

THE COLORADO APPELLATE RULES

**Proposed Changes to Rules 3.3, 3.4, 4.1, 5,
12, 21, 29, 32, 40, and 41, and JDF 1996**

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, [C.A.R. 27\(a\)](#), and ~~C.R.S.~~ § 13-20-901, [C.R.S.](#)

Rule 3.4. Appeals From Proceedings in Dependency or Neglect

(a) – (f) [NO CHANGE]

(g) Answer Brief on Appeal.

(1) – (6) [NO CHANGE]

(7) In cases involving more than one appellee, the court encourages coordination among appellees to avoid repetition within the answer briefs. A joint answer brief may, but is not required to, be filed by appellees. [Such a joint brief must contain no more than 9,500 words.](#)

(h) – (o) [NO CHANGE]

Rule 4.1. Interlocutory Appeals in Criminal Cases

(a) - (g) [NO CHANGE]

(h) Disposition by Court. The supreme court will issue its decision by written opinion or order disposing of the interlocutory appeal. The supreme court clerk will serve the opinion or order on the district court judge and the parties. Petitions for rehearing are not permitted. Orders issued without an opinion will not be designated for official publication by the court and will remain unpublished. Unpublished orders may not be cited as precedent.

(i) [NO CHANGE]

Rule 5. Entry of Appearance and Withdrawal

(a) - (d) [NO CHANGE]

(e) ~~Limited Representation Entry of Appearance and Withdrawal.~~ Legal Services. An attorney may ~~undertake to provide limited representation~~ legal services to a ~~pro se~~ self-represented party involved in a civil appellate proceeding. ~~Upon the request and with the consent of a pro se party,~~ an in accordance with Colo. R.P.C. 1.2(c) and the following provisions.

(1) Limited Legal Services Requiring Entry of Appearance and Withdrawal. An attorney may make a limited appearance for ~~the pro se party to file a notice of appeal and designation of transcripts in the court of appeals or the supreme court, to file or oppose a petition or cross petition for a writ of certiorari~~ a self-represented party in the supreme court, to respond to an order to show cause issued by the supreme court or the court of appeals, or to participate in one or more specified motion proceedings in either court, a civil appellate proceeding if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the part(s) of the proceeding(s) for which the attorney appears. At the conclusion of such part(s) of the proceeding(s), the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance ~~in the appellate court in which the attorney appeared, a copy of which may be filed in any other court, except that an attorney filing a notice of appeal or petition or cross petition for writ of certiorari is obligated, absent leave of court, to respond to any issues regarding the appellate court's jurisdiction.~~ Service on an attorney who makes a limited appearance for a party ~~shall~~ will be valid only in connection with the specific part(s) of the proceedings(s) for which the attorney appears. ~~The provisions of this C.A.R. 5(e) shall not apply to an attorney who has filed an opening or answer brief pursuant to C.A.R. 31~~

(2) Limited Legal Services Requiring Disclosure of Attorney Assistance without Entry of Appearance. An attorney may provide drafting assistance to a self-represented party involved in a civil appellate proceeding without filing a notice of limited appearance. Documents filed by the self-represented party that were prepared with the drafting assistance of the attorney must include the attorney's name, address, telephone number, e-mail address, and registration number. The attorney must provide a signed attorney disclosure certification to the self-represented party for the self-represented party to file with the court as an attachment to the document(s). The certification must indicate whether the attorney provided drafting assistance for the entire document or for specific sections only, and if for specific sections, indicate which sections. The certification also must contain the following statement: "In helping to draft the document filed by the self-represented party, the attorney certifies that, to the best of the attorney's knowledge, information, and belief, this document, or specified section(s), is (A) well-grounded in fact based upon a reasonable inquiry of the self-represented party by the attorney, (B) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (C) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." The attorney in providing such drafting assistance may rely on the self-represented party's representation of facts, unless the attorney has reason to believe that such representations

are false or materially insufficient, in which instance the attorney must make an independent reasonable inquiry into the facts. The attorney's violation of this subsection (e)(2) may subject the attorney to sanctions provided by C.A.R. 38. Providing limited legal services to a self-represented party under this subsection (e)(2) does not constitute an entry of appearance by the attorney for purposes of this rule and does not authorize or require the service of papers upon the attorney.

(3) Limited Legal Services Not Requiring Entry of Appearance or Disclosure of Attorney Assistance. An attorney may provide the following forms of assistance to a self-represented party in a civil appellate proceeding without satisfying the requirements of subsections (e)(1) and (2) of this rule: (A) assistance in filling out pre-printed or electronically published forms that are issued by the judicial branch; (B) oral assistance or advice given to the self-represented party regarding the self-represented party's case; and (C) short-term legal assistance offered to a self-represented party on a pro bono basis, including but not limited to assistance through a nonprofit or court-sponsored program, that does not create an expectation by either the client or the lawyer that legal assistance will continue. Providing limited legal services to a self-represented party under this subsection (e)(3) does not authorize or require the service of papers upon the attorney.

(f) Termination of Representation. When an attorney has entered an appearance, other than a limited appearance pursuant to C.A.R. 5(e)(1), on behalf of a party in an appellate court without having previously represented that party in the matter in any other court, the attorney's representation of the party ~~shall~~will terminate at the conclusion of the part(s) of the proceedings in the appellate court in which the attorney has appeared, unless otherwise directed by the appellate court or agreed to by the attorney and the party represented. Counsel may file a notice of such termination of representation in any other court.

