

Rule Change 2014(08)

COLORADO APPELLATE RULES

Rule 1. Scope of Rules

(a) Matters Reviewable. An appeal to the appellate court may be taken from:

- (1) A final judgment of any district, ~~superior~~, probate, or juvenile court in all actions or special proceedings whether governed by these rules or by the statutes;
- (2) A judgment and decree, or any portion thereof, in a proceeding concerning water rights; and an order refusing, granting, modifying, cancelling, affirming or continuing in whole or in part a conditional water right, or a determination that reasonable diligence or progress has or has not been shown in an enterprise granted a conditional water right;
- (3) An order granting or denying a temporary injunction;
- (4) An order appointing or denying the appointment of, or sustaining or overruling a motion to discharge, a receiver.

(b) Limitation on Taking Appeals. The taking of appeals shall be in accordance with these rules except for special proceedings in which a different time period is set by statute for the taking of an appeal.

(c) Appeal Substitute for Writ of Error. Matters designated by statute to be reviewable by writ of error shall be reviewed on appeal as herein provided.

(d) Ground for Reversal, etc. ~~Briefs filed pursuant to Each party in this brief required by~~ C.A.R. 28(a) shall state clearly and briefly the grounds upon which ~~he~~ the party relies in seeking a reversal or modification of the judgment or the correction of adverse findings, orders, or rulings of the trial court. ~~He~~ The party will be limited to the grounds so stated although the court may in its discretion notice any error appearing of record. When an appeal has been taken, it shall not be dismissed upon motion of an appellant without notice to all interested parties whose appearances have been entered in the appellate court, and order of the court permitting such dismissal; if dismissal is objected to by any such interested party, ~~he~~ the party may, in the court's discretion, seek reversal, modification, or correction of the judgment.

(e) Review of Water Matters. The notice of appeal (see C.A.R. 4) for review of the whole or any part of a judgment and decree or order as defined in subsection (a)(2) of this Rule shall designate as appellant the party or parties filing the notice of appeal and as appellee all other parties whose rights may be affected by the appeal and who in the trial court entered an appearance, by application, protest, or in any other authorized manner. If not an appellant, the division engineer shall be an appellee; provided that upon application, a dismissal may be entered as to the division engineer in the absence of objection made by any party to the appeal within ~~ten~~ 14 days from the mailing to such party of such application. The notice of appeal shall describe the water rights with sufficient particularity to apprise each appellee of the issues sought to be reviewed. The notice of appeal shall otherwise comply with the requirements of C.A.R.

3(d).

Rule 3.2. Appeals from the Denial of a Petition for Waiver of Parental Notification Requirements

Appeals from orders denying a petition for waiver of the parental notification requirements of Section 12-37.5-104, C.R.S., shall be in the manner and within the time prescribed in Rule 3 of Chapter 23.5 of the Colorado Rules of Civil Procedure.

Rule 4.1. Interlocutory Appeals in Criminal Cases

(a) **Grounds.** The state may file an interlocutory appeal in the ~~supreme court~~ Supreme Court from a ruling of a district court granting a motion under Crim. P. 41(e) and (g) and Crim. P. 41.1(i) made in advance of trial by the defendant for return of property and to suppress evidence or granting a motion to suppress an extra-judicial confession or admission; provided that the state certifies to the judge who granted such motion and to the ~~supreme court~~ Supreme Court that the appeal is not taken for purposes of delay and the evidence is a substantial part of the proof of the charge pending against the defendant.

(b) **Limitation on Time of Issuance.** An interlocutory appeal must be filed within 14 days ~~No interlocutory appeal shall be filed after 14 days from~~ after the entry of the order complained of. It shall not be a condition for the filing of such interlocutory appeal that a motion for a new trial or rehearing shall have been filed and denied in the trial court.

(c) **How Filed.** To file an interlocutory appeal the state, within the time fixed by this Rule, shall file the notice of appeal with the clerk of the appellate court with an advisory copy served on the clerk of the trial court.

