

**RULE CHANGE 2011(19)**

**TIME CALCULATION CHANGES IN THE COLORADO RULES OF PROCEDURE**

This rule change includes only sections where amendments to the rules have been made. Any sections of the rules not specifically included remain unchanged.

**VARIOUS CHANGES IN COLORADO RULES OF PROCEDURE ..... 2**

**COLORADO RULES OF CRIMINAL PROCEDURE .....12**

Amended and adopted by the Court, En Banc, December 14, 2011, effective July 1, 2012.

**By the Court:**

**Nancy E. Rice  
Justice, Colorado Supreme Court**

**Rule 103. Garnishment**

SECTION 1

WRIT OF CONTINUING GARNISHMENT  
(ON EARNINGS OF A NATURAL PERSON)

**(f) Effective Garnishment Period.**

(1) A writ of continuing garnishment shall be a lien and continuing levy against the nonexempt earnings of the judgment debtor until such time as earnings are no longer due, the underlying judgment is vacated, modified or satisfied in full, the writ is dismissed, or for 91 days (13 weeks) following service of the writ, if the judgment was entered prior to August 8, 2001, and 182 days (26 weeks) following service of the writ if the judgment was entered on or after August 8, 2001, except when such writ is suspended pursuant to subsection (j) of this rule.

**(k) Answer and Tender of Payment by Garnishee.**

(1) The garnishee shall file the answer to the writ of continuing garnishment with the clerk of the court and send a copy to the judgment creditor no less than 7 nor more than 14 days following the time the judgment debtor receives earnings for the first pay period affected by such writ, or 42 days following the date such writ was served pursuant to section (1)(d) of this rule, whichever is less.

(2) The garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the clerk of the court which issued such writ no less than 7 nor more than 14 days following the time the judgment debtor receives earnings affected by such writ. However, if the judgment creditor is represented by an attorney, or is a collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., the garnishee may be directed to pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the attorney or the licensed collection agency.

**(l) Disbursement of Garnished Earnings.**

(1) If no objection is filed by the judgment debtor within 7 days, the garnishee shall send the nonexempt earnings to the attorney, collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., or court designated on the writ of continuing garnishment (C.R.C.P. Form 26, page 1, paragraph e). The judgment creditor shall refund to the judgment debtor any disbursement in excess of the amount necessary to satisfy the judgment.

SECTION 2

WRIT OF GARNISHMENT  
(ON PERSONAL PROPERTY OTHER THAN  
EARNINGS OF A NATURAL PERSON)  
WITH NOTICE OF EXEMPTION AND PENDING LEVY

**(g) Court Order on Garnishment Answer.**

(2) No such judgment and request shall enter until the judgment creditor has made a proper showing that: (A) a copy of the writ with notice was properly served upon the judgment debtor, and (B) no written claim of exemption was filed within 7 days after such service or a written claim of exemption was properly filed and the same was disallowed.

(4) No such order shall enter until the judgment creditor has made a proper showing that: (A) a copy of the writ with notice was properly served upon the judgment debtor, and (B) no written claim of exemption was filed within 7 days after such service or a written claim of exemption was properly filed with the court and the same was disallowed.

### SECTION 3

#### WRIT OF GARNISHMENT FOR SUPPORT

##### **(g) Answer and Tender of Payment by Garnishee.**

(1) The garnishee shall answer the writ of garnishment for support no less than 7 nor more than 14 days following the time the judgment debtor receives earnings for the first pay period affected by such writ. If the judgment debtor is not employed by the garnishee at the time the writ is served, the garnishee shall answer the writ within 14 days from the service thereof.

(2) The garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings, as directed in the writ of garnishment for support, to the family support registry, the clerk of the court which issued such writ, or to the judgment creditor no less than 7 nor more than 14 days following the time the judgment debtor receives earnings during the Effective Garnishment Period of such writ.

### SECTION 6

#### JUDGMENT DEBTOR'S OBJECTION--

#### WRITTEN CLAIM OF EXEMPTION--HEARING

##### **(a) Judgment Debtor's Objection to Calculation of Exempt Earnings Under Writ of Continuing Garnishment.**

(1) If a judgment debtor objects to the initial or a subsequent calculation of the amount of exempt earnings, the judgment debtor shall have 7 days from the receipt of the copy of the writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods, within which to resolve the issue of such miscalculation by agreement with the garnishee.

(2) If the judgment debtor's objection is not resolved with the garnishee within 7 days upon good faith effort, the judgment debtor may file a written objection setting forth, with reasonable detail, the grounds for such objection. Such objection must be filed within 14 days from receipt of the copy of writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods.

##### **(b) Judgment Debtor's Claim of Exemption Under a Writ With Notice.**

(1) When a garnishee, pursuant to a writ with notice, holds any personal property of the judgment debtor, other than earnings, which the judgment debtor claims to be exempt, the judgment debtor, within 14 days after being served a copy of such writ as required by Section 2(d)(2) of this rule, shall make and file a written claim of exemption with the clerk of the court in which the judgment was entered.

##### **(c) Hearing on Objection or Claim of Exemption.**

(1) Upon the filing of an objection pursuant to Section 6(a) of this rule or the filing of a claim of exemption pursuant to Section 6(b) of this rule, the court in which the judgment was entered shall set a time for hearing of such objection or claim of exemption which hearing shall not be more than 14 days after the filing of such objection or claim of exemption.

SECTION 7  
FAILURE OF GARNISHEE TO ANSWER  
(ALL FORMS OF GARNISHMENT)

**(a) Default Entered by Clerk of Court.**

(2) No default shall be entered in an attachment action against the garnishee until the expiration of 35 days after service of a writ of garnishment upon the garnishee.

SECTION 8  
TRAVERSE OF ANSWER  
(ALL FORMS OF GARNISHMENT)

**(a) Time for Filing of Traverse.** The judgment creditor, plaintiff in attachment or intervenor in attachment, may file a traverse of an answer to any form of writ provided by this rule provided such traverse is filed within the greater time period of 21 days from the date such answer should have been filed with the court or 21 days after such answer was filed with the court. The failure to timely file a traverse shall be deemed an acceptance of the answer as true.

**Rule 105.1. Spurious Lien or Document**

(1) Direct any lien claimant and any person who recorded or filed the lien or document to appear as respondent before the court at a time and place certain not less than 14 days nor more than 21 days after service of the order to show cause why the lien or document should not be declared invalid and why such other relief provided for by statute should not be granted;

(b) Notice; Service. The petitioner shall issue a notice to respondent setting forth the time and place for the hearing on the show cause order, which hearing shall be set not less than 14 days nor more than 21 days from service of the show cause order, and shall advise respondent of the right to file and serve a response as provided in section (c), including a reference to the last day for filing a response and the addresses at which such response must be filed and served. The notice shall contain the return address of the petitioner or the petitioner's attorney. The notice and a copy of the petition and order to show cause shall be served by the petitioner on the respondent not less than 14 days prior to the date set for the hearing, by (1) mailing a true copy thereof by first class mail to each respondent at the address or addresses stated in the lien or document and (2) filing a copy with the clerk of the district court and delivering a second copy to the clerk of the district court for posting in the clerk's office, which shall be evidenced by the certificate of the petitioner or petitioner's agent or attorney. Alternatively, the petitioner may serve the petition, notice, and show cause order upon each respondent in accordance with Rule 4, or, in the event the claim is brought as a counterclaim or cross-claim in a pending action in which the parties have appeared, in accordance with Rule 5.

