme court must issue the mandate immediately when a copy of a United States Supreme Court order denying a petition for writ of certiorari is filed.~~

~~**(d) Effective Date.** The mandate is effective when issued.~~

~~**(e) Recall of Mandate.** The court of appeals may recall its mandate, and the supreme court may recall any appellate mandate as it deems appropriate. Upon recall of a mandate, re-issuance of the mandate may be stayed pursuant to subsection (c) of this rule.~~

## **COMMITTEE COMMENTS**

### **2001**

**[1]** The purpose of this amendment is to clarify that the Court of Appeals can extend the stay of the issuance of the mandate when an extension of time to file a petition for rehearing is timely filed. The rule change addresses the specific problem that arises when, after an extension has been granted, no petition for rehearing is filed. Practitioners had been concerned that, without having filed a petition for rehearing, any petition for certiorari filed beyond the time specified in the rule for stay of the issuance of the mandate would be untimely.

## 2016

[2] The ~~changes~~ amendments to this Rule are mainly structural, not substantive, and were made to provide better organization. They were modeled, in part, on F.R.A.P. 41. The title of the Rule changed to “Mandate,” because the revisions created a more comprehensive rule. The Rule now contains separate subsections explaining when a mandate issues (subsection (b)); ~~The changes include creating separate subsections setting forth when a~~ mandate may be stayed (~~issuance of a mandate may be stayed~~ (subsection (b)), ~~when a~~ ~~mandate issues~~ (subsection (c)); when a mandate becomes effective (subsection (d)); and ~~an~~ when an appellate court may recall a mandate ~~appellate court’s discretion to recall a~~ ~~mandate~~ (subsection (e)).

[3] Rule 41.1 has been deleted, and its substance has been relocated to new subsections (bc) and (e) of Rule 41.

### ~~RULE 41.1. STAY OR RECALL OF MANDATE~~

~~The Supreme Court, the Court of Appeals, or a justice or judge thereof may upon just terms stay the issuance of, or recall, any mandate of the Court of Appeals until the time for seeking review by the Supreme Court expires, or if review is timely sought until it is granted or refused, or if review is granted until final disposition of the case by the Supreme Court. The stay may apply to any judgment entered or standing affirmed in any court pursuant to the mandate of the Court of Appeals. In cases in which review by the Supreme Court of the United States may be sought, the court whose decision is sought to be reviewed or a justice or judge thereof, and in any event the Supreme Court of Colorado, or a justice thereof, may stay or recall the mandate, as may be appropriate.~~

### **Rule 42. Voluntary Dismissal**

~~(a) [Deleted].~~

~~(b) Dismissal in the Appellate Court. The appellate court must dismiss an appeal or other~~

~~appellate proceeding i~~ If the parties ~~to an the appeal or other proceeding sign and file with the clerk of the appellate court a~~ signed dismissal agreement ~~with the clerk that the proceeding be dismissed,~~ specifying how the terms as to payment of costs will be paid, and pay ~~whatever~~ any fees that are due. ~~;~~ ~~the clerk shall dismiss the appeal, bb~~ But no mandate or other process shall issue without an court order of the court. The appellate court may ~~An appellate proceedingl may be~~ dismiss an appeal or other appellate proceedinge on motion of the appellant's or petitioner's motion upon ~~such~~ terms ~~as may be~~ agreed upon by the parties or fixed by the court. No mandate or other process may issue without a court order.

## ~~Editors' Notes~~

### ~~COMMENT~~

~~Rule 42(a) is no longer necessary.~~

Amended and Adopted by the Court, En Banc, April 7, 2016, effective immediately.

By the Court:

Allison H. Eid  
Justice, Colorado Supreme Court



Rule Change 2016(05)

**COLORADO APPELLATE RULES**

**Rules 35, 40, 41, 41.1 and 42**

**Rule 35. Determination of Appeal**

**(a) Disposition of Appeal.** The appellate court may, in whole or in part, dismiss an appeal; affirm, vacate, modify, reverse, or set aside a lower court judgment; and remand any portion of the case to the lower court for further proceedings. When reviewing a ruling or judgment dismissing criminal charges, the appellate court may approve or disapprove of the judgment if retrial of the defendant is prohibited. The appellate court may dismiss an appeal or affirm a lower court judgment without opinion, but it must issue a written opinion when vacating, modifying, reversing, setting aside, or remanding any portion of the lower court judgment.

**(b) Equally Divided Supreme Court.** When the supreme court acting en banc is equally divided in an opinion, the judgment being appealed will stand affirmed.

**(c) Harmless Error.** The appellate court may disregard any error or defect not affecting the substantial rights of the parties.

**(d) Advancement on Docket.** Any pending action may be advanced on the docket and may be disposed of in such order as the court deems appropriate. The court may make such orders relating to the time and necessity for the filing of briefs and for oral argument as it deems the circumstances demand.