(d) **Record.** The record for an interlocutory appeal shall consist of the information or indictment, the plea of the defendant or the defendants, the motions filed by the defendant or defendants on the grounds stated in section (a) above, the reporter's 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 together with 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. After the filing of the record, such other exhibits or reasonable copies, facsimiles, or photographs thereof shall be transmitted by the clerk of the trial court to the appellate court as the appellate court may order. The record shall be filed within 14 days of the date of filing the notice of appeal.

(e) **Appearances.** The state in these proceedings shall be represented by the district attorney, and

briefs shall be prepared by ~~him~~ the district attorney's office and responsive briefs or pleadings served upon ~~him~~ that office.

(f) Briefs. Within 14 days after the record has been filed in the ~~supreme court~~ Supreme Court, the state shall file ~~ten copies of a typewritten, mimeographed, or otherwise reproduced~~ its brief, and within 14 days thereafter, the appellee shall file ~~ten copies of a typewritten, mimeographed, or otherwise reproduced~~ the answer brief, and the state shall have 7 days after service of ~~said~~ the answer brief to file ~~ten copies of a typewritten, mimeographed, or otherwise reproduced~~ any reply brief.

(g) Disposition of Cause. No oral argument shall be permitted except when ordered by the court. 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 one attorney on each side of the case. No petition for rehearing shall be permitted. Remittitur shall accompany said opinion.

(h) Time. The time limits herein may only be enlarged by order of the appropriate court before the existing time limit has expired.

Rule 4.2. Interlocutory Appeals in Civil Cases

(a) Discretionary Interlocutory Appeals. Upon certification by the trial court, or stipulation of all parties, the court of appeals may, in its discretion, allow an interlocutory appeal of an order in a civil action. This rule applies only to cases governed by C.R.S. 13-4-102.1.

(b) Grounds for Granting Interlocutory Appeal. Grounds for certifying and allowing an interlocutory appeal are:

(1) Where immediate review may promote a more orderly disposition or establish a final disposition of the litigation; and

(2) The order involves a controlling and unresolved question of law. For purposes of this rule, an "unresolved question of law" is a question that has not been resolved by the Colorado Supreme Court or determined in a published decision of the Colorado Court of Appeals, or a question of federal law that has not been resolved by the United States Supreme Court.

(c) Procedure in the Trial Court. The party seeking to appeal shall move for certification or submit a stipulation signed by all parties within 14 days after the date of the order to be appealed, stating that the appeal is not being sought for purposes of delay. The trial court may, in its discretion, certify an order as immediately appealable, but if all parties stipulate, the trial court must forthwith certify the order. Denial of a motion for certification is not appealable.

(d) Procedure in the Appellate Court. If the trial court certifies an order for an interlocutory appeal, the party seeking an appeal shall file a petition to appeal with the clerk of the court of appeals with an advisory copy served on the clerk of the trial court within 14 days of the date of the trial court's certification.

(1) *Docketing of Petition and Fees; Form of Papers.* Upon the filing of a petition to appeal, appellant shall pay to the clerk of the court of appeals the applicable docket fee. All papers filed under this rule shall comply with C.A.R. 32.

(2) *Number of Copies to be Filed and Served.* An original ~~and five copies~~ of any petition or brief shall be filed. One set of supporting documents shall be filed. ~~If the court grants the petition to appeal, the appellant shall file an additional five copies of supporting documents no later than the date on which any reply is due.~~

(3) *Content of Papers and Service.*

(A) The petition shall contain a caption that complies with C.A.R. 3(d)(1) and C.A.R. 32.

(B) To enable the court to determine whether the petition should be granted, the petition shall disclose in sufficient detail the following:

(i) The identities of all parties and their status in the proceeding below;

(ii) The order being appealed;

(iii) The reasons why immediate review may promote a more orderly disposition or establish a final disposition of the litigation and why the order involves a controlling and unresolved question of law;

(iv) The issues presented;

(v) The facts necessary to understand the issues presented;

(vi) Argument and points of authority explaining why the petition to appeal should be granted and why the relief requested should be granted; and

(vii) A list of supporting documents, or an explanation of why supporting documents are not available.