(c) Response; Contents; Filing and Service. Not less than 7 days prior to the date set for the hearing, the respondent shall file and serve a verified response to the petition, setting forth the facts supporting the validity of the lien or document and attaching copies of all documents which support the validity of the lien or document. Service of such response shall be made in accordance with Rule 5(b).

## **Rule 403. Garnishment**

### SECTION 1

#### WRIT OF CONTINUING GARNISHMENT (ON EARNINGS OF A NATURAL PERSON)

##### **(f) Effective Garnishment Period.**

(1) A writ of continuing garnishment shall be a lien and continuing levy against the nonexempt earnings of the judgment debtor until such time as earnings are no longer due, the underlying judgment is vacated, modified or satisfied in full, the writ is dismissed, or for 91 days (13 weeks) following service of the writ, if the judgment was entered prior to August 8, 2001, and 182 days (26 weeks) following service of the writ if the judgment was entered on or after August 8, 2001, except when such writ is suspended pursuant to subsection (j) of this rule.

##### **(k) Answer and Tender of Payment by Garnishee.**

(1) The garnishee shall file the answer to the writ of continuing garnishment with the clerk of the court and send a copy to the judgment creditor no less than 7 nor more than 14 days following the time the judgment debtor receives earnings for the first pay period affected by such writ, or 42 days following the date such writ was served pursuant to section (1)(d) of this rule, whichever is less.

(2) The garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the clerk of the court which issued such writ no less than 7 nor more than 14 days following the time the judgment debtor receives earnings affected by such writ. However, if the judgment creditor is represented by an attorney, or is a collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., the garnishee may be directed to pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings to the attorney or the licensed collection agency.

##### **(l) Disbursement of Garnished Earnings.**

(1) If no objection is filed by the judgment debtor within 7 days, the garnishee shall send the nonexempt earnings to the attorney, collection agency licensed pursuant to section 12-14-101, et seq., C.R.S., or court designated on the writ of continuing garnishment (C.R.C.P. Form 26, page 1, paragraph e). The judgment creditor shall refund to the judgment debtor any disbursement in excess of the amount necessary to satisfy the judgment.

### SECTION 2

#### WRIT OF GARNISHMENT (ON PERSONAL PROPERTY OTHER THAN EARNINGS OF A NATURAL PERSON) WITH NOTICE OF EXEMPTION AND PENDING LEVY

##### **(g) Court Order on Garnishment Answer.**

(2) No such judgment and request shall enter until the judgment creditor has made a proper showing that: (A) a copy of the writ with notice was properly served upon the judgment debtor, and (B) no written claim of exemption was filed within 7 days after such service or a written claim of exemption was properly filed and the same was disallowed.

(4) No such order shall enter until the judgment creditor has made a proper showing that: (A) a copy of the writ with notice was properly served upon the judgment debtor, and (B) no written claim of exemption was filed within 7 days after such service or a written claim of exemption was properly filed with the court and the same was disallowed.

### SECTION 3

#### WRIT OF GARNISHMENT FOR SUPPORT

##### **(g) Answer and Tender of Payment by Garnishee.**

(1) The garnishee shall answer the writ of garnishment for support no less than 7 nor more than 14 days following the time the judgment debtor receives earnings for the first pay period affected by such writ. If the judgment debtor is not employed by the garnishee at the time the writ is served, the garnishee shall answer the writ within 14 days from the service thereof.

(2) The garnishee shall pay any nonexempt earnings and deliver a calculation of the amount of exempt earnings, as directed in the writ of garnishment for support, to the family support registry, the clerk of the court which issued such writ, or to the judgment creditor no less than 7 nor more than 14 days following the time the judgment debtor receives earnings during the Effective Garnishment Period of such writ.

### SECTION 6

#### JUDGMENT DEBTOR'S OBJECTION--

#### WRITTEN CLAIM OF EXEMPTION--HEARING

##### **(a) Judgment Debtor's Objection to Calculation of Exempt Earnings Under Writ of Continuing Garnishment.**

(1) If a judgment debtor objects to the initial or a subsequent calculation of the amount of exempt earnings, the judgment debtor shall have 7 days from the receipt of the copy of the writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods, within which to resolve the issue of such miscalculation by agreement with the garnishee.

(2) If the judgment debtor's objection is not resolved with the garnishee within 7 days upon good faith effort, the judgment debtor may file a written objection setting forth, with reasonable detail, the grounds for such objection. Such objection must be filed within 14 days from receipt of the copy of writ of garnishment or calculation of the amount of exempt earnings for subsequent pay periods.

##### **(b) Judgment Debtor's Claim of Exemption Under a Writ With Notice.**

(1) When a garnishee, pursuant to a writ with notice, holds any personal property of the judgment debtor, other than earnings, which the judgment debtor claims to be exempt, the judgment debtor, within 14 days after being served a copy of such writ as required by Section 2(d)(2) of this rule, shall make and file a written claim of exemption with the clerk of the court in which the judgment was entered.

##### **(c) Hearing on Objection or Claim of Exemption.**

(1) Upon the filing of an objection pursuant to Section 6(a) of this rule or the filing of a claim of exemption pursuant to Section 6(b) of this rule, the court in which the judgment was entered shall set a time for hearing of such objection or claim of exemption which hearing shall not be more than 14 days after the filing of such objection or claim of exemption.

SECTION 7  
FAILURE OF GARNISHEE TO ANSWER  
(ALL FORMS OF GARNISHMENT)

**(a) Default Entered by Clerk of Court.**

(2) No default shall be entered in an attachment action against the garnishee until the expiration of 35 days after service of a writ of garnishment upon the garnishee.

SECTION 8  
TRAVERSE OF ANSWER  
(ALL FORMS OF GARNISHMENT)

**(a) Time for Filing of Traverse.** The judgment creditor, plaintiff in attachment or intervenor in attachment, may file a traverse of an answer to any form of writ provided by this rule provided such traverse is filed within the greater time period of 21 days from the date such answer should have been filed with the court or 21 days after such answer was filed with the court. The failure to timely file a traverse shall be deemed an acceptance of the answer as true.

