

AGENDA

COLORADO SUPREME COURT ADVISORY COMMITTEE ON RULES OF APPELLATE PROCEDURE

Thursday, January 23, 2025, 1:00 p.m.
Ralph L. Carr Colorado Judicial Center
2 E. 14th Ave., Denver CO 80203
Third Floor, Court of Appeals Full Court Conference Room

- I. Call to Order
- II. Approval of September 19, 2024, minutes [Pages 2 to 3]
- III. Chair's Report
- IV. Business
 - a. Rule 12 (Audrey Bianco) [Page 4]
 - b. Rules 52 and 53 (Audrey Bianco) [Page 5-7]
 - c. Rule 27 (Tiffany Mortier) [Page 8]
 - d. Rule 32 (Tiffany Mortier) [Page 9]
 - e. Next meeting
- V. Adjourn

**COLORADO SUPREME COURT
ADVISORY COMMITTEE ON RULES OF APPELLATE PROCEDURE**

**Minutes of Meeting
September 19, 2024**

A quorum being present, the Colorado Supreme Court’s Advisory Committee on Rules of Appellate Procedure was called to order by Chief Judge Gilbert Román at 1:00 p.m., in the Court of Appeals Full Court Conference Room on the third floor of the Ralph L. Carr Colorado Judicial Center. Members present or excused from the meeting were:

Name	Present	Excused
Chief Judge Gilbert Román, Chair	X	
Marilyn Chappell	X	
Anne Whalen Gill	X	
Marcy Glenn		X
Judge Christina Gomez	X	
Andrew Low		X
Jason Middleton		X
Norman Mueller	X	
Jillian Price	X	
Judge Christopher Zenisek	X	
Justice Richard Gabriel, Liaison (non-voting)	X	
Polly Brock (non-voting)		X
Melissa Meirink (non-voting)	X	

I. Attachments & Handouts

A. September 19, 2024, agenda packet

II. Approval of Minutes

The Committee approved the November 30, 2023, minutes as submitted.

III. Announcements from the Chair

- Chair Chief Judge Román announced that all the rules have now been given a close look by this Committee. Going forward, the Committee will address changes as they are brought forward.

IV. Proposed drafts of Colorado Appellate Rules

The following issues and revisions were discussed:

- C.A.R. 39.1

- Judge Tow from the Court of Appeals brought this to the Committee to require that attorney fee requests be set forth under a separate heading for greater efficiency. The Committee approved this proposal unanimously.
- C.A.R. 25 and 30
 - Melissa Meirink brought proposed changes from the clerks to improve processes. The Committee approved this proposal unanimously.
- C.A.R. 53
 - Melissa Meirink brought proposed changes from the clerks to ensure that all parties are served that participated in the underlying procedure. The Committee approved this proposal unanimously.
- C.A.R. 52
 - The Court of Appeals (COA) Motions Team proposed this language to mitigate possible future hacking issues. The Committee approved this proposal unanimously.
- C.A.R. 3.1
 - The COA Motions Team brought these proposed changes aimed at clarity and modernization. The Committee approved the proposal unanimously.
- C.A.R. 3.4
 - The COA Motions Team brought these changes to clarify transmission of the record. The Committee approved this proposal unanimously.
- C.A.R. 27
 - The COA Motions Team brought these changes to provide clarification. The Committee approved this proposal unanimously.
- C.A.R. 8.1 and 9
 - The COA Motions Team brought edits to these rules to reflect changes in statutes and remove gendered pronouns. The Committee approved both proposals unanimously.

Future Meeting

The next meeting will be held on Thursday, January 23rd at 1:00 pm. The Committee adjourned at 2:19 pm.

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) By Motion.

(a) In the Trial Court. A party may file in the trial court a motion to proceed on appeal in forma pauperis in the supreme court, together with an affidavit showing inability to pay the filing fee and costs. If the trial court denies the motion, the trial court must state in writing the reasons for the denial.

(b) In the Supreme Court. A party may file in the supreme court a motion to waive the filing fee, together with an affidavit showing inability to pay the filing fee and costs.

(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. The court may require ~~Any party proceeding under this subparagraph must attach to submit~~ a copy of the lower court's order granting leave to proceed in forma pauperis ~~to the notice of appeal or initiating pleading.~~

(2) *In the Court of Appeals.* Any request to proceed in forma pauperis in the court of appeals must first be sought in the trial court. Any lower court order granting in forma pauperis status must have been entered no earlier than 12 months before the filing of a notice of appeal or other initiating pleading. A party may file in the court of appeals a motion to reconsider a trial court's denial of a motion to proceed in forma pauperis in the court of appeals. The motion and affidavit must be filed at the time of filing the notice of appeal or other initiating pleading.

(c) NO CHANGE

Commented [mm1]: Clarification added at clerk office's request. The clerk's office is typically able to verify in JPOD that the lower court granted IFP status but would like the ability to ask the parties to provide proof if necessary.

From: [wallace, jennifer](#)
To: [michaels, kathryn](#); [meirink, melissa](#);
Subject: RE: C.A.R. 52 & 53
Attachments: [Draft C.A.R. 52 & 53 incorporating C.A.R. 3.5\(l\).docx](#)
Sent: 11/4/2024 9:57:16 AM

Hello again,

I found another spot that needs updating in light of C.A.R. 3.5(l). This time it's in C.A.R. 53. I've attached a new draft with both rules.

Thanks,

J.J.

From: michaels, kathryn <kathryn.michaels@judicial.state.co.us>
Sent: Thursday, October 31, 2024 11:00 AM
To: meirink, melissa <melissa.meirink@judicial.state.co.us>; wallace, jennifer <jennifer.wallace@judicial.state.co.us>
Cc: stevens, cheryl <cheryl.stevens@judicial.state.co.us>
Subject: RE: C.A.R. 52

Will do!