(C) The petition shall include the names, addresses, email addresses and telephone and fax numbers, if any, of all parties to the proceeding below; or, if a party is represented by counsel, the attorney's name, address, email address and telephone and fax numbers.

(D) The petition shall be served upon each party and the court below.

(4) *Supporting Documents.* A petition shall be accompanied by a separate, indexed set of available supporting documents adequate to permit review. Some or all of the following documents may be necessary:

(A) The order being appealed;

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

(C) A transcript of the proceeding leading to the order below.

(5) *No Initial Response to Petition Allowed.* Unless requested by the court of appeals, no response to the petition shall be filed prior to the court's determination of whether to grant or deny the petition.

(6) *Briefs.* If the court grants the petition to appeal, the petition to appeal shall serve as appellant's opening brief. The appellee shall file an answer brief and the appellant may file a reply brief according to a briefing schedule established by the court in its order granting the petition to appeal. The petition and briefs shall comply with the limitations on length contained in C.A.R. 28(g).

(7) *Oral Argument.* Oral argument is governed by C.A.R. 34.

(8) *Petition for Rehearing.* In all proceedings under this Rule 4.2, where the court of appeals has issued an opinion on the merits of the interlocutory appeal, a petition for rehearing may be filed in accordance with the provisions of C.A.R. 40.

(e) Stay of Trial Court Proceedings

(1) The filing of a petition under this rule does not stay any proceeding below or the running of any applicable time limit. If the appellant seeks temporary stay pending the court's determination of whether to grant the petition to appeal, a stay ordinarily shall be sought in the first instance from the trial court. If a request for stay below is impracticable or not promptly ruled upon or is denied, the appellant may file a separate motion for temporary stay in the court of appeals supported by accompanying materials justifying the requested stay.

(2) An order granting the petition to appeal by the court of appeals automatically stays all proceedings below until final determination of the interlocutory appeal in the court of appeals unless the court, sua sponte, or upon motion lifts such stay in whole or in part.

(f) Effect of Failure to Seek or Denial of Interlocutory Review. Failure to seek or obtain interlocutory review shall not limit the scope of review upon an appeal from entry of the final judgment.

(g) Supreme Court Review. Denial of a petition to appeal is not subject to certiorari review. A decision of the court of appeals on the merits shall be subject to certiorari review. No provision of this rule limits the jurisdiction of the Supreme Court under C.A.R. 21.

(h) All matters in the Court of Appeals under this rule shall be heard and determined by a special or regular division of three judges as assigned by the Chief Judge.

Rule 26. Computation and Extension of Time

(a) Computation of Time. In computing any period of time prescribed or allowed by these rules the day of the act, event, or default from which the designated period of time begins to run shall not be included. Thereafter, every day shall be counted including holidays, Saturdays and Sundays. The last day of the period so computed shall 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. 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.

(b) Enlargement of Time. The appellate court for good cause shown may upon motion enlarge

the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time; but the court may not enlarge the time for filing a notice of appeal beyond that prescribed in C.A.R. 4(a). Nor may the court enlarge the time prescribed by law for filing a petition to enjoin, set aside, suspend, modify, enforce, or otherwise review, or a notice of appeal from, an order of an administrative agency, board, commission, or officer of the State of Colorado, except as specifically authorized by law.

(c) Additional Time After Service by Mail [Repealed].

COMMITTEE COMMENT

The rule as amended conforms to C.R.C.P. 6(a).

Rule 30. E-Filing

(a) Definitions.

(1) **Document.** A pleading, motion, brief, writing or other paper filed or served under Colorado Appellate Rules.

(2) **E-Filing/Service System.** The E-Filing/Service System (“E-System”) approved by the Colorado Supreme Court for filing and service of documents via the Internet through the Court-authorized E-System provider.