**Rule 411. Appeals**

**(a) Notice of Appeal; Time for Filing; Bond.** If either party in a civil action believes that the judgment of the county court is in error, that party may appeal to the district court by filing a notice of appeal in the county court within 14 days after the date of entry of judgment. The notice shall be in the form appearing in the Appendix to Chapter 25, Form 4, C.R.C.P. If the notice of the entry of judgment is transmitted to the parties by mail, the time for the filing of the notice of appeal shall commence from the date of the mailing of the notice. The appealing party shall also file within the said 14 days an appeal bond with the clerk of the county court. The bond shall be furnished by a corporate surety authorized and licensed to do business in this state as a surety, or one or more sufficient private sureties, or may be a cash deposit by the appellant and, if the appeal is taken by the plaintiff, shall be conditioned to pay the costs of the appeal and the counterclaim, if any, and, if the appeal be taken by the defendant, shall be conditioned to pay the costs and judgment if the appealing party fail. The bond shall be approved by the judge or the clerk. Upon filing of the notice of appeal, the posting and approval of the bond, and the deposit by the appellant of an estimated fee in advance for preparing the record, the county court shall discontinue all further proceedings and recall any execution issued. The appellant shall also, within 35 days after the filing of the notice of appeal, docket the case in the district court and pay the docket fee.

**(b) Preparation of Record on Appeal.** Upon the deposit of the estimated record fee, the clerk of the court shall prepare and issue as soon as may be possible a record of the proceedings in the county court, including the summons, the complaint, proof of service, and the judgment. The record shall also include a transcription of such part of the actual evidence and other proceedings as the parties may designate or, in lieu of transcription, to which they may stipulate. If a stenographic record has been maintained or the parties agree to stipulate, the party appealing shall lodge with the clerk of the court the reporter's transcript of the designated evidence or proceedings, or a stipulation covering such items within 42 days after judgment. If the proceedings have been electrically recorded, the transcription of designated evidence and proceedings shall be prepared in the office of the clerk of the county court or under the

supervision of the clerk, within 42 days after judgment. The clerk shall notify, in writing, the opposing parties of the completion of the record, and such parties shall have 14 days within which to file objections. If none are received, the record shall be certified forthwith by the judge. If objections are made, the parties shall be called for hearing and the objections settled by the county judge as soon as possible, and the record then certified.

**(d) Briefs.** A written brief shall contain a statement of the matters relied upon as constituting error and the arguments with respect thereto. It shall be filed in the district court by the appellant 21 days after filing of the record therein. A copy of such brief shall be served on the appellee. The appellee may file an answering brief within 21 days after such service. In the discretion of the district court, the time for filing of briefs and answers may be extended. When the briefs have been filed the matter shall stand at issue and shall be determined on the record and the briefs, with such oral argument as the court in its discretion may allow. No trial shall be held de novo in the district court unless the record of the proceedings in the county court have been lost or destroyed or for some other valid reason cannot be produced; or unless a party by proper proof to the court establishes that there is new and material evidence unknown and undiscoverable at the time of the trial in the county court which, if presented in a de novo trial in the district court, might affect the outcome.

## **COLORADO RULES OF JUVENILE PROCEDURE (CH. 28)**

### **Rule 6. Petition in Adoption**

(b) At least 14 days prior to the hearing on the petition, petitioner(s) shall file with the court the following documentation:

## **COLORADO MUNICIPAL COURT RULES OF PROCEDURE (CH. 30)**

### **Rule 210. Arraignment**

#### **(a) In Court.**

(4) (VI) To a trial by jury where such right is granted by statute or ordinance, together with the requirement that the defendant, if desiring a jury trial, demand such trial by jury in writing within 21 days after arraignment or entry of a plea; also the number of jurors allowed by law, and of the requirement that the defendant, if desiring a jury trial, tender to the court within-21 days after arraignment or entry of a plea a jury fee of \$25 unless the fee be waived by the judge because of the indigence of the defendant.

### **Rule 223. Trial by Jury or by the Court**

**(a) Trial by Jury.** Trial shall be to the court, unless the defendant is entitled to a jury trial under the constitution, ordinance, charter, or general laws of the state, in which case the defendant shall have a jury, if, within 21 days after arraignment or entry of a plea, the defendant files with the court a written jury demand and at the same time tenders to that court a jury fee of \$25, unless

the fee is waived by the judge because of the indigence of the defendant. If the action is dismissed or the defendant is acquitted of the charge, or if the defendant, having paid the jury fee, files with the court at least 7 days before the scheduled trial date a written waiver of jury trial, the jury fee shall be refunded. A defendant who fails to file with the court the written jury demand as provided above waives the right to a jury trial.

### **Rule 229. Motion for Acquittal**

**(c) Motion after Verdict or Discharge of Jury.** If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment or acquittal may be made or renewed within 14 days after the jury is discharged or within such further time as the court may fix during the 14 day period. If a verdict of guilty is returned, the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned, the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that such a similar motion has been made prior to the submission of the case to the jury.

### **Rule 241. Search and Seizure**

**(d) Execution and Return With Inventory.** The search warrant may be executed and returned only within 14 days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and receipt for any property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant for the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge upon request shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

### **Rule 245. Time**

**(a) Computation.** In computing any period of time prescribed or allowed by these rules, the day of the event from which the designated period of time begins to run is not to be included. Thereafter, every day shall be counted including holidays, Saturdays, and Sundays. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event. As used in these Rules, "legal holiday" includes the first day of January, observed as New Year's Day; the third Monday in January, observed as Martin Luther King Day; the third Monday in February, observed as Washington-Lincoln Day; the last Monday in May, observed as Memorial Day; the fourth day of July, observed as Independence Day; the first Monday in September, observed as Labor Day; the second Monday in October, observed as Columbus Day; the 11th day of November, observed as Veteran's Day; the fourth Thursday in November, observed as Thanksgiving Day; the twenty-

fifth day of December, observed as Christmas Day, and any other day except Saturday or Sunday when the court is closed.

(c) [Repealed].

**(d) For Motions -- Affidavits.** A written motion, other than one which may be heard ex parte, and notice of the hearing thereon, shall be served not later than 7 days before the time specified for the hearing, unless a different period is fixed by rule or order of court. For cause shown, such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion, and opposing affidavits may be served not less than one day before the hearing, unless otherwise ordered by the court.

(e) [Repealed].

## **COLORADO APPELLATE RULES**

### **Rule 4. Appeal as of Right -- When Taken**

(a) Appeals in Civil Cases (Other than Appeals or Appellate Review Within C.A.R. 3.1, 3.2, 3.3 and 3.4). Except as provided in Rule 4(e), in a civil case in which an appeal is permitted by law as of right from a trial court to the appellate court, the notice of appeal required by C.A.R. 3 shall be filed with the appellate court with an advisory copy served on the clerk of the trial court within 49 days of the date of the entry of the judgment, decree, or order from which the party appeals. In appeals from district court review of agency actions, such notice of appeal shall be in addition to the statutory 45-day notice of intent to seek appellate review filed with the district court required by C.R.S. 24-4-106(9). If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal is filed, or within the time otherwise prescribed by this section (a), whichever period last expires.