COMMENT

The purpose of C.A.R. 5(e)(1) is to establish a procedure similar to that set forth in C.R.C.P. ~~olorado Rule of Civil Procedure 121, s~~Section 1-1(5). ~~This procedure provides assurance that an attorney who makes a limited appearance for a pro se party in a specified appellate case proceeding(s), at the request of and with the consent of the pro se party, can withdraw from the case upon filing a notice of completion of the limited appearance, without leave of court.~~ The purpose of C.A.R. 5(e)(2) and (3) is to establish a procedure similar to that set forth in C.R.C.P. 11(b). ~~The purpose of C.A.R. 5(f) is to make clear that when an attorney appears for a party, whom he or she has not previously represented, in an appellate court and the proceedings in that court have concluded, the attorney is not obligated to represent the party in any other proceeding on remand or in any review of the appellate court's decision by any other court. Nothing in this provision would prevent the attorney from entering a limited or general appearance on behalf of the party in another court (for example, on a writ of certiorari to the supreme court), if agreed to by the attorney and the party.~~

Rule 12. Docketing the Proceeding and Fees; Proceedings in Forma Pauperis

(a) [NO CHANGE]

(b) Waiver of Filing Fees in Appellate Court Proceedings.

(1) *In the Supreme Court.*

(A) [NO CHANGE]

(B) Prior Approval. Notwithstanding the provisions of the preceding paragraph, the court ~~will~~may waive the filing fee for a party who has been permitted to proceed in forma pauperis in ~~an~~the underlying action in the trial court or the court of appeals or who has been permitted to proceed there as one who is financially unable to obtain an adequate defense in a criminal case. Any party proceeding under this subparagraph must attach a copy of the lower court's order granting leave to proceed in forma pauperis to the notice of appeal or initiating pleading.

(2) [NO CHANGE]

(c) [NO CHANGE]

Rule 21. ~~Procedure in~~ Original Proceedings in the Supreme Court

(a) In General ~~Original Jurisdiction Under the Constitution.~~

(1) Original Jurisdiction Under the Constitution. This rule applies only to the original jurisdiction of the supreme court to issue writs as provided in Section 3 of Article VI of the Colorado Constitution and to the exercise of the supreme court's general superintending authority over all courts as provided in Section 2 of Article VI of the Colorado Constitution.

(2) Extraordinary Nature and Availability of Relief. Relief under this rule is extraordinary in nature and is a matter wholly within the discretion of the supreme court. Such relief will be granted only when no other adequate remedy is available, including relief available by appeal ~~or~~ under C.R.C.P. 106.5, or under Crim. P. 35 ~~is available.~~

(23) Forms of Writs Subject to this Rule. ~~Petitions to the supreme court in the nature of~~ for writs of habeas corpus, mandamus, certiorari, habeas corpus, quo warranto, injunction, prohibition, and other forms of writs cognizable under the common law are subject to this rule. The petitioner need not designate a specific form of writ when seeking relief under this rule.

(b) ~~How Sought; Proposed Respondents~~ Initiating an Original Proceeding. ~~The p~~ Petitioner must file a petition for an order ~~rule~~ to show cause specifying the relief sought and ~~must request~~ ing the court to issue to one or more proposed respondents, as set forth in subsection (c)(1), an order ~~rule~~ to show cause why the relief requested should not be granted. ~~The proposed respondent(s) should be the real party (or parties) in interest.~~

(c) ~~Docketing of Petition and Fees; Form of Pleadings.~~ Upon the filing of a petition ~~for a~~ under this rule to show cause, the petitioner must pay to the clerk of the supreme court the docket fee of \$225.00 and must comply with C.A.R. 12. ~~All documents filed under this rule must comply with C.A.R. 32.~~

(d) ~~Content~~ Form, Caption, and Title of the Petition and Service.

(1) Form. Unless otherwise provided, the petition and all documents filed under this rule must comply with the requirements of C.A.R. 28(g) for opening briefs and C.A.R. 32.

(2) Caption and Title.

(A) If there is no underlying proceeding, the petition must be captioned, "In Re [Petitioner v. Proposed Respondent(s)]."

(B) If there is ~~exists~~ an underlying proceeding, the petition must use ~~be titled with~~ the full, exact, and unmodified caption given by the lower court or tribunal in the underlying proceeding, "In Re [Caption of Underlying Proceeding]." Only one case may be listed as the underlying proceeding in the caption. ~~If there is no underlying proceeding, the petition must be titled, "In Re [Petitioner v. Proposed Respondent]."~~

(C) The petition must be titled "Petition for Order to Show Cause Pursuant to C.A.R. 21."