From: meirink, melissa <melissa.meirink@judicial.state.co.us>
Sent: Thursday, October 31, 2024 10:59 AM
To: wallace, jennifer <jennifer.wallace@judicial.state.co.us>
Cc: stevens, cheryl <cheryl.stevens@judicial.state.co.us>; michaels, kathryn <kathryn.michaels@judicial.state.co.us>
Subject: RE: C.A.R. 52

Thanks, J.J. Kathryn, will you please include the proposed change and J.J.'s emailed explanation on the next meeting agenda?

Melissa C. Meirink (she/her)
Staff Attorney
Colorado Supreme Court
(720) 625-5406
melissa.meirink@judicial.state.co.us

From: wallace, jennifer <jennifer.wallace@judicial.state.co.us>
Sent: Thursday, October 31, 2024 10:52 AM
To: meirink, melissa <melissa.meirink@judicial.state.co.us>
Cc: stevens, cheryl <cheryl.stevens@judicial.state.co.us>; michaels, kathryn <kathryn.michaels@judicial.state.co.us>
Subject: C.A.R. 52

Hello,

I'm working on Chapter 17 for the Colorado Appellate Handbook. It's a useful exercise because it makes me look at things in a way that I don't normally look at them.

Anyway, one thing I knew needed to be added to the certiorari section was the time to file a certiorari petition for mental health cases. *See* C.A.R. 3.5(l). In adding it in, I noticed that Rule 52 mentions the other altered timelines for cert cases (D&N, worker's comp), but does not mention mental health cases. I think we need Rule 52(b) to be updated to include the special timing of cert petitions in mental health cases (this phrase may need to be "Appeals of Mental Health Orders" instead of "mental health cases"; I leave that decision to you guys or to the committee). I've attached a Word doc with recommended changes.

Let me know if you need anything else!

Thanks,

J.J. Wallace
Staff Attorney, Colorado Supreme Court
jennifer.wallace@judicial.state.co.us
(720) 625-5272

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Rule 52. Review on Certiorari--Time for Petitioning

(a) [NO CHANGE]

(b) **Time to File.**

(1) *In General.* Except as provided in subsections (2), (3), and (34) of this rule, a petition for writ of certiorari must be filed within 42 days after entry of the judgment on appeal if no petition for rehearing is filed. If a petition for rehearing is filed, the petition for writ of certiorari must be filed within 28 days after the intermediate appellate court's denial of the petition for rehearing. No certiorari proceeding may be initiated in the supreme court until the time for filing a petition for rehearing in the intermediate appellate court has expired. A timely filed petition for writ of certiorari or a timely filed motion for extension of time to file a petition for writ of certiorari transfers jurisdiction from the court of appeals to the supreme court.

(2) – (3) [NO CHANGE]

(4) *In Mental Health Cases.* A petition for writ of certiorari to review a judgment of the court of appeals in mental health cases must be filed within 14 days after the expiration of the time for filing a petition for rehearing or the date of denial of a petition for rehearing by the court of appeals.

Rule 53. Petition for Writ of Certiorari and Cross-Petition for Writ of Certiorari

(a) – (c) [NO CHANGE]

(d) **Reply Brief.** A reply brief is not required. If a petitioner or cross-petitioner files a reply brief, the brief must be filed and served within 7 days after service of an opposition brief. The reply brief must comply with C.A.R. 32. In dependency or neglect appeals, pursuant to C.A.R. 3.4(1), and mental health cases, pursuant to C.A.R. 3.5(1), no reply briefs are allowed.

(e) – (h) [NO CHANGE]

Rule 27. Motions

(a) [NO CHANGE]

(b) **Determination of Stipulated Motions and Motions for Procedural Orders.** The court may act on a stipulated motion signed by all parties or a motion for a procedural order, including a motion under Rule 26(~~cb~~), at any time without awaiting a response. Any party adversely affected by the court's action may file a motion to reconsider, vacate, or modify that action. Timely opposition filed after the motion is granted in whole or in part does not constitute a request to reconsider, vacate, or modify the disposition; a motion specifically requesting that relief must be filed.

(c) - (e) [NO CHANGE]

Rule 32. Form of Briefs and Appellate Documents

(a) Form of Briefs and Other Appellate Documents. Except as otherwise provided in this rule or by leave of court, all briefs and other appellate documents must comply with the following standards:

(1) *Type Size.* The typeface must be 14-point or larger, including footnotes, except that the caption may be in 12-point if necessary to fit on one page.

(2) *Typeface.* The type must be a plain, Roman style with serifs. Italics or boldface may be used for emphasis. Cited case names must be italicized or underlined.

(3) *Paper Size, Line Spacing, and Margins.* All documents must be on 8 ½ by 11 inch paper. The text must be double-spaced, but quotations more than two lines long may be indented and single-spaced. Headings and footnotes may be single-spaced. Margins must be at least 1 ½ inches on the top and 1 inch on the left, right, and bottom. Page numbers are required and may be placed in the bottom margin, but no text may appear there.

(4) *Length.* If a brief or other appellate document is subject to a word limit, it must include a certificate by the attorney, or by a self-represented party, that the document complies with the applicable word limit. The person preparing the certificate may rely on the word count of the word-processing system used to prepare the document. The certificate must state the number of words in the document.

(5) In briefs and other appellate documents, parties are not permitted to remove spaces or underline spaces within citations to the record or legal authority to reduce the word count. Citations without spacing or with underlining are difficult to read and decipher.

(b) - (h) [NO CHANGE]

COMMENTS [NO CHANGE]