(3) **Electronic Filing.** Electronic filing (“E-Filing”) is the transmission of documents to the clerk of the court, and from the court, via the E-System.

(4) **Electronic Service.** Electronic service (“E-Service”) is the transmission of documents to any party in a case via the E-System. Parties who have subscribed to the E-System have agreed to receive service via the E-System.

(5) **E-System Provider.** The E-Service/E-Filing System Provider authorized by the Colorado Supreme Court.

(6) **S/Name.** A symbol representing the signature of the person whose name follows the “S/” on the electronically or otherwise signed form of the E-Filed or E-Served document.

(b) Types of Cases Applicable. E-Filing and E-Service are permissible in all cases. ~~civil, domestic, probate and agency appellate proceedings.~~

(c) To Whom Applicable.

(1) Attorneys licensed to practice law in Colorado may register to use the E-System.

(2) Where the system and necessary equipment are in place to permit it, pro se parties and government entities and agencies may register to use the E-System.

(d) E-Filing-Date and Time of Filing. A document transmitted to the E-System Provider by 11:59 p.m. Colorado time shall be deemed to have been filed with the clerk of the court on that date.

(e) E-Service--When Required--Date and Time of Service. Documents submitted to the court through E-Filing shall be served under C.A.R. 25 by E-Service. A document transmitted to the E-System Provider for service by 11:59 p.m. Colorado time shall be deemed to have been served on that date.

(f) Filing Party to Maintain the Signed Copy-Paper Document Not to Be Filed--Duration of Maintaining of Document. A printed or printable copy of an E-Filed or E-Served document with original or scanned signatures shall be maintained by the filing party and made available for inspection by other parties or the court upon request, but shall not be filed with the court. When these rules require a party to maintain a document, the filer is required to maintain the document for a period of two years after the final resolution of the action, including the final resolution of all appeals.

(g) Documents Requiring E-Filed Signatures. For all E-Filed and E-Served documents, signatures of attorneys and parties may be in S/Name typed form to satisfy signature requirements, once the necessary signatures have been obtained on a paper form of the document. Attorneys and parties may also use an electronic ink signature.

(h) Documents Under Seal. A motion for leave to file documents under seal may be E-Filed. Documents to be filed under seal pursuant to an order of the court may be E-Filed at the direction of the court; however, the filing party may object to this procedure.

(i) Transmitting of Orders, Notices, Opinions and Other Court Entries. Appellate courts shall distribute orders, notices, opinions, and other court entries using the E-System in cases where E-Filings were received from any party.

(j) Form of E-Filed Documents. ~~The requirements found in C.A.R. 28, 31, and 32 shall apply to E-Filed documents~~E-Filed documents shall comply with all requirements as to form contained within these rules. ~~A document shall not be transmitted to the clerk of the court by any other~~

~~means unless the court at any later time requests a printed copy.~~

(k) E-Filing May be Mandated. The Chief Justice may mandate, or, with the permission of the Chief Justice, the Chief Judge of the court of appeals may mandate E-Filing for specific case classes or types of cases. An appellate justice or judge may mandate E-Filing and E-Service for a specific case for submitting documents to the court and serving documents on case parties. Where E-Filing is mandatory, the court may thereafter accept a document in paper form and the court shall scan the document and upload it to the E-Service Provider. After notice to an attorney that all future documents are to be E-Filed, the court may charge a fee of \$50 per document for the service of scanning and uploading a document filed in paper form. Where E-Filing and E-Service are mandatory an appellate justice or judge may exclude pro se parties from mandatory E-Filing requirements.

(l) Relief in the Event of Technical Difficulties.

(1) Upon satisfactory proof that E-Filing or E-Service of a document was not completed because of: (a) an error in the transmission of the document to the E-System Provider which was unknown to the sending party; (b) a failure of the E-System Provider to process the E-Filing when received, or (c) other technical problems experienced by the filer or E-System Provider, the court may enter an order permitting the document to be filed nunc pro tunc to the date it was first attempted to be sent electronically.