(e2) Contents of the Petition. The petitioner has the burden of showing that the court should issue a rule to show cause. To enable the court to determine whether to issue an ~~rule~~ order to show cause ~~should be~~

issued, the petition must set forth ~~disclose~~ in sufficient detail the following:

- (1) ~~(A)~~ the identity of the petitioner and of the proposed respondent(s), together with, if applicable, their party status in the underlying proceeding (e.g., plaintiff, defendant, etc.). ;
The proposed respondent(s) must be the real party (or parties) in interest against whom relief is sought. When a petition seeks a writ of mandamus or prohibition directed to a court or tribunal, the proposed respondents must be the lower court or tribunal, if appropriate, and all parties to the underlying proceeding other than the petitioner;
- ~~(2B)~~ the identity of the court or other underlying tribunal, the case name and case number or other identification of the underlying proceeding, if any, and identification of any other related proceeding;
- ~~(C) the identity of the persons or entities against whom relief is sought;~~
- ~~(3D)~~ the ruling, action, or failure to act complained of and the relief being sought;
- ~~(4E)~~ the reasons why no other adequate remedy is available;
- ~~(5F)~~ the issues presented;
- ~~(6G)~~ the facts necessary to understand the issues presented;
- ~~(7H)~~ argument and points of authority explaining why the court should issue an order ~~rule~~ to show cause and grant the relief requested; ~~and~~
- ~~(8I)~~ a list of supporting documents, or an explanation of why supporting documents are not available; and;
- ~~(39) The petition must include~~ the names, addresses, telephone numbers, and e-mail addresses (if any); ~~and fax numbers (if any)~~ of all parties to the underlying proceeding; or, if a party is represented by counsel, the attorney's name, address, telephone number, and email address (if any); ~~and fax number (if any).~~
- ~~(f4) Service.~~ The petitioner must ~~be served~~ the petition up on ~~each~~ every party and proposed respondent and, ~~if applicable, upon~~ on the lower court or tribunal. All documents filed under this rule must be served in accordance with C.A.R. 25. If a case is filed through the court's E-System, E-Service on a party must be completed in the supreme court case; the supreme court will not accept service of documents made in the underlying proceeding or in the lower court.
- ~~(5) The petition must comply with the requirements of C.A.R. 28(g) for opening briefs and with C.A.R. 32.~~

~~(ge)~~ Supporting Documents.

(1) Proceedings initiated under this rule are not subject to C.A.R. 10.

(2) A petition must be accompanied by a separate, indexed ~~set~~ appendix of available supporting documents necessary for a complete understanding of the issues presented ~~adequate to permit review~~. The appendix must include an index or table of contents of the supporting documents with page numbers noting where the documents appear. If the supporting documents are unavailable, the petition must explain why they are unavailable, consistent with subsection (e)(8).

(3) In cases involving an underlying proceeding, the following documents must be included in the

appendix:

(A) the order or judgment from which relief is sought if applicable;

(B) documents and exhibits submitted in the underlying proceeding that are necessary for a complete understanding of the issues presented; and

(C) a transcript of the proceeding leading to the underlying order or judgment if available.

(43) The filing party is responsible for reviewing all supporting documents, including any attachments, exhibits, and appendices, to determine if the document contains information that should be excluded from public access pursuant to C.J.D. Chief Justice Directive 05-01 section 4.60. Any supporting document filed by a party that is not accessible to the public pursuant to C.J.D. Chief Justice Directive 05-01 section 4.60 must be accompanied by a motion to suppress or seal as prescribed in subsection (ge)(4). The filing party must certify compliance with this subsection as directed by C.A.R. 32(h).

(45) Any document submitted as sealed or suppressed pursuant to C.J.D. Chief Justice Directive 05-01 sections 3.07 and 3.08 must be filed as a separate supporting document and must be accompanied by a motion for leave to file the document as sealed or suppressed. The motion must:

(A) identify with particularity the specific document containing sensitive information;

(B) explain why the sensitive information cannot reasonably be redacted in lieu of filing the entire document as sealed or suppressed;

(C) articulate the substantial interest that justifies depriving the public of access to the document; and

(D) cite any applicable rule, statute, case law, or prior court order sealing or suppressing the document.

(6) Original proceedings involving the specific case types listed in Chief Justice Directive 05-01 section 4.60(b)(1)–(9) are not accessible to the public. Unless a party intends to seal the proceeding pursuant to subsection (g)(5), it is unnecessary to file a motion to suppress the proceeding.

~~(5) In cases involving an underlying proceeding, the following documents must be included:~~

~~(A) the order or judgment from which relief is sought if applicable;~~

~~(B) documents and exhibits submitted in the underlying proceeding that are necessary for a complete understanding of the issues presented; and~~

~~(C) a transcript of the proceeding leading to the underlying order or judgment if available.~~

(h) Stay; Jurisdiction.

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

(2) Upon Issuance of an Order to Show Cause. Issuance of an order-rule to show cause by the supreme court automatically stays all underlying proceedings until final determination of the original proceeding in the supreme court unless the court, acting on its own, or upon motion, lifts the stay in whole or in part.

(ig) No Initial Responsive Pleading to Petition Allowed. Unless requested by the supreme court, no responsive pleading to the petition may be filed prior to the court's determination of whether to issue an order-rule to show cause.

(jh) ~~Denial; Rule to Show Cause.~~ Ruling on the Petition.

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

(2) Issuance of an Order to Show Cause. The court may issue an order to show cause. The clerk will serve the ~~rule to show cause~~order on all persons ordered or invited by the court to respond and, ~~if applicable,~~ on the lower court or tribunal ~~judge or other officer~~ in the underlying proceeding.

(ki) Response to ~~Rule-Order~~ to Show Cause.