The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion filed in the trial court by any party pursuant to the Colorado Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this section (a) commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: (1) Granting or denying a motion under C.R.C.P. 59 for judgment notwithstanding verdict; (2) granting or denying a motion under C.R.C.P. 59, to amend findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under C.R.C.P. 59, to alter or amend the judgment; (4) denying a motion for a new trial under C.R.C.P. 59; (5) expiration of a court granted extension of time to file motion(s) for post-trial relief under C.R.C.P. 59, where no motion is filed. The trial court shall continue to have jurisdiction to hear and decide a motion under C.R.C.P. 59 regardless of the filing of a notice of appeal, provided the C.R.C.P. 59 motion is timely filed under C.R.C.P. 59(a) and determined within the time specified in C.R.C.P. 59(j). During such time, all proceedings in the appellate court shall be stayed. A judgment or order is entered within the meaning of this section (a) when it is entered pursuant to C.R.C.P. 58. If notice of the entry of judgment, decree, or order is transmitted to the parties by mail or E-Service, the time for the

filing of the notice of appeal shall commence from the date of the mailing or E-Service of the notice.

Upon a showing of excusable neglect, the appellate court may extend the time for filing the notice of appeal by a party for a period not to exceed 35 days from the expiration of the time otherwise prescribed by this section (a). Such an extension may be granted before or after the time otherwise prescribed by this section (a) has expired; but if a request for an extension is made after such time has expired, it shall be made by motion with such notice as the court shall deem appropriate.

[Comment: C.A.R. 4(a) provides for the notice of appeal to be filed with the appellate court and a copy to be served upon the trial court. Time for filing the notice of appeal is increased to 49 days.]

(b) Appeals in Criminal Cases.

(1) Except as provided in Rule 4(e), in a criminal case the notice of appeal by a defendant shall be filed in the appellate court and an advisory copy served on the clerk of the trial court within 49 days after the entry of the judgment or order appealed from. A notice of appeal filed after the announcement of a decision, sentence, or order but before entry of the judgment or order shall be treated as filed on the date of such entry. If a timely motion in arrest of judgment or for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within 49 days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made within 14 days after entry of the judgment. A judgment or order is entered within the meaning of this section (b) when it is entered in the criminal docket. Upon a showing of excusable neglect the appellate court may, before or at any time after the time has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed 35 days from the expiration of the time otherwise prescribed by this section (b).

[Comment: C.A.R. 4(b) has been altered to make it conform more closely to C.A.R. 4(a).]

(2) Unless otherwise provided by statute or Colorado appellate rule, when an appeal by the state or the people is authorized by statute, the notice of appeal shall be filed in the Court of Appeals within 49 days after the entry of judgment or order appealed from. The Court of Appeals, after consideration of said appeal, shall issue a written decision answering the issues in the case and shall not dismiss the appeal as without precedential value. The final decision of the Court of Appeals is subject to petition for certiorari to the Supreme Court.

(c) Appellate Review of Felony Sentences.

(1) Availability of Review.

(II) (A) The notice of appeal must be filed within 49 days from the date of the imposition of sentence. The notice shall be filed with the appellate court with an advisory copy served on the clerk of the trial court which imposed the sentence. The time for filing the notice of appeal may be extended by the appellate court.

(d) Appeals of Cases in Which a Sentence of Death Has Been Imposed.

(2) Procedure and Conditions.

(I) The trial court, at the time of imposition of a sentence of death, shall enter an order staying execution of the judgment and sentence until further order of the Supreme Court, and shall direct the clerk of the trial court to mail to the Supreme Court, within 7 days of imposition of sentence, a copy of the judgment, sentence, and mittimus.

(II) The record, as described in subsection (3) of this Rule, shall be prepared in the same form as any other record to be presented to the Supreme Court and shall be transmitted by the clerk of the trial court within 42 days of imposition of sentence, or such additional time as may be allowed by the Supreme Court.

## **COLORADO RULES OF CRIMINAL PROCEDURE**

### **Rule 4. Warrant Or Summons Upon Felony Complaint**

(c) Execution or Service and Return.

(2) Summons.

(III) Manner. A summons issued pursuant to this Rule may be served in the same manner as the summons in a civil action or by mailing it to the defendant's last known address, not less than 14 days prior to the time the defendant is required to appear, by registered mail with return receipt requested or certified mail with return receipt requested. Service by mail shall be complete upon the return of the receipt signed by the defendant or signed on behalf of the defendant by one authorized by law to do so. The summons for the appearance of a corporation may be served by a peace officer in the manner provided for service of summons upon a corporation in a civil action.

(IV) Return. At least one business day prior to the return day, the person to whom a summons has been delivered for service shall make return thereof to the county court before whom the summons is returnable. At the request of the prosecuting attorney, made while a complaint is pending, a summons returned unserved, or a duplicate thereof, may be delivered by the county judge to any peace officer or other authorized person for service.

### **Rule 4.1. County Court Procedure--Misdemeanor And Petty Offense--Warrant Or Summons Upon Complaint**

(c) Summons, Summons and Complaint.

(1) Summons. A summons issued by the county court in a prosecution for a misdemeanor or a class 1 petty offense may be served by giving a copy to the defendant personally, or by leaving a copy at the defendant's usual place of abode with some person over the age of eighteen years residing therein, or by mailing a copy to the defendant's last known address not less than 14 days

prior to the time the defendant is required to appear by registered mail with return receipt requested or certified mail with return receipt requested. Service by mail shall be complete upon the return of the receipt signed by the defendant or signed on behalf of the defendant by one authorized by law to do so. Personal service shall be made by a peace officer or any disinterested party over the age of eighteen years.

### **Rule 5. Preliminary Proceedings**

(a) Felony Proceedings.

(3) Appearance in the Court not Issuing the Warrant. If the defendant is taken before a court which did not issue the arrest warrant, the court shall inform the defendant of the matters set out in subsection (a)(2) of this Rule and, allowing time for travel, set bail returnable not less than 14 days thereafter before the court which issued the arrest warrant, and shall transmit forthwith all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

(4) Preliminary Hearing--County Court Procedures.

(I) Within 7 days after the defendant is brought before the county court, either the prosecutor or the defendant may request a preliminary hearing. Upon such request, the court forthwith shall set the hearing. The hearing shall be held within 35 days of the day of setting, unless good cause for continuing the hearing beyond that time is shown to the court. The clerk of the court shall prepare and give notice of the hearing, or any continuance thereof, to all parties and their counsel.

(VII) If a felony complaint is dismissed prior to a preliminary hearing being held when one is required or, in other cases, prior to being bound over, the prosecution may thereafter file a direct information in the district court pursuant to Rule 7(c)(4) charging the same offense(s), file a felony complaint in the county court charging the same offense(s), or submit the matter to a grand jury. If the prosecution files a subsequent felony complaint charging the defendant with the same offense(s), the felony complaint shall be accompanied by a written statement from the prosecutor providing good cause for dismissing and refileing the charges. Within 21 days of defendant's first appearance following the filing of the new felony complaint the defendant may request an evidentiary hearing at which the prosecutor shall establish the existence of such good cause.