(2) Upon satisfactory proof that an E-Served document was not received by or unavailable to a party served, the court may enter an order extending the time for responding to that document.

(m) Form of Electronic Documents.

(1) **Electronic Document Format, Size and Density.** Electronic document format, size, and density shall be as specified by Chief Justice Directive # ~~11-01~~05-02, as amended.

(2) **Multiple Documents.** Multiple documents ~~(including proposed orders)~~ may be filed in a single electronic filing transaction. Each document in that filing must bear a separate document title.

~~ADDITIONAL INFORMATION ON RULE.~~ The Court authorized service provider for the program is ~~ICCES~~; ~~LexisNexis File and Serve~~ (~~(www.courts.states.co.us/icces)~~, ~~www.lexisnexis.com/fileandserve~~).

Rule 38. Sanctions

(a) Dismissal for Failure of Appellant to Cause Timely Transmission of the Record. If the appellant fails to cause timely transmission of the record pursuant to the appellate rules, an appellee, upon payment of the docket fee, may move for the dismissal of the appeal. The motion shall be supported by a certificate of the clerk of the trial court showing the date of the judgment or order from which the appeal was taken. The motion shall also be supported by the case file in the office of the clerk of the appellate court in which it is filed, the expiration of any order extending the time for transmitting the record, and proof of service of the notice of appeal. The appellant may respond within ~~fourteen~~ 14 days of service of the motion to dismiss.

(b) Consequence of Failure to File Brief. If an appellant or cross-appellant fails to file a brief within the time provided by this rule, or within the time extended, an appellee or cross-appellee may move for dismissal of the appeal or cross-appeal. The court may dispense with oral argument if an appellee or cross-appellee fails to file a brief.

(c) Failure to Prosecute Appeal. In all cases where the appellant fails ~~duly~~ to prosecute the appeal, the appellate court, may, upon dismissal thereof, enter judgment against the appellant for not more than ~~twenty percent~~ 20% of the amount of the judgment as damages and costs in consequence of the delay occasioned by the appeal.

(d) Sanctions for Frivolous Appeal. If the appellate court ~~shall~~ determines that an appeal is frivolous, it may award just damages and single or double costs to the appellee.

(e) General Powers of the Court. The appellate court may apply such sanction as it deems appropriate, including dismissal, for the failure to comply with any of its orders or with these appellate rules.

Rule 43. Substitution of Parties

(a) Death of a Party. If a party dies and a suggestion of death is filed after a notice of appeal is filed or while a proceeding is otherwise pending in the appellate court—, the personal representative of the deceased party may be substituted as a party on motion filed by the representative or by any party with the clerk of the appellate court. The motion of a party shall be served upon the representative in accordance with the provisions of C.R.C.P. Rule 25, ~~C.R.C.P.~~ If the deceased party has no representative, any party may suggest the death on the record and proceedings shall then be had as the appellate court may direct. If a party against whom an appeal may be taken dies after entry of a judgment or order in the trial court but before a notice of appeal is filed, an appellant may proceed as if death had not occurred. After the notice of appeal is filed substitution shall be effected in the appellate court in accordance with this section (a). If a party entitled to appeal dies before filing a notice of appeal, the notice of appeal may be filed by his personal representative, or, if he has no personal representative, by his attorney of record within the time prescribed by these rules. After the notice of appeal is filed substitution shall be effected in the appellate court in accordance with this section (a).

(b) Substitution for Other Causes. If substitution of a party in the appellate court is necessary for any reason other than death, substitution shall be effected in accordance with the procedure prescribed in section (a).

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

(1) When a public officer is a party to an appeal or other proceedings in the appellate court in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action does not abate and his successor is automatically substituted as a party. Proceedings following the substitution shall be in the name of the substituted party, but any misnomer not affecting the substantial rights of the parties shall be disregarded. An order of substitution may be entered at any time, but the omission to enter such an order shall not affect the substitution.

