

**COLORADO APPELLATE RULES**

**RULE 39.15. Attorney Fees on Appeal**

If attorney fees are recoverable for the appeal, the principal brief of the party claiming attorney fees must include a specific request, and explain the legal and factual basis, for an award of attorney fees. Any opposition to a request for attorney fees, and the legal and factual basis for the opposition, must be set forth in either the answer or reply brief, as appropriate. In its discretion, the appellate court may determine entitlement to and the amount of an award of attorney fees for the appeal, or may remand those determinations to the lower court or tribunal.

~~If attorney fees are otherwise recoverable for the particular appeal, the party claiming attorney fees shall specifically request them, and state the legal basis therefor, in the party's principal brief in the appellate court. Any opposition to a request for attorney fees shall be set forth, as pertinent, in either the answer or reply brief. The appellate court may determine entitlement to and the amount of any attorney fees for the appeal. In its discretion, the appellate court may remand to the trial court or tribunal below the determination of entitlement to or the amount of any attorney fees.~~

## Rule 43. Substitution of Parties

### (a) Death of a Party.

(1) After Notice of Appeal is Filed. If a party dies ~~and a suggestion of death is filed~~ after a notice of appeal is filed or while a proceeding is otherwise pending in the appellate court, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or ~~by any party with the clerk of the appellate court.~~ A death certificate or other official proof of death must be filed with the motion. ~~The~~ A party's motion ~~of a party shall~~ must be served ~~upon~~ the representative in accordance with ~~the provisions of C.R.C.P. 25.~~ If the ~~deceased party~~ decendent has no representative, any party may suggest the death on the record, and the court may then direct appropriate proceedings. ~~shall then be had as the appellate court may direct.~~

(2) Before Notice of Appeal is Filed – Potential Appellant. ~~If a party against whom an appeal may be taken dies after entry of a judgment or order in the trial court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the appellate court in accordance with this section (a).~~ If a party entitled to appeal dies before filing a notice of appeal, the decendent's personal representative—~~or, if the decedent has no personal representative, the decedent's attorney of record~~—may file a notice of appeal ~~may be filed by his personal representative, or, if he has no personal representative, by his attorney of record~~ within the time prescribed by these rules. After the notice of appeal is filed, substitution ~~shall~~ must be ~~effected in the appellate court in~~ accordance with ~~this~~ section (a)(1) of this rule.

(3) Before Notice of Appeal is Filed – Potential Appellee. ~~If a party against whom an appeal may be taken dies after entry of a judgment or order in the underlying proceeding trial lower court, but before a notice of appeal is filed, an appellant may proceed as if the death had not occurred. After the notice of appeal is filed, substitution shall~~ must be ~~effected in the appellate court in~~ accordance with section (a)(1) of this rule.

**(b) Substitution for ~~Other Causes~~ Reasons Other Than Death.** If substitution of a party is required ~~substitution of a party in the appellate court is necessary~~ needs to be substituted for any reason other than death, the party seeking substitution must file a motion stating the grounds for substitution. ~~substitution shall be effected in accordance with the procedure prescribed in section (a)~~ applies.

(c) Public Officers; Identification; Substitution~~Death or Separation from Office.~~

(1) Identification of Party. A public officer who is a party to an appeal or other proceeding in an official capacity may be described as a party by the public officer's official title rather than by name; but the court may require the public officer's name to be added.

(2) Automatic Substitution of Officeholder. When a public officer who is a party to an appeal or other proceedings ~~in the appellate court~~ in ~~his~~an official capacity ~~and during its pendency~~ dies, resigns, or otherwise ceases to hold office, the action does not abate. ~~The public officer's and his~~ successor is automatically substituted as a party. Proceedings following the substitution ~~shall~~must be in the name of the substituted party, but any misnomer that does not affecting the substantial rights of the parties ~~shall~~may be disregarded. The court may enter ~~An~~ order of substitution ~~may be entered~~ at any time, but ~~failure the omission~~ to enter ~~such~~ an order ~~does~~shall not affect the substitution. ~~When a public officer is a party to an appeal or other proceeding in his official capacity he may be described as a party by his official title rather than by name; but the court may require his name to be added.~~

**Rule 44. Cases Involving a Constitutional Questions  
When re the State of Colorado is Not a Party**

~~(a) **Constitutional Challenge to Statute.** If a party questions~~ In a review involving the constitutionality of any Colorado statute in an appellate proceeding in which neither the state, ~~its nor any state~~ agency, ~~nor any officer, or employee representative thereof~~ is not a party in an official capacity, the ~~questioning party raising such question shall~~ must notify the clerk of the supreme court in writing ~~give immediate notice in writing to the Supreme Court immediately upon the filing of the proceeding or as soon as the question is raised in the appellate court~~ of the existence of the question. The clerk ~~must shall~~ thereupon then certify ~~that such~~ fact to the ~~a~~ Attorney ~~g~~ General.