**(e) Published Opinions of Court of Appeals.** A majority of all of the judges of the court of appeals shall determine which opinions of that court will be designated for official publication. The opinions shall be published in the official publication designated by the supreme court. Opinions designated for official publication must be followed as precedent by all lower court judges in the state of Colorado. No court of appeals opinion shall be designated for official publication unless it satisfies one or more of the following standards:

(1) the opinion establishes a new rule of law, or alters or modifies an existing rule, or applies an established rule to a novel fact situation;

(2) the opinion involves a legal issue of continuing public interest;

(3) the majority opinion, dissent, or special concurrence directs attention to the

shortcomings of existing common law or inadequacies in statutes; or

(4) the opinion resolves an apparent conflict of authority.

**(f) Unpublished Opinions of Court of Appeals.** A court of appeals opinion not designated for official publication must contain the following notation on the title page: “NOT PUBLISHED PURSUANT TO C.A.R. 35(e).” If the supreme court grants certiorari to a court of appeals opinion not designated for official publication, and if the supreme court announces an opinion in the case, the court of appeals’ opinion will not be published unless otherwise ordered by the supreme court.

**(g) Effect of Denial of Writ of Certiorari.** The supreme court’s denial of a writ of certiorari does not constitute approval of the lower court judgment.

**(h) References to Minors and Sexual Assault Victims.** Opinions and orders issued by the appellate courts will refer to sexual assault victims and minors in a manner consistent with C.A.R. 32(f).

## COMMENTS

### 2016

[1] Prior subsections (c), entitled, “Affirmation;” (d), entitled, “Reversal;” and (e), entitled, “Disposition of Cause;” were deleted to reflect current appellate practice, for readability, and because portions of these prior subsections addressed functions of the trial court rather than functions of an appellate court. The relevant substance of those prior subsections, however, has been relocated to new subsections (a), entitled “Disposition of Appeal;” (b) entitled “Equally Divided Supreme Court;” and (c), entitled “Harmless Error.”

[2] Because prior subsections (c), (d), and (e) were deleted, prior subsection (f), entitled, “Published Opinions of the Court of Appeals,” has been re-lettered to subsection (e). For readability and organization, the contents of prior subsection (f) have been divided into new subsections (e); (f), entitled, “Unpublished Opinions of the Court of Appeals;” and (g) entitled, “Effect of Denial of Writ of Certiorari.”

[3] New subsection (h) is consistent with C.A.R. 32(f) and 34, and is based on the legislative requirements set forth in Colo. Rev. Stat. §§ 19-1-102(1.7), 19-1-109(1), and 24-72-304(4)(a), and is consistent with longstanding court practice.

## Rule 40. Petition for Rehearing

### (a) Time to File; Contents; Answer; Oral Argument; Action by Court if Granted.

(1) **Time.** Unless the time is shortened or extended by order, a petition for rehearing may be filed within 14 days after entry of judgment.

(2) **Contents.** The petition must state with particularity each point of law or fact the petitioner believes the court has overlooked or misapprehended and must include an argument in support of the petition.

(3) **Answer.** Unless the court requests a response, no answer to a petition for rehearing is permitted.

(4) **Oral Argument.** Oral argument is not permitted on a petition for rehearing.

(5) **Action by the Court.** If a petition for rehearing is granted, the court may:

(A) make a final disposition of the case without reargument;

(B) restore the case to the calendar for reargument or resubmission; or

(C) issue any other order it deems appropriate.

(b) **Form of Petition; Length.** The petition must comply in form with C.A.R. 32. The petition must include the following in the caption:

(1) If filed in the supreme court: the name of the author justice; the name of any justice who wrote or participated in a separate opinion; the name of any justice who did not participate in the case; whether the decision was en banc; and, if a departmental decision, the names of the participating justices.

(2) If filed in the court of appeals: the names of the author judge and participating judges, and the name of any judge who wrote or participated in a separate opinion.

Except by permission of court, a petition for rehearing must not exceed 1,900 words, excluding material not counted under C.A.R. 28(g)(1).

**(c) Petition for Rehearing in Supreme Court Proceedings.** A petition for rehearing filed in proceedings before the supreme court must comply with the requirements of subsections (a) and (b) of this rule.

**(1) In Direct Appeals.** A petition for rehearing may be filed in a direct appeal to the supreme court only after issuance of an opinion. No petition for rehearing may be filed after issuance of an order affirming a lower court order.

**(2) In Proceedings Under C.A.R. 21.** A petition for rehearing may be filed after issuance of an opinion discharging a rule to show cause or making a rule absolute. No petition for rehearing may be filed after denial of a petition without explanation.

**(3) In Certiorari Proceedings.** A petition for rehearing may be filed after issuance of an opinion on the merits of a granted petition for writ of certiorari, or when, after granting a writ of certiorari, the court later denies the writ as having been improvidently granted. No petition for rehearing may be filed after issuance of an order denying a petition for writ of certiorari.

**(4) In Interlocutory Appeals in Criminal Cases under C.A.R. 4.1.** No petition for rehearing shall be permitted in interlocutory appeals filed pursuant to C.A.R. 4.1.