(1) The court in its discretion may invite or order any ~~person-party,~~ including a party in the underlying proceeding, to respond to the ~~rule-order~~ to show cause within a fixed time. Any ~~party~~person in the underlying proceeding may request permission to respond to the ~~rule-order~~ to show cause but may not respond unless invited or ordered to do so by the court. Those ordered by the court to respond are the respondents.

(2) The response to an order-rule to show cause must comply with the requirements of C.A.R. 28(g) for answer briefs and with C.A.R. 32.

(3) Two or more respondents may respond jointly.

(lj) Reply to Response to ~~Rule-Order~~ to Show Cause. The petitioner may submit a single reply brief within the time fixed by the court. A reply must comply with the requirements of C.A.R. 28(g) for reply briefs and with C.A.R. 32.

(mk) Amicus Briefs. Any amicus curiae may file a brief only by leave of the court after a case number has been assigned. A brief submitted by an amicus curiae must comply with C.A.R. 29(a), (b), (c), (d), (f), and (g).

(1) Before Ruling on a Petition. Before the court rules on a petition~~issues a rule to show cause,~~ an amicus curiae may tender a brief with a motion for leave to file supporting a petitioner, but the court may act on a petition at any time after the petition is filed, including before the submission of an amicus brief.

(2) After Issuing an Order to Show Cause. If the court issues an order-rule to show cause, an amicus brief supporting a petitioner must be filed within seven days after the issuance of the show cause order, or such ~~lesser-other~~ time as the court may ~~permit-order~~ for the submission of amicus briefs. An amicus brief supporting a respondent must be tendered by the deadline for the respondent's response, or such ~~lesser-other~~ time as the court may ~~permit-order~~ for the submission of amicus briefs. An amicus curiae that does not support either party must file its brief no later than seven days after the issuance of an order-rule to show cause, or such ~~lesser-other~~ time as the court may ~~permit-order~~ for the submission of amicus briefs.

(3) No Reconsideration. The filing of an amicus brief within the deadlines established by this rule but after the court has acted on a petition is not a ground for reconsideration of the court's decision to ~~issuance~~ of a rule to show cause or denial ~~of a petition.~~

~~(1) A brief submitted by an amicus curiae must comply with C.A.R. 29(a), (b), (c), (d), (f), and (g).~~

(h) No Oral Argument. There will be no oral argument unless ordered by the court.

~~(m) Opinion Discretionary~~ Disposition of an Order to Show Cause. The court, ~~upon review,~~ in its discretion may discharge the ~~rule-order~~ or make it absolute, in whole or in part, with or without opinion. Orders issued without an opinion will not be designated for official publication by the court and will remain unpublished. Unpublished orders may not be cited as precedent.

~~(p) Petition for Rehearing.~~ A petition for rehearing may be filed only ~~In all proceedings under this rule, where-when~~ the ~~supreme~~ court has issued an opinion discharging ~~a rule~~ the order to show cause or making ~~a rule~~ the order absolute. Any ~~a~~ petition for rehearing may be filed in accordance with ~~the provisions of~~ C.A.R. 40(c)(2). No petition for rehearing may be filed after denial of a petition without explanation, if the order was discharged without opinion, or if the order was made absolute without opinion.

COMMENT

2024

Except for the revisions made to subsection (g), most of the rule revisions to C.A.R. 21 are not substantive. The amendments were made for clarity, readability, and to reflect the current practices of the supreme court clerk's office.

To parallel the language of original jurisdiction rules in other states, the term "rule to show cause" was replaced with "order to show cause." The change in terminology does not affect the substance of the rule or the relief requested or granted by the rule. Parties may continue to rely on case law referring to a "rule to show cause," as the terms "rule to show cause" and "order to show cause" are used interchangeably.

The court may dispose of an order to show cause with or without an opinion. Any ruling made without an opinion will be unpublished and may not be cited as precedent. Parties may file a petition for rehearing only if the court issues an opinion.

Rule 29. Brief of an Amicus Curiae

(a) – (d) [NO CHANGE]

(e) Time for Filing. An amicus curiae must file its brief within the deadline for filing the principal brief of the party being supported. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's opening brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer. The time for filing an amicus brief in an original proceeding shall be as provided under C.A.R. 21([mk](#)).

(f) - (g) [NO CHANGE]

Rule 32. Form of Briefs and Appellate Documents

(a)–(c) NO CHANGE

(d) Caption. The first page of each brief or other appellate document must contain a caption that includes the following basic document information:

- (1) the name and address of the court in which the proceeding is filed;
- (2) the nature of proceeding (e.g., Appeal, Petition for Writ of Certiorari, Petition for ~~Rule~~Order to Show Cause); name of the court(s), agency, or board below; and the lower court judge(s), and case number(s);

(e)–(g) [NO CHANGE]

(h) Certificate of Compliance. Each brief must include, on a separate page immediately behind the caption page, a certificate that the brief complies with all requirements of C.A.R. 28 and C.A.R. 32, and, if applicable, C.A.R. 21(~~ge~~34), 28.1, or 29. For proceedings other than those involving C.A.R. 21(~~ge~~34), Forms 6 and 6A are the preferred forms for a certificate of compliance and will be regarded as meeting the requirements of C.A.R. 32(a)(4).