(VIII) If the county court has bound over the defendant to the district court and the case is thereafter dismissed in the district court before jeopardy has attached, the prosecution may file a direct information in the district court pursuant to Rule 7(c)(5) charging the same offense(s), file a felony complaint in county court charging the same offense(s), or submit the matter to a grand jury, and the case shall then proceed as if the previous case had never been filed. The prosecution shall also file with the felony complaint or the direct information a statement showing good cause for dismissing and then refileing the case. Within 21 days of defendant's first appearance following the filing of the new felony complaint or the direct filing of the new information the defendant may request an evidentiary hearing at which the prosecutor shall establish the existence of such good cause.

(5) Procedure Upon Failure to Request Preliminary Hearing. If the defendant or prosecutor fails to request a preliminary hearing within 7 days after the defendant has come before the court, the county court shall forthwith order the defendant bound over to the appropriate court of record for trial. In no case shall the defendant be bound over for trial to another court until the preliminary hearing has been held, or until the 7-day period for requesting a preliminary hearing has expired. In appropriate cases, the defendant may be admitted to, or continued upon bail by the county court, but bond shall be made returnable in the trial court at a day and time certain. All court records in the case, except the reporter's transcript, notes, or recording shall be transferred forthwith by the clerk to the appropriate court of record.

(c) Misdemeanor and Petty Offense Proceedings.

(3) Appearance in the County Court not Issuing the Warrant. If the defendant is taken before a county court which did not issue the arrest warrant, the court shall inform the defendant of the matters set out in subsection (a)(2)(I through VII) of this Rule and, allowing time for travel, set bail returnable not less than 14-days thereafter before the court which issued the arrest warrant, and shall transmit forthwith a transcript of the proceedings and all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

### **Rule 7. The Indictment And The Information**

(c) Direct Information.

(2) A preliminary hearing was held either in the county court or in the district court and the court found probable cause did not exist as to one or more counts. If the prosecutor states an intention to proceed in this manner, the bond executed by the defendant shall be continued and returnable in the district court at a day and time certain. If a bond has not been continued, the defendant shall be summoned into court without the necessity of making a new bond. The information shall be accompanied by a written statement from the prosecutor alleging facts which establish that evidence exists which for good cause was not presented by the prosecutor at the preliminary hearing. Within 21 days of defendant's first appearance following the direct filing the defendant may request an evidentiary hearing at which the prosecutor shall establish the existence of such good cause; or

(4) The case was dismissed before a preliminary hearing was held in the county court or in the district court, when one is required, or, in other cases, before the defendant was bound over to the trial court or otherwise set for arraignment or trial. The information shall be accompanied by a written statement from the prosecutor stating good cause for dismissing and then refiling the case. Within 21 days after defendant's first appearance following the direct filing the defendant may request a hearing at which the prosecutor shall establish the existence of such good cause. The prosecution may also submit the matter to a grand jury.

(5) The case was dismissed after the district or county court found probable cause at the preliminary hearing if one was required or, in other cases, after the defendant was bound over to the trial court or otherwise set for arraignment or trial, and before jeopardy has attached. If such case was originally filed by direct information in the district court, the prosecution may not file the same offense(s) by a felony complaint in the county court, but the prosecution may charge

the same offense(s) by filing a direct information in the district court or may submit the matter to a grand jury, and the case shall then proceed as if the previous case had never been filed. The prosecution shall also file with the direct information or with the felony complaint a statement showing good cause for dismissing and then refile the case. Within 21 days of defendant's first appearance following the filing of the new felony complaint or the direct filing of the new information the defendant may request an evidentiary hearing at which the prosecutor shall establish the existence of such good cause.

(g) Bill of Particulars. The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made only within 14 days after arraignment or at such other time before or after arraignment as may be prescribed by rule or order. A bill of particulars may be amended at any time subject to such conditions as justice requires.

(h) Preliminary Hearing--District Court Procedures.

(2) Upon the making of such a request, or if a dispositional hearing is required, the district court shall set the hearing which shall be held within 35 days of the day of the setting, unless good cause for continuing the hearing beyond that period is shown to the court. The clerk of the court shall prepare and give notice of the hearing, or any continuance thereof, to all parties and their counsel.

## **Rule 12. Pleadings, Motions Before Trial, Defenses, And Objections**

(b) The Motion Raising Defenses and Objections.

(3) Time of Making Motion. The motion shall be made within 21 days following arraignment.

## **Rule 16. Discovery And Procedure Before Trial**

Part I. Disclosure to the Defense

(b) Prosecutor's Performance of Obligations.

(1) The prosecuting attorney shall perform his or her obligations under subsections (a)(1)(I), (IV), (VII), and with regard to written or recorded statements of the accused or a codefendant under (VIII) as soon as practicable but not later than 21 days after the defendant's first appearance at the time of or following the filing of charges, except that portions of such reports claimed to be nondiscoverable may be withheld pending a determination and ruling of the court under Part III but the defense must be notified in writing that information has not been disclosed.

(2) The prosecuting attorney shall request court consent and provide the defense with all grand jury transcripts made in connection with the case as soon as practicable but not later than 35 days after indictment.

(3) The prosecuting attorney shall perform all other obligations under subsection (a)(1) as soon as practicable but not later than 35 days before trial.

Part II. Disclosure to Prosecution

(c) Nature of Defense.

Subject to constitutional limitations, the defense shall disclose to the prosecution the nature of any defense, other than alibi, which the defense intends to use at trial. The defense shall also disclose the names and addresses of persons whom the defense intends to call as witnesses at trial. At the entry of the not guilty plea, the court shall set a deadline for such disclosure. In no case shall such disclosure be less than 35 days before trial for a felony trial, or 7 days before trial for a non-felony trial, except for good cause shown. Upon receipt of the information required by this subsection (c), the prosecuting attorney shall notify the defense of any additional witnesses which the prosecution intends to call to rebut such defense within a reasonable time after their identity becomes known.

(d) Notice of Alibi.

The defense, if it intends to introduce evidence that the defendant was at a place other than the location of the offense, shall serve upon the prosecuting attorney as soon as practicable but not later than 35 days before trial a statement in writing specifying the place where he or she claims to have been and the names and addresses of the witnesses he or she will call to support the defense of alibi. Upon receiving this statement, the prosecuting attorney shall advise the defense of the names and addresses of any additional witnesses who may be called to refute such alibi as soon as practicable after their names become known. Neither the prosecuting attorney nor the defense shall be permitted at the trial to introduce evidence inconsistent with the specification, unless the court for good cause and upon just terms permits the specification to be amended. If the defense fails to make the specification required by this section, the court shall exclude evidence in his behalf that he or she was at a place other than that specified by the prosecuting attorney unless the court is satisfied upon good cause shown that such evidence should be admitted.