## COMMENT

### 2016

Subsection (c), entitled “Petition for Rehearing in Supreme Court Proceedings” is new. It explains when a petition for rehearing may be filed, see also C.A.R. 21(n) and 54(b); reiterates that a petition for rehearing shall not be permitted in interlocutory appeals in criminal cases, see C.A.R. 4.1((g); and clarifies that a petition for rehearing may not be filed after issuance of an order without explanation.

## Rule 41. Mandate

**(a) Contents.** The clerk of the court will issue the mandate with a copy of the appellate court judgment.

**(b) When Issued.** Unless the court grants or removes a stay, or otherwise changes the time by order, the mandate will issue as follows:

**(1) In the Court of Appeals.** Except as provided in subsections (A) and (B), the court of appeals mandate will issue no earlier than 42 days after entry of the judgment.

(A) If the court extends the time to file a petition for rehearing but no petition is filed within the extended period, the mandate will issue following the last day of the extended period for filing the petition for rehearing or after the day specified by this rule, whichever occurs later. The mandate will issue no earlier than 28 days after the court denies the petition for rehearing.

(B) In workers' compensation and unemployment insurance cases, the mandate will issue no earlier than 28 days after entry of the judgment, or 14 days after the court denies a timely petition for rehearing, whichever occurs later.

**(2) In the Supreme Court.** The supreme court mandate will issue no earlier than 14 days after entry of the judgment. If a petition for rehearing is denied, or if the court extends the time to file a petition for rehearing but no petition is filed within the extended period, the mandate will issue no earlier than 2 days after entry of the order denying the petition or the extended deadline for filing a petition. The supreme court must issue the mandate immediately when a copy of a United States Supreme Court order denying a petition for writ of certiorari is filed.

**(c) Staying the Mandate.**

**(1) On Petition for Rehearing or Motion.** The timely filing of a petition for rehearing or motion for stay of mandate stays the mandate until disposition of the petition or motion, unless the court orders otherwise.

**(2) Pending Petition for Writ of Certiorari in the Colorado Supreme Court.** The timely filing of a petition for writ of certiorari pursuant to C.A.R. 52 stays the court of appeals mandate until disposition of the petition.

**(3) Pending Petition for Writ of Certiorari in the United States Supreme Court.**

(A) A party may move to stay the appellate mandate pending the filing of a petition for a writ of certiorari in the United States Supreme Court. The motion must be served on all parties and must show that the certiorari petition would present a substantial question and that there is good cause for a stay.

(B) The court, or a judge or justice thereof, may stay issuance of the mandate until the petition for writ of certiorari is filed, or if review is timely sought, until the petition is ruled on, or, if review is granted, until final disposition of the case by the United States Supreme Court. A stay pending the filing of a petition for writ of certiorari must not exceed 90 days, unless the period is extended for good cause or

unless the party who obtained the stay files a petition for the writ and so notifies the clerk of the appellate court, in writing, within the period of the stay, in which case the stay continues until disposition of the petition.

(C) The court may require a bond or other security as a condition of granting or continuing a stay of the mandate.

**(d) Effective Date.** The mandate is effective when issued.

**(e) Recall of Mandate.** The court of appeals may recall its mandate, and the supreme court may recall any appellate mandate as it deems appropriate. Upon recall of a mandate, re-issuance of the mandate may be stayed pursuant to subsection (c) of this rule.

## COMMENTS

### 2001

[1] The purpose of this amendment is to clarify that the Court of Appeals can extend the stay of the issuance of the mandate when an extension of time to file a petition for rehearing is timely filed. The rule change addresses the specific problem that arises when, after an extension has been granted, no petition for rehearing is filed. Practitioners had been concerned that, without having filed a petition for rehearing, any petition for certiorari filed beyond the time specified in the rule for stay of the issuance of the mandate would be untimely.

### 2016

[2] The amendments to this Rule are mainly structural, not substantive, and were made to provide better organization. They were modeled, in part, on F.R.A.P. 41. The title of the Rule changed to “Mandate,” because the revisions created a more comprehensive rule. The Rule now contains separate subsections explaining when a mandate issues (subsection (b)); when a mandate may be stayed (subsection (c)); when a mandate becomes effective (subsection (d)); and when an appellate court may recall a mandate (subsection (e)).

[3] Rule 41.1 has been deleted, and its substance has been relocated to new subsections (c) and (e) of Rule 41.

41.1 [DELETED]

## **Rule 42. Voluntary Dismissal**

The appellate court must dismiss an appeal or other appellate proceeding if the parties file a signed dismissal agreement specifying how costs will be paid and pay any fees that are due. The appellate court may dismiss an appeal or other appellate proceeding on the appellant's or petitioner's motion on terms agreed upon by the parties or fixed by the court. No mandate or other process may issue without a court order.

Amended and Adopted by the Court, En Banc, April 7, 2016, effective immediately.

By the Court:

Allison H. Eid  
Justice, Colorado Supreme Court