COMMENTS [NO CHANGE]

Rule 40. Petition for Rehearing

(a) – (b) [NO CHANGE]

(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) [NO CHANGE]

(2) *In Proceedings Under C.A.R. 21*. A petition for rehearing may be filed only when the court has after issuance of an opinion discharging a rule order to show cause or an opinion making a rule the order absolute. No petition for rehearing may be filed after denial of a petition without explanation, if an order was discharged without opinion, or if an order was made absolute without opinion.

(3) - (4) [NO CHANGE]

COMMENTS

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(p#) 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) [NO CHANGE]

(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) [NO CHANGE]

(A) [NO CHANGE]

(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 unless a petition for rehearing is not permitted, in which case the court may issue the mandate immediately. 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.

(3) [NO CHANGE]

(c) - (e) [NO CHANGE]

COMMENTS [NO CHANGE]

Colorado Court of Appeals

2 East 14th Avenue

Denver, CO 80203

Plaintiff | Petitioner: _____

☐ Appellant or ☐ Appellee

&

Defendant | Respondent: _____

☐ Appellant or ☐ Appellee

My Name: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Phone: _____

E-Mail: _____

▲ FOR COURT USE ▲

Court of Appeals Case

Number: _____

District Court Case

Number: _____

County: _____

Certification and Attorney Disclosure

This form is to be completed by the attorney providing drafting assistance and filed with the document(s) by the self-represented party.

In helping to draft this document filed by the self-represented party, I certify that, to the best of the my knowledge, information, and belief, this document is (1) well-grounded in fact based upon a reasonable inquiry of the self-represented party by myself, (2) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (3) not interposed for any improper

purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

☐ The attorney provided drafting assistance with the entire document.

or

☐ The attorney provided drafting assistance for only the following section(s) of the document:

Note: this certification does not constitute an entry of appearance by the attorney in this matter

Date:

Attorney Signature

Attorney Name, Atty Reg. #

Address

Phone

E-mail

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, C.A.R. 27(a), and § 13-20-901, C.R.S.

Rule 3.4. Appeals From Proceedings in Dependency or Neglect

(a) – (f) [NO CHANGE]

(g) Answer Brief on Appeal.

(1) – (6) [NO CHANGE]

(7) In cases involving more than one appellee, the court encourages coordination among appellees to avoid repetition within the answer briefs. A joint answer brief may, but is not required to, be filed by appellees. Such a joint brief must contain no more than 9,500 words.

(h) – (o) [NO CHANGE]

Rule 4.1. Interlocutory Appeals in Criminal Cases

(a) - (g) [NO CHANGE]

(h) Disposition by Court. The supreme court will issue its decision by written opinion or order disposing of the interlocutory appeal. The supreme court clerk will serve the opinion or order on the district court judge and the parties. Petitions for rehearing are not permitted. Orders issued without an opinion will not be designated for official publication by the court and will remain unpublished. Unpublished orders may not be cited as precedent.

(i) [NO CHANGE]

Rule 5. Entry of Appearance and Withdrawal

(a) - (d) [NO CHANGE]

(e) Limited Legal Services. An attorney may provide limited legal services to a self-represented party involved in a civil appellate proceeding in accordance with Colo. R.P.C. 1.2(c) and the following provisions.

- (1) Limited Legal Services Requiring Entry of Appearance and Withdrawal. An attorney may make a limited appearance for a self-represented party in a civil appellate proceeding if the attorney files and serves with the court and the other parties and attorneys (if any) a notice of the limited appearance prior to or simultaneous with the part(s) of the proceeding for which the attorney appears. At the conclusion of such part(s) of the proceeding, the attorney's appearance terminates without the necessity of leave of court, upon the attorney filing a notice of completion of limited appearance. Service on an attorney who makes a limited appearance for a party will be valid only in connection with the specific part(s) of the proceeding for which the attorney appears.
- (2) Limited Legal Services Requiring Disclosure of Attorney Assistance without Entry of Appearance. An attorney may provide drafting assistance to a self-represented party involved in a civil appellate proceeding without filing a notice of limited appearance. Documents filed by the self-represented party that were prepared with the drafting assistance of the attorney must include the attorney's name, address, telephone number, e-mail address, and registration number. The attorney must provide a signed attorney disclosure certification to the self-represented party for the self-represented party to file with the court as an attachment to the document(s). The certification must indicate whether the attorney provided drafting assistance for the entire document or for specific sections only, and if for specific sections, indicate which sections. The certification also must contain the following statement: "In helping to draft the document filed by the self-represented party, the attorney certifies that, to the best of the attorney's knowledge, information, and belief, this document, or specified section(s), is (A) well-grounded in fact based upon a reasonable inquiry of the self-represented party by the attorney, (B) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (C) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." The attorney in providing such drafting assistance may rely on the self-represented party's representation of facts, unless the attorney has reason to believe that such representations are false or materially insufficient, in which instance the attorney must make an independent reasonable inquiry into the facts. The attorney's violation of this subsection (e)(2) may subject the attorney to sanctions provided by C.A.R. 38. Providing limited legal services to a self-represented party under this subsection (e)(2) does not constitute an entry of appearance by the attorney for purposes of this rule and does not authorize or require the service of papers upon the attorney.
- (3) Limited Legal Services Not Requiring Entry of Appearance or Disclosure of Attorney Assistance. An attorney may provide the following forms of assistance to a self-represented party in a civil appellate proceeding without satisfying the requirements of

subsections (e)(1) and (2) of this rule: (A) assistance in filling out pre-printed or electronically published forms that are issued by the judicial branch; (B) oral assistance or advice given to the self-represented party regarding the self-represented party's case; and (C) short-term legal assistance offered to a self-represented party on a pro bono basis, including but not limited to assistance through a nonprofit or court-sponsored program, that does not create an expectation by either the client or the lawyer that legal assistance will continue. Providing limited legal services to a self-represented party under this subsection (e)(3) does not authorize or require the service of papers upon the attorney.