~~(b) In a review involving the validity, interpretation or application of any section of the Public Utilities Law of the State of Colorado or of any rule or regulation or order or of any certificate or permit issued by the Public Utilities Commission of the State of Colorado in which the Public Utilities Commission is not a party, the party raising such question shall give immediate notice in writing to the appellate court of the existence of the question. The clerk of such appellate court shall thereupon certify such fact to the Secretary of the Public Utilities Commission of the State of Colorado.~~

~~(c) In a review involving a municipally owned utility wherein it appears that the decision of the appellate court may impact upon the powers and duties of the Public Utilities Commission of the State of Colorado or upon the interpretation of the Public Utilities Law of the State of Colorado, the clerk of the appellate court shall notify the Secretary of the Public Utilities Commission of the State of Colorado of the pendency of such litigation and invite the Public Utilities Commission to intervene or to enter an appearance as amicus curiae.~~

**COMMENT**

**2016**

The substance of prior subsections (b) and (c) has been relocated to C.A.R. 44.1.

**Rule 44.1. Cases Involving Public Utilities Laws  
or the Public Utilities Commission When the  
Commission is Not a Party**

**(a) Challenge to Public Utilities Law or Act of Public Utilities Commission.** If a party questions the validity, interpretation, or application of any section of the Public Utilities Law of the State of Colorado or of any rule, regulation, order, certificate, or permit issued by the Public Utilities Commission in a proceeding in which the Commission is not a party, the questioning party must notify the clerk of the appellate court in writing immediately upon the filing of the proceeding or as soon as the question is raised in the appellate court. The clerk must then certify that fact to the Secretary of the Public Utilities Commission.

**(b) Other Proceedings Impacting the Public Utilities Commission.** In an appellate proceeding involving a municipally owned utility in which the court's decision may impact the powers and duties of the Public Utilities Commission or the interpretation of the Public Utilities Law of the State of Colorado, the clerk of the appellate court must notify the Secretary of the Public Utilities Commission of the pendency of the proceeding and invite the Commission to intervene or to enter an appearance as amicus curiae.

**COMMENT**

**2016**

This new rule contains the substance of prior C.A.R. 44(b) and (c), pertaining to cases involving Public Utilities Law or proceedings impacting the Public Utilities Commission when the Commission is not a party.

## Rule 45. Duties of Clerk of Appellate Court clerk

### (a) General Provisions.

**(1) Qualifications.** The clerk of the appellate court ~~shall~~ must take any oath ~~and give the post any bond~~ required by law. Neither the clerk nor any deputy clerk ~~shall~~ may practice as an attorney or ~~as~~ counselor in any court while in office.

**(2) When Court is Open.** The appellate courts ~~are~~ shall be deemed always ~~open~~ open for the purpose of filing any ~~proper paper~~ document, of issuing and returning process, ~~and of making a motions,~~ and entering an orders. The ~~office of the clerk's office;~~ with the clerk or a deputy in attendance ~~,~~ shall must be open during business hours on all days except Saturdays, Sundays, and legal holidays, as defined in C.A.R. 26(a), but the chief justice may ~~provide by~~ order that the clerk's office be for the opening or closing of the appellate court ~~clerk's office~~ during specified hours on other days.

### (b) Records.

**(1) The Docket; Calendar; Other Records Required.** The clerk ~~shall in each~~ must ~~ease~~ maintain a docket and an index of all docketed cases in ~~such the form and style~~ manner as may be prescribed by the appellate court. The clerk must record all papers documents filed with the clerk and all process, orders, and judgments. ~~Cases shall be assigned consecutive file numbers. The file number of each case shall be noted on the page of the docket whereon the first entry is made. All papers filed with the clerk and all process, orders, and judgments shall be entered chronologically in the docket on the page assigned to the case. Entries shall be brief but shall show the nature of each paper filed or judgment or order entered. The entry of an order or judgment shall show the date the entry is made. The clerk shall keep a suitable index of cases contained in the docket.~~

**(2) Calendar.** Under the court's direction, ~~T~~the clerk ~~shall~~ must prepare, ~~under the direction of the chief justice or chief judge~~ a calendar of cases awaiting argument. In placing cases on the calendar for argument, the clerk ~~shall~~ must give preference to appeals and other proceedings entitled to preference by law.

**(3) Other Records.** The clerk ~~shall~~must keep ~~such other books and~~ records as ~~may be~~ required ~~from time to time~~ by the court.

**(c) Service ~~Notice of an Order~~ss and ~~and~~ Judgmentss.** ~~The clerk must serve all orders and judgments on each party and Upon the entry of an order or judgment, tThe clerk shall must serve a notice of entry on orders and judgments upon each party, with a copy of any written order or opinion, and shall must make a note~~ the date of service in on the docket ~~of the service~~. Service on a party represented by counsel ~~shall~~must be made on counsel.

**(d) Custody of Records and ~~Papers~~Documents.** The clerk ~~shall~~has~~ve~~ custody of the ~~court's~~ records and ~~papers~~documents of the court. ~~Unless the court orders or instructs otherwise, the clerk must not permit an o~~Original records or ~~papers~~document to~~may not~~ be taken from the clerk's custody ~~except as authorized by the orders or instructions of the court. Upon disposition of the case, the clerk must return o~~Original papers documents containing transmitted as the record on appeal or review ~~shall must upon disposition of the case be returned~~ to the court or agency from which they were received. The clerk ~~shall~~must preserve a copy~~ies~~ of any briefs, appendix, or other ~~and other printed papers~~document that has been filed.

Amended and Adopted by the Court, En Banc, \_\_\_\_\_, 2016, effective immediately.

By the Court:

Allison H. Eid  
Justice, Colorado Supreme Court