Part IV. Procedure

(b) Setting of Omnibus Hearing.

(3) The hearing shall be no later than 35 days after arraignment.

Part V. Time Schedules and Discovery Procedures

(b) Time Schedule.

(1) In the event the defendant enters a plea of not guilty or not guilty by reason of insanity, or asserts the defense of impaired mental condition, the court shall set a deadline for such disclosure to the prosecuting attorney of those items referred to in Parts II (b) (1) and (c) herein, subject to objections which may be raised by the defense within that period pursuant to Part III (d) of this rule. In no case shall such disclosure be less than 35 days before trial for a felony trial, or 7 days before trial for a non-felony trial, except for good cause shown.

**Rule 21. Change Of Venue Or Judge**

(a) Change of Venue.

(2) The Motion for Change of Venue.

(II) The written motion and the affidavits shall be served upon the opposing party 7 days before the hearing; the nonmoving party may submit a written brief or affidavit or both in opposition to the motion.

(5) Disposition of Confined Defendant. When the defendant is in custody, the court shall order the sheriff, or other officer having custody of the defendant, to remove him not less than 7 days before trial to the jail of the county to which the venue is changed and there deliver him together with the warrant under which he is held, to the jailer. The sheriff or other officers shall endorse on the warrant of commitment the reason for the change of custody, and deliver the warrant, with the prisoner, to the jailer of the proper county, who shall give the sheriff or other officer a receipt and keep the prisoner in the same manner as if he had originally been committed to his custody.

(b) Substitution of Judges.

(1) Within 14 days after a case has been assigned to a court, a motion, verified and supported by affidavits of at least two credible persons not related to the defendant, may be filed with the court and served on the opposing party to have a substitution of the judge. Said motion may be filed after the 14-day period only if good cause is shown to the court why it was not filed within the original 14-day period. The motion shall be based on the following grounds:

### **Rule 23. Trial By Jury Or To The Court**

(3) Every person accused of a class 1 or class 2 petty offense has the right to be tried by a jury of three, if he or she:

(I) Files a written jury demand within 21 days after entry of a plea;

(II) Tenders twenty-five dollars to the court within 21 days after entry of a plea, unless such fee is waived by the judge because of the indigence of the defendant. If the charge is dismissed or the defendant is acquitted of the charge, or if the defendant, having paid the jury fee, files with the court, at least 7 days before the scheduled trial date a written waiver of jury trial, the jury fee shall be returned to the defendant.

### **Rule 29. Motion For Acquittal**

(c) Motion After Verdict or Discharge of Jury. If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 14 days after the jury is discharged or within such further time as the court may fix during the 14-day period. If a verdict of guilty is returned, the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned, the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that such a similar motion has been made prior to the submission of the case to the jury.

### **Rule 32. Sentence And Judgment**

(f) Proceedings for Revocation of Probation.

(4) If the probationer is in custody, the hearing shall be held within 14 days after the filing of the complaint, unless delay or continuance is granted by the court at the instance or request of the probationer or for other good cause found by the court justifying further delay.

(5) If the court determines that a violation of a condition or conditions of probation has been committed, it shall within 7 days after the said hearing either revoke or continue the probation.

In the event probation is revoked, the court may then impose any sentence, including probation which might originally have been imposed or granted.

### **Rule 32.1. Death Penalty Sentencing Hearing**

(b) Statement of Intention to Seek Death Penalty. In any class 1 felony case in which the prosecution intends to seek the death penalty, the prosecuting attorney shall file a written statement of that intention with the trial court no later than 63 days (9 weeks) after arraignment and shall serve a copy of the statement on the defendant's attorney of record or the defendant if appearing pro se.

(d) Discovery Procedures for Sentencing Hearing.

(1) Aggravating Factors. Not later than 21 days after the filing of the written statement of intention required in subsection (b) of this rule, the prosecuting attorney shall provide to the defendant, and file with the court a list of the aggravating factors enumerated at section 18-1.3-1201(5), 6 C.R.S., and that the prosecuting attorney intends to prove at the hearing.

(2) Prosecution Witnesses. Not later than 21 days after the filing of the written statement of intention required in subsection (b) of this rule, the prosecuting attorney shall provide to the defendant a list of the witnesses whom the prosecuting attorney may call at the sentencing hearing and shall promptly furnish the defendant with written notification of any such witnesses who subsequently become known or the materiality of whose testimony subsequently becomes known. Along with the name of the witness, the prosecuting attorney shall furnish the witness' address and date of birth, the subject matter of the witness' testimony, and any written or recorded statement of that witness, including notes.

(3) Prosecution Books, Papers, Documents. Not later than 21 days after the filing of the written statement of intention required in subsection (b) of this rule, the prosecuting attorney shall provide to the defendant a list of the books, papers, documents, photographs, or tangible objects, and access thereto, that the prosecuting attorney may introduce at the sentencing hearing and shall promptly furnish the defendant written notification of additional such items as they become known.

(4) Prosecution Experts. As soon as practicable but not later than 63 days (9 weeks) before trial, the prosecuting attorney shall provide to the defendant any reports, recorded statements, and notes, including results of physical or mental examinations and scientific tests, experiments, or comparisons, of any experts whom the prosecuting attorney intends to call as a witness at the sentencing hearing and shall promptly furnish the defendant additional such items as they become available.

(5) Material Favorable to the Accused. Not later than 21 days after the filing of the written statement of intention required in subsection (b) of this rule, the prosecuting attorney shall make available to the defendant any material or information within the prosecuting attorney's possession or control that would tend to mitigate or negate the finding of any of the aggravating factors the prosecuting attorney intends to prove at the sentencing hearing, and the prosecuting attorney shall promptly make available to the defendant any such material or information that subsequently comes into the prosecuting attorney's possession or control.

(6) Prosecution's Rebuttal Witnesses. Upon receipt of the information required by subsection (7), the prosecuting attorney shall notify the defendant as soon as practicable but not later than 14 days before trial of any additional witnesses whom the prosecuting attorney intends to call in response to the defendant's disclosures.

(7) Defendant's Disclosure.

(A) Subject to constitutional limitations, the defendant shall provide the prosecuting attorney with the following information and materials not later than 35 days before trial:

(B) Any material subject to this subsection (7) that the defendant believes contains self-incriminating information that is privileged from disclosure to the prosecution prior to the sentencing hearing shall be submitted by the defendant to the trial judge under seal no later than 49 days before trial. The trial judge shall review any material submitted under seal pursuant to this paragraph (B) to determine whether it is in fact privileged.

(II) If the trial judge finds any of the material submitted under seal pursuant to this paragraph-(B) to be not privileged from disclosure to the prosecution prior to the sentencing hearing, the trial judge shall notify the defense of its findings and allow the defense 7 days after such notification in which to seek a modification, review or stay of the court's order requiring disclosure.