(f) Termination of Representation. When an attorney has entered an appearance, other than a limited appearance pursuant to C.A.R. 5(e)(1), on behalf of a party in an appellate court without having previously represented that party in the matter in any other court, the attorney's representation of the party will terminate at the conclusion of the part(s) of the proceeding in the appellate court in which the attorney has appeared, unless otherwise directed by the appellate court or agreed to by the attorney and the party represented. Counsel may file a notice of such termination of representation in any other court.

COMMENT

The purpose of C.A.R. 5(e)(1) is to establish a procedure similar to that set forth in C.R.C.P. 121, section 1-1(5). The purpose of C.A.R. 5(e)(2) and (3) is to establish a procedure similar to that set forth in C.R.C.P. 11(b).

Rule 12. Docketing the Proceeding and Fees; Proceedings in Forma Pauperis

(a) [NO CHANGE]

(b) Waiver of Filing Fees in Appellate Court Proceedings.

(1) *In the Supreme Court.*

(A) [NO CHANGE]

(B) Prior Approval. Notwithstanding the provisions of the preceding paragraph, the court may waive the filing fee for a party who has been permitted to proceed in forma pauperis in the underlying action in the trial court or the court of appeals or who has been permitted to proceed there as one who is financially unable to obtain an adequate defense in a criminal case. Any party proceeding under this subparagraph must attach a copy of the lower court's order granting leave to proceed in forma pauperis to the notice of appeal or initiating pleading.

(2) [NO CHANGE]

(c) [NO CHANGE]

Rule 21. Original Proceedings in the Supreme Court

(a) In General.

(1) *Original Jurisdiction Under the Constitution.* This rule applies only to the original jurisdiction of the supreme court to issue writs as provided in Section 3 of Article VI of the Colorado Constitution and to the exercise of the supreme court's general superintending authority over all courts as provided in Section 2 of Article VI of the Colorado Constitution.

(2) *Extraordinary Nature and Availability of Relief.* Relief under this rule is extraordinary in nature and is a matter wholly within the discretion of the supreme court. Such relief will be granted only when no other adequate remedy is available, including relief available by appeal, under C.R.C.P. 106, or under Crim. P. 35.

(3) *Forms of Writs Subject to this Rule.* Petitions for writs of habeas corpus, mandamus, quo warranto, injunction, prohibition, and other forms of writs cognizable under the common law are subject to this rule. The petitioner need not designate a specific form of writ when seeking relief under this rule.

(b) *Initiating an Original Proceeding.* The petitioner must file a petition for an order to show cause specifying the relief sought and requesting the court to issue to one or more proposed respondents, as set forth in subsection (e)(1), an order to show cause why the relief requested should not be granted.

(c) *Docket Fees.* Upon the filing of a petition under this rule, the petitioner must pay to the clerk of the supreme court the docket fee of \$225.00 and must comply with C.A.R. 12.

(d) Form, Caption, and Title of the Petition.

(1) *Form.* Unless otherwise provided, the petition and all documents filed under this rule must comply with the requirements of C.A.R. 28(g) for opening briefs and C.A.R. 32.

(2) Caption and Title.

(A) If there is no underlying proceeding, the petition must be captioned, "In Re [Petitioner v. Proposed Respondent(s)]."

(B) If there is an underlying proceeding, the petition must use the full, exact, and unmodified caption given by the lower court or tribunal in the underlying proceeding, "In Re [Caption of Underlying Proceeding]." Only one case may be listed as the underlying proceeding in the caption.

(C) The petition must be titled "Petition for Order to Show Cause Pursuant to C.A.R. 21."

(e) *Contents of the Petition.* The petitioner has the burden of showing that the court should issue a rule to show cause. To enable the court to determine whether to issue an order to show cause, the petition must set forth in sufficient detail the following:

- (1) the identity of the petitioner and of the proposed respondent(s), together with, if applicable, their party status in the underlying proceeding (e.g., plaintiff, defendant, etc.). The proposed respondent(s) must be the real party (or parties) in interest against whom relief is sought. When a

petition seeks a writ of mandamus or prohibition directed to a court or tribunal, the proposed respondents must be the lower court or tribunal, if appropriate, and all parties to the underlying proceeding other than the petitioner;

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

(3) the ruling, action, or failure to act complained of and the relief being sought;

(4) the reasons why no other adequate remedy is available;

(5) the issues presented;

(6) the facts necessary to understand the issues presented;

(7) argument and points of authority explaining why the court should issue an order to show cause and grant the relief requested;

(8) a list of supporting documents, or an explanation of why supporting documents are not available; and

(9) the names, addresses, telephone numbers, and e-mail addresses (if any) of all parties to the underlying proceeding; or, if a party is represented by counsel, the attorney's name, address, telephone number, and email address (if any).