(2) When a public officer is a party to an appeal or other proceeding in his official capacity he may be described as a party by his official title rather than by name; but the court may require his name to be added.

Rule 45. Duties of Clerk

(a) General Provisions. The clerk of the appellate court shall take an oath and give the bond required by law. Neither the clerk nor any deputy clerk shall practice as an attorney or as counselor in any court while he continues in office. The appellate court shall be deemed always open for the purpose of filing any proper paper, of issuing and returning process and of making motions and orders. The office of the clerk, with the clerk or a deputy in attendance, shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, as defined in C.A.R. 26, but the chief justice may provide by order for the opening or closing of the

appellate court clerk's office during specified hours on other days.

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

The clerk shall prepare, under the direction of the chief justice or chief judge a calendar of cases awaiting argument. In placing cases on the calendar for argument, he the clerk shall give preference to appeals and other proceedings entitled to preference by law.

The clerk shall keep such other books and records as may be required from time to time by the court.

(c) Notice Service of Orders ~~or and~~ Judgments. The clerk shall serve orders and judgments upon each party ~~Immediately upon the entry of an order or judgment the clerk shall serve a notice of entry by mail upon each party to the proceeding together with a copy of any opinion respecting the order or judgment,~~ and shall make a note in the docket of the mailingservice. Service on a party represented by counsel shall be made on counsel.

(d) Custody of Records and Papers. The clerk shall have custody of the records and papers of the court. ~~He shall not permit any~~ Original records or papers may not ~~to~~ be taken from the clerk's ~~his~~ custody except as authorized by the orders or instructions of the court. Original papers transmitted as the record on appeal or review shall upon disposition of the case be returned to the court or agency from which they were received. The clerk shall preserve copies of briefs and other printed papers filed.

Rule 50. Certiorari to Court of Appeals Before Judgment

(a) Considerations Governing. A writ of certiorari from the Supreme Court to review a case newly filed or pending in the eCourt of aAppeals, before judgment is given in said court, may be granted upon a showing:

(1) That the case involves a matter of substance not heretofore determined by the Supreme Court of Colorado, or that the case if decided according to the relief sought on appeal involves the overruling of a previous decision of the Supreme Court; or

(2) That the Court of Appeals is being asked to decide an important state question which has not been, but should be, determined by the Supreme Court; or

(3) That the case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate determination in the Supreme Court.

(b) By Whom Sought. The petition for a writ may be filed by either party or by stipulation of the parties. The Court of Appeals on its own motion may request transfer to the Supreme Court, or the Supreme Court may on its own motion require transfer of the case to it.

Rule 51. Review on Certiorari – How Sought

(a) Filing and Proof of Service. Review on certiorari shall be sought by filing with the clerk of the Supreme Court, with service had and proof thereof as required by C.A.R. 25, ~~ten typewritten or otherwise reproduced copies of~~ a petition which shall be in the form prescribed in C.A.R. 32 and a transcript of the record in the case as filed in said court which shall be certified by the clerk of the appropriate court. Service of a copy of the transcript of the record is not required.

(b) Appearance and Docket Fee. Upon the filing of the petition and the certified transcript of the record, counsel for the petitioner shall enter an appearance and pay the docket fee of \$225.00, of which \$1.00 shall be transferred to the state general fund as a tax levy pursuant to section 2-5-119, C.R.S. The case shall then be placed in the certiorari docket.

(c) Notice to Respondents. It shall be the duty of counsel for the petitioner to notify all the respondents of the date of filing, and of the docket number of the case, and that the transcript of the record has been filed in the Supreme Court.

(d) Docket Fee. Upon entry of appearance, counsel for respondent shall pay the docket fee of \$115.00.