### **Rule 32.2. Death Penalty Post-Trial Procedures**

(b) Trial Court Procedure.

(2) Motions for New Trial. The defendant may file any post-trial motions, pursuant to Crim. P. 33, no later than 21 days after the imposition of sentence. The trial court, in its discretion, may rule on such motion before or after the sentencing hearing, but must rule no later than 91 days (13 weeks) after the imposition of sentence.

(3) Advisement and Order. Within 7 days after the imposition of a sentence of death, the court shall hold a hearing (advisement date) and shall advise the defendant pursuant to sections 16-12-204 and 205. On the advisement date, the court shall:

(III).Order the prosecuting attorney to deliver to counsel for the defendant within 7 days of the advisement date one copy of all material and information in the prosecuting attorney's possession or control that is discoverable under Crim. P. 16 or pertains to punishment, unless such material and information has been previously provided to that counsel. Costs of copying and delivery of such material and information shall be paid by the prosecuting attorney;

(IV) If new counsel is appointed for the defendant, order defendant's trial counsel, at his or her cost, to deliver a complete copy of trial counsel's file to new counsel within 7 days of the advisement date;

(V) Direct that any post-conviction review motions be filed within 154 days (22 weeks) of the advisement date; and

(4) Resolution of Post-conviction Motions. The court, upon receipt of any motion raising post-conviction review issues, as described in section 16-12-206, shall promptly determine whether an evidentiary hearing is necessary, and if so, shall schedule the matter for hearing within 63 days (9 weeks) of the filing of such motions and enter its order on all motions within 35 days of the

hearing. If no evidentiary hearing is required, the trial court shall rule within-35 days of the last day for filing the motions.

(c) Appellate Procedure.

(1) Unitary Notice of Appeal. The notice of appeal for the direct appeal and the notice of appeal for all post-conviction review shall be filed by unitary notice in the supreme court no later than 7 days after the trial court's order on post-conviction review motions. The unitary notice of appeal need conform only to the requirements of sections (1), (2), (6) and (8) of C.A.R. 3(g).

(2) Briefs. Counsel for defendant shall file an opening brief no later than 182 days (26 weeks) after the filing of the notice of appeal. The prosecution shall file an answer brief no later than 126 days (18 weeks) after filing of the opening brief. Counsel for defendant may file a reply brief no later than 63 days (9 weeks) after filing of the answer brief. Extensions of time will not be granted except on a showing of extraordinary circumstances that could not have been foreseen and prevented. The opening brief may not exceed 250 pages or, in the alternative, 79, 250 words; the answer brief may not exceed 250 pages or, in the alternative, 79, 250 words; and the reply brief may not exceed 100 pages or, in the alternative, 31,700 words. The Supreme Court may approve extensions not to exceed 75 pages or, in the alternative, 23,775 words for the opening and answer briefs, and 50 pages or 15, 850 words for the reply brief upon a showing of compelling need.

(4) Further Proceedings.

(II) Any notice of appeal concerning a trial court decision entered pursuant to section 16-12-209 or concerning any second or subsequent request for relief filed by the defendant, shall be filed in the supreme court within 35 days of the entry of the trial court's order. Such appeal shall be governed by the Colorado appellate rules as may be modified by the supreme court in case-specific orders designed to expedite the proceedings.

### **Rule 33. New Trial**

(c) Motion; Contents; Time.

The court may grant a defendant a new trial if required in the interests of justice. The motion for a new trial shall be in writing and shall point out with particularity the defects and errors complained of. A motion based upon newly discovered evidence or jury misconduct shall be supported by affidavits. A motion for a new trial based upon newly discovered evidence shall be filed as soon after entry of judgment as the facts supporting it become known to the defendant, but if a review is pending the court may grant the motion only on remand of the case. A motion for a new trial other than on the ground of newly discovered evidence shall be filed within 14 days after verdict or finding of guilt or within such additional time as the court may fix during the 14-day period.

### **Rule 34. Arrest Of Judgment**

The court shall arrest judgment if the indictment or information, complaint, or summons and complaint does not charge an offense, or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 14 days after verdict or finding

of guilt or within such further time as the court may fix during the 14-day period. A motion in arrest of judgment may be set forth alternatively as a part of a motion for a new trial.

### **Rule 35. Postconviction Remedies**

(b) Reduction of Sentence. The court may reduce the sentence provided that a motion for reduction of sentence is filed (1) within 126 days (18 weeks) after the sentence is imposed, or (2) within 126 days (18 weeks) after receipt by the court of a remittitur issued upon affirmance of the judgment or sentence or dismissal of the appeal, or (3) within 126 days (18 weeks) after entry of any order or judgment of the appellate court denying review or having the effect of upholding a judgment of conviction or sentence. The court may, after considering the motion and supporting documents, if any, deny the motion without a hearing. The court may reduce a sentence on its own initiative within any of the above periods of time.

(c) Other Remedies.

(3)(III) If a motion fails to comply with Subsection (II) the court shall return to the defense a copy of the document filed along with a blank copy of Form 4 and direct that a motion in substantial compliance with the form be filed within 49 days.

(IV) The court shall promptly review all motions that substantially comply with Form 4, Petition for Postconviction Relief Pursuant to Crim. P. 35(c). In conducting this review, the court should consider, among other things, whether the motion is timely pursuant to § 16-5-402, whether it fails to state adequate factual or legal grounds for relief, whether it states legal grounds for relief that are not meritorious, whether it states factual grounds that, even if true, do not entitle the party to relief, and whether it states factual grounds that, if true, entitle the party to relief, but the files and records of the case show to the satisfaction of the court that the factual allegations are untrue. If the motion and the files and record of the case show to the satisfaction of the court that the defendant is not entitled to relief, the court shall enter written findings of fact and conclusions of law in denying the motion. The court shall complete its review within 63 days (9 weeks) of filing or set a new date for completing its review and notify the parties of that date.

(V) If the court does not deny the motion under (IV) above, the court shall cause a complete copy of said motion to be served on the prosecuting attorney if one has not yet been served by counsel for the defendant. If the defendant has requested counsel be appointed in the motion, the court shall cause a complete copy of said motion to be served on the Public Defender. Within 49 days, the Public Defender shall respond as to whether the Public Defender's Office intends to enter on behalf of the defendant pursuant to § 21-1-104(1)(b), 6 C.R.S. In such response, the Public Defender shall identify whether any conflict exists, request any additional time needed to investigate, and add any claims the Public Defender finds to have arguable merit. Upon receipt of the response of the Public Defender, or immediately if no counsel was requested by the defendant or if the defendant already has counsel, the court shall direct the prosecution to respond to the defendant's claims or request additional time to respond within 35 days and the defendant to reply to the prosecution's response within 21 days. The prosecution has no duty to respond until so directed by the court. Thereafter, the court shall grant a prompt hearing on the motion unless, based on the pleadings, the court finds that it is appropriate to enter a ruling containing written findings of fact and conclusions of law. At the hearing, the court shall take whatever evidence is necessary for the disposition of the motion. The court shall enter written or

oral findings either granting or denying relief within 63 days (9 weeks) of the conclusion of the hearing or provide the parties a notice of the date by which the ruling will be issued.