(f) Service. The petitioner must serve the petition on every party and proposed respondent and on the lower court or tribunal. All documents filed under this rule must be served in accordance with C.A.R. 25. If a case is filed through the court's E-System, E-Service on a party must be completed in the supreme court case; the supreme court will not accept service of documents made in the underlying proceeding or in the lower court.

(g) Supporting Documents.

(1) Proceedings initiated under this rule are not subject to C.A.R. 10.

(2) A petition must be accompanied by a separate, indexed appendix of available supporting documents necessary for a complete understanding of the issues presented. The appendix must include an index or table of contents of the supporting documents with page numbers noting where the documents appear. If the supporting documents are unavailable, the petition must explain why they are unavailable, consistent with subsection (e)(8).

(3) In cases involving an underlying proceeding, the following documents must be included in the appendix:

(A) the order or judgment from which relief is sought if applicable;

(B) documents and exhibits submitted in the underlying proceeding that are necessary for a complete understanding of the issues presented; and

(C) a transcript of the proceeding leading to the underlying order or judgment if available.

(4) The filing party is responsible for reviewing all supporting documents, including any attachments,

exhibits, and appendices, to determine if the document contains information that should be excluded from public access pursuant to Chief Justice Directive 05-01 section 4.60. Any supporting document filed by a party that is not accessible to the public pursuant to Chief Justice Directive 05-01 section 4.60 must be accompanied by a motion to suppress or seal as prescribed in subsection (g)(4). The filing party must certify compliance with this subsection as directed by C.A.R. 32(h).

(5) Any document submitted as sealed or suppressed pursuant to Chief Justice Directive 05-01 sections 3.07 and 3.08 must be filed as a separate supporting document and must be accompanied by a motion for leave to file the document as sealed or suppressed. The motion must:

- (A) identify with particularity the specific document containing sensitive information;
- (B) explain why the sensitive information cannot reasonably be redacted in lieu of filing the entire document as sealed or suppressed;
- (C) articulate the substantial interest that justifies depriving the public of access to the document; and
- (D) cite any applicable rule, statute, case law, or prior court order sealing or suppressing the document.

(6) Original proceedings involving the specific case types listed in Chief Justice Directive 05-01 section 4.60(b)(1)–(9) are not accessible to the public. Unless a party intends to seal the proceeding pursuant to subsection (g)(5), it is unnecessary to file a motion to suppress the proceeding.

(h) Stay.

(1) *Pending a Decision to Issue an Order to Show Cause.* The filing of a petition under this rule does not stay any underlying proceeding or the running of any applicable time limit. If the petitioner seeks a temporary stay in connection with the petition pending the court's determination whether to issue an order to show cause, a stay ordinarily must be sought first from the lower court or tribunal. If a request for stay below is impracticable, not promptly ruled upon, or is denied, the petitioner may file a separate motion for a temporary stay in the supreme court supported by accompanying materials justifying the requested stay.

(2) *Upon Issuance of an Order to Show Cause.* Issuance of an order to show cause by the supreme court automatically stays all underlying proceedings until final determination of the original proceeding in the supreme court unless the court, acting on its own, or upon motion, lifts the stay in whole or in part.

(i) No Initial Responsive Pleading to Petition Allowed. Unless requested by the supreme court, no responsive pleading to the petition may be filed prior to the court's determination of whether to issue an order to show cause.

(j) Ruling on the Petition.

(1) *Denial.* The court may deny the petition without explanation and without an answer by any respondent.

(2) *Issuance of an Order to Show Cause.* The court may issue an order to show cause. The clerk will serve the order on all persons ordered or invited by the court to respond and on the lower court or tribunal in the underlying proceeding.

(k) Response to Order to Show Cause.

(1) The court in its discretion may invite or order any party, including a party in the underlying proceeding, to respond to the order to show cause within a fixed time. Any party in the underlying proceeding may

request permission to respond to the order to show cause but may not respond unless invited or ordered to do so by the court. Those ordered by the court to respond are the respondents.

(2) The response to an order to show cause must comply with the requirements of C.A.R. 28(g) for answer briefs and with C.A.R. 32.

(3) Two or more respondents may respond jointly.

(l) Reply to Response to Order to Show Cause. The petitioner may submit a single reply brief within the time fixed by the court. A reply must comply with the requirements of C.A.R. 28(g) for reply briefs and with C.A.R. 32.

(m) Amicus Briefs. Any amicus curiae may file a brief only by leave of the court after a case number has been assigned. A brief submitted by an amicus curiae must comply with C.A.R. 29(a), (b), (c), (d), (f), and (g).

(1) *Before Ruling on a Petition.* Before the court rules on a petition an amicus curiae may tender a brief with a motion for leave to file supporting a petitioner, but the court may act on a petition at any time after the petition is filed, including before the submission of an amicus brief.

(2) *After Issuing an Order to Show Cause.* If the court issues an order to show cause, an amicus brief supporting a petitioner must be filed within seven days after the issuance of the show cause order, or such other time as the court may order for the submission of amicus briefs. An amicus brief supporting a respondent must be tendered by the deadline for the respondent's response, or such other time as the court may order for the submission of amicus briefs. An amicus curiae that does not support either party must file its brief no later than seven days after the issuance of an order to show cause, or such other time as the court may order for the submission of amicus briefs.