Rule 51.1. Exhaustion of State Remedies Requirement in Criminal Cases

(a) Exhaustion of Remedies. In all appeals from criminal convictions or post-conviction relief matters from or after July 1, 1974, a litigant shall not be required to petition for rehearing and certiorari following an adverse decision of the Court of Appeals in order to be deemed to have exhausted all available state remedies respecting a claim of error. Rather, when a claim has been presented to the Court of Appeals or Supreme Court, and relief has been denied, the litigant shall be deemed to have exhausted all available state remedies.

(b) Savings Clause. If a litigant's petition for federal habeas corpus is dismissed or denied for failure to exhaust state remedies based on a decision that this rule is ineffective, the litigant shall have 49 days from the date of such dismissal or denial within which to file a motion to recall the mandate together with a writ of certiorari presenting any claim of error not previously presented in reliance on this rule.

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

(a) The Petition. The petition for writ of certiorari shall be succinct and shall not exceed twelve 12 pages, unless it contains no more than 3,800 words, exclusive of appendix. The petition shall comply with C.A.R. 32. The petition shall contain in the order here indicated:

(1) An advisory listing of the issues presented for review expressed in the terms and circumstances of the case but without unnecessary detail. The statement of an issue presented will be deemed to include every subsidiary issue clearly comprised therein. Only the issues set forth or fairly comprised therein will be considered.

(2) A reference to the official or unofficial reports of the opinion, ~~or judgment, and or decree of the court, from~~ which review is sought ~~shall be in an appendix containing the papers as provided in subsection (6) of this rule.~~

(3) A concise statement of the grounds on which jurisdiction of the Supreme Court is invoked, showing:

(A) The date of the opinion, judgment, or decree sought to be reviewed and the time of its entry;

(B) The date of any order respecting a rehearing and the date and terms of any order granting an extension of time within which to petition for writ of certiorari.

(4) A concise statement of the case containing the matters material to consideration of the issues presented.

(5) A direct and concise argument amplifying the reasons relied on for the allowance of the writ.

(6) An appendix containing:

(A) A copy of any opinions delivered upon the rendering of the decision of the Court of Appeals;

(B) If review of a judgment of the district court on an appeal from a county court is sought, a copy of the findings, judgment and decree in question; and

(C) The text of any pertinent statute or ordinance.

(7) Repealed.

(b) **The Cross-Petition.** Within 14 days after service of the petition for writ of certiorari, a respondent may file and serve a cross-petition. A cross-petition shall be succinct and shall not exceed ~~twelve~~ 12 pages, unless it contains no more than 3,800 words, exclusive of appendix. The cross-petition shall comply with C.A.R. 32. A cross-petition shall have the same contents, in the same order, as the petition.

(c) **Opposition Brief.** Within 14 days after service of the petition, respondent may file and serve an opposition brief, a cross-petition or both. The petitioner may file an opposition brief within 14 days after service of a cross-petition. An opposition brief shall be succinct and shall not exceed ~~twelve~~ 12 pages, unless it contains no more than 3,800 words. The opposition brief shall comply with C. A.R. 32.

(d) **Reply Brief.** Within 7 days after service of an opposition brief, a petitioner or cross-petitioner may file and serve a reply brief. A reply brief shall be succinct and shall not exceed ~~ten~~ 10 pages, unless it contains no more than 3,150 words. The reply brief shall comply with C.A.R. 32.

(e) **No Separate Brief.** No separate brief may be appended to the petition, any cross-petition, the opposition brief, or the reply brief.

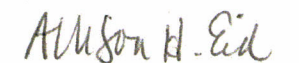
(f) **Filing and Service.** An original ~~and ten copies~~ of all petitions and briefs shall be filed with the clerk of the sSupreme eCourt. Service shall be in the same manner as provided for service of the notice of appeal.

Rule 55. Stay Pending Review on Certiorari

Application to the Supreme Court for stay of execution of a decision of the Court of Appeals or the judgment of a district ~~or superior~~ court on appeal from a county court will normally not be entertained until application for a stay has first been made to the court rendering the decision sought to be reviewed.

Amended and Adopted by the Court, En Banc, June 23, 2014, effective immediately.

By the Court:


Allison H. Eid, Justice