### **Rule 37. Appeals From County Court**

(a) Filing Notice of Appeal and Docketing Appeal. The district attorney may appeal a question of law, and the defendant may appeal a judgment of the county court in a criminal action under simplified procedure to the district court of the county. To appeal the appellant shall, within 35 days after the date of entry of the judgment or the denial of posttrial motions, whichever is later, file notice of appeal in the county court, post such advance costs as may be required for the preparation of the record and serve a copy of the notice of appeal upon the appellee. He shall also, within such 35 days, docket the appeal in the district court and pay the docket fee. No motion for new trial or in arrest of judgment shall be required as a prerequisite to an appeal, but such motions if filed shall be pursuant to Rule 33(b) of these Rules.

(b) Contents of Notice of Appeal and Designation of Record. The notice of appeal shall state with particularity the alleged errors of the county court or other grounds relied upon for the appeal, and shall include a stipulation or designation of the evidence and other proceedings which the appellant desires to have included in the record certified to the district court. If the appellant intends to urge upon appeal that the judgment or a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. The appellee shall have 14 days after service upon him of the notice of appeal to file with the clerk of the county court and serve upon the appellant a designation of any additional parts of the transcript or record which he deems necessary. The advance cost of preparing the additional record shall be posted by the appellant with the clerk of the county court within 7 days after service upon him of the appellee's designation, or the appeal will be dismissed. If the district court finds that any part of the additional record designated by the appellee was unessential to a complete understanding of the questions raised by the appeal, it shall order the appellee to reimburse the appellant for the cost advanced for the preparation of such part without regard to the outcome of the appeal.

(c) Contents of Record on Appeal. Upon the filing of a notice of appeal and upon the posting of such advance costs by the appellant, as may be required for the preparation of a record, unless the appellant is granted leave to proceed as an indigent, the clerk of the county court shall prepare and issue as soon as may be possible a record of the proceedings in the county court, including the summons and complaint or warrant, the separate complaint if any has been issued, and the judgment. The record shall also include a transcription or a joint stipulation of such part of the actual evidence and other proceedings as the parties may designate. If the proceedings have been electrically recorded, the transcription of designated evidence and proceedings shall be prepared in the office of the clerk of the court, either by him or under his supervision, within 42 days after judgment or within such additional time as may be granted by the county court. The clerk shall notify in writing the opposing parties of the completion of the record, and such parties shall have 14 days within which to file objections. If none are received, the record shall be certified forthwith by the judge. If objections are made, the parties shall be called for hearing and the objections settled by the county judge and the record then certified.

(e) Briefs. A written brief setting out matters relied upon as constituting error and outlining any arguments to be made shall be filed in the district court by the appellant within 21 days after

certification of the record. A copy of the appellant's brief shall be served upon the appellee. The appellee may file an answering brief within 21 days after such service. A reply brief may be filed within 14 days after service of the answering brief. In the discretion of the district court, the time for filing briefs and answers may be extended.

### **Rule 37.1. Interlocutory Appeal From County Court**

(b) Filing Notice of Appeal. The prosecuting attorney shall file the notice of appeal with the clerk of the district court and shall serve the defendant and the clerk of the trial court with a copy thereof. Such notice of appeal shall be filed within 14 days of the entry of the order being appealed and any docket fee shall be paid at the time of the filing.

(c) Contents of Record on Appeal. The record for an interlocutory appeal shall consist of the information or charging document, the motions filed by the defendant or defendants and the grounds stated in section (a) above, a transcript of all testimony taken at the hearing on said motions and such exhibits or reasonable copies, facsimiles, or photographs thereof as the parties may designate (subject to the provisions in C.A.R. 11(b) pertaining to exhibits of bulk), the order of court ruling on said motions and the date, if one has been fixed, that the case is set for trial or a certificate by the clerk that the case has not been set for trial. The record shall be filed within 14 days of the date of filing the notice of appeal, and may be supplemented by order of the district court.

(d) Briefs. Within 14 days after the record has been filed in the district court, the prosecuting attorney shall file an opening brief. Within 14 days after service of said opening brief, the defendant shall file an answer brief, and the prosecuting attorney shall have 7 days after service of said answer brief to file a reply brief.

(e) Disposition of Cause. Unless oral argument is ordered by the court and it rules on the record and in the presence of the parties, the decision of the court shall be by written opinion, copies of which shall be transmitted by the clerk of the court by mail to the trial judge and to all parties. No petition for rehearing shall be permitted. A certified copy of the judgment and directions to the county court, and a copy of the written opinion, if any, shall constitute the mandate of the district court, concluding the appeal and restoring jurisdiction to the county court. Such mandate shall issue and be transmitted by the clerk of the court by mail to the trial judge and all parties on the 44<sup>th</sup> day after the district court's oral or written order, unless the district court is given notice by one of the parties that it has sought further review by the supreme court upon a writ of certiorari pursuant to the rules of that court, in which case the mandate shall issue upon notification that certiorari has been denied or upon receiving the remittitur of the supreme court.

### **Rule 41. Search, Seizure, And Confession**

(d) Issuance, Contents, Execution, and Return of Warrant.

(5) Execution and Return.

(VI) A search warrant shall be executed within 14 days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be

accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge upon request shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

#### **Rule 41.1. Court Order For Nontestimonial Identification**

(f) Execution and Return.

(2) The order may be executed and returned only within 14 days after its date.

#### **Rule 45. Time**

(a) Computation. In computing any period of time prescribed or allowed by these rules, the day of the event from which the designated period of time begins to run is not to be included. Thereafter, every day shall be counted including holidays, Saturdays, and Sundays. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event. As used in these Rules, “legal holiday” includes the first day of January, observed as New Year's Day; the third Monday in January, observed as Martin Luther King Day; the third Monday in February, observed as Washington-Lincoln Day; the last Monday in May, observed as Memorial Day; the fourth day of July, observed as Independence Day; the first Monday in September, observed as Labor Day; the second Monday in October, observed as Columbus Day; the 11th day of November, observed as Veteran's Day; the fourth Thursday in November, observed as Thanksgiving Day; the twenty-fifth day of December, observed as Christmas Day, and any other day except Saturday or Sunday when the court is closed.

(c) [Repealed].

(d) [Repealed].

(e) [Repealed].

#### **Rule 47. Motions**

(a) An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit.

(b) A written motion, other than one which may be heard ex parte, and notice of the hearing thereof, shall be served not later than 7 days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be

made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion, and opposing affidavits may be served not less than one day before the hearing unless the court permits them to be served at a later time.