(3) *No Reconsideration.* The filing of an amicus brief within the deadlines established by this rule but after the court has acted on a petition is not a ground for reconsideration of the court's decision to issue a rule to show cause or deny a petition.

(n) No Oral Argument. There will be no oral argument unless ordered by the court.

(o) Disposition of an Order to Show Cause. The court in its discretion may discharge the order or make it absolute, in whole or in part, with or without opinion. Orders issued without an opinion will not be designated for official publication by the court and will remain unpublished. Unpublished orders may not be cited as precedent.

(p) Petition for Rehearing. A petition for rehearing may be filed only when the court has issued an opinion discharging the order to show cause or making the order absolute. Any petition for rehearing may be filed in accordance with C.A.R. 40(c)(2). No petition for rehearing may be filed after denial of a petition without explanation, if the order was discharged without opinion, or if the order was made absolute without opinion.

COMMENT

2024

Except for the revisions made to subsection (g), most of the rule revisions to C.A.R. 21 are not substantive. The amendments were made for clarity, readability, and to reflect the current practices of the supreme

court clerk's office.

To parallel the language of original jurisdiction rules in other states, the term “rule to show cause” was replaced with “order to show cause.” The change in terminology does not affect the substance of the rule or the relief requested or granted by the rule. Parties may continue to rely on case law referring to a “rule to show cause,” as the terms “rule to show cause” and “order to show cause” are used interchangeably.

The court may dispose of an order to show cause with or without an opinion. Any ruling made without an opinion will be unpublished and may not be cited as precedent. Parties may file a petition for rehearing only if the court issues an opinion.

Rule 29. Brief of an Amicus Curiae

(a) – (d) [NO CHANGE]

(e) Time for Filing. An amicus curiae must file its brief within the deadline for filing the principal brief of the party being supported. An amicus curiae that does not support either party must file its brief no later than 7 days after the appellant's opening brief is filed. A court may grant leave for later filing, specifying the time within which an opposing party may answer. The time for filing an amicus brief in an original proceeding shall be as provided under C.A.R. 21(m).

(f) - (g) [NO CHANGE]

Rule 32. Form of Briefs and Appellate Documents

(a)–(c) NO CHANGE

(d) Caption. The first page of each brief or other appellate document must contain a caption that includes the following basic document information:

- (1) the name and address of the court in which the proceeding is filed;
- (2) the nature of proceeding (e.g., Appeal, Petition for Writ of Certiorari, Petition for Order to Show Cause); name of the court(s), agency, or board below; and the lower court judge(s), and case number(s);

(e)–(g) [NO CHANGE]

(h) Certificate of Compliance. Each brief must include, on a separate page immediately behind the caption page, a certificate that the brief complies with all requirements of C.A.R. 28 and C.A.R. 32, and, if applicable, C.A.R. 21(g)(4), 28.1, or 29. For proceedings other than those involving C.A.R. 21(g)(4), Forms 6 and 6A are the preferred forms for a certificate of compliance and will be regarded as meeting the requirements of C.A.R. 32(a)(4).

COMMENTS [NO CHANGE]

Rule 40. Petition for Rehearing

(a) – (b) [NO CHANGE]

(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) [NO CHANGE]

(2) *In Proceedings Under C.A.R. 21*. A petition for rehearing may be filed only when the court has issued an opinion discharging an order to show cause or an opinion making the order absolute. No petition for rehearing may be filed after denial of a petition without explanation, if an order was discharged without opinion, or if an order was made absolute without opinion.

(3) - (4) [NO CHANGE]

COMMENTS

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(p) 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) [NO CHANGE]

(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) [NO CHANGE]

(A) [NO CHANGE]

(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 unless a petition for rehearing is not permitted, in which case the court may issue the mandate immediately. 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.

(3) [NO CHANGE]

(c) - (e) [NO CHANGE]

COMMENTS [NO CHANGE]

Colorado Court of Appeals 2 East 14 th Avenue Denver, CO 80203	
Plaintiff Petitioner: _____, <div style="text-align: center;"><input type="checkbox"/> Appellant or <input type="checkbox"/> Appellee</div> & Defendant Respondent: _____ <div style="text-align: center;"><input type="checkbox"/> Appellant or <input type="checkbox"/> Appellee </div>	▲ FOR COURT USE ▲
My Name: _____ Street Address: _____ City: _____ State: _____ Zip: _____ Phone: _____ E-Mail: _____	Court of Appeals Case Number: _____ District Court Case Number: _____ County: _____
<h2 style="margin: 0;">Certification and Attorney Disclosure</h2>	

This form is to be completed by the attorney providing drafting assistance and filed with the document(s) by the self-represented party.

In helping to draft this document filed by the self-represented party, I certify that, to the best of the my knowledge, information, and belief, this document is (1) well-grounded in fact based upon a reasonable inquiry of the self-represented party by myself, (2) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and (3) not interposed for any improper

purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

☐ The attorney provided drafting assistance with the entire document.

or

☐ The attorney provided drafting assistance for only the following section(s) of the document:

Note: this certification does not constitute an entry of appearance by the attorney in this matter

Date: _____

Attorney Signature

Attorney Name, Atty Reg. #

Address

Phone

E-mail