

Rule Change 2003(17)

The Colorado Rules of Civil Procedure

CHAPTER 23.5. RULES OF PROCEDURE FOR JUDICIAL BYPASS OF  
PARENTAL NOTIFICATION REQUIREMENTS.

Instructions For Obtaining Judicial Bypass of Parental  
Notification Requirements Concerning Abortions for Minors  
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Rule 23.5, Instructions and forms are adopted by the Court, En  
Banc September 18, 2003.

BY THE COURT:

Nancy E. Rice  
Justice, Colorado Supreme Court

**Rule Change 2003(17)**

**The Colorado Rules of Civil Procedure**

**CHAPTER 23.5**

**RULES OF PROCEDURE**

**FOR JUDICIAL BYPASS OF PARENTAL NOTIFICATION REQUIREMENTS**

**Rule 1. Applicability.** This rule applies to proceedings instituted pursuant to Section 12-37.5-107(2)(g), C.R.S. which allows for judicial bypass of the parental notification requirements set forth in the Colorado Parental Notification Act, Sections 12-37.5-101, *et.seq.* concerning abortions to be performed on unemancipated minors.

**Rule 2. Petition for Waiver of Parental Notification Requirements**

**(a) Procedure.** An unemancipated minor who seeks waiver of the parental notification requirements for an abortion shall file on her own, or have filed on her behalf, a "petition" with any district court or Denver Juvenile Court (both hereinafter referred to as "district court"), as provided in Rule 6 (Form 1) of these rules. These rules of procedure and forms, as well as instructions for using the judicial bypass procedure, shall be available free of charge at the offices of all clerks of the state district courts and on the Judicial Department's official website ([www.courts.state.co.us](http://www.courts.state.co.us)). The clerk of court's office shall provide assistance to minors seeking to file a judicial bypass petition in a manner that protects the minor's right to anonymity and confidentiality in the proceedings.

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**(b) Expedited Proceedings.** Court proceedings under this rule shall be given preference over other pending matters and shall be heard and decided as soon as practicable but in no event later than four calendar days after the petition was filed. If the court fails to act within four calendar days, the court in which the proceeding is pending shall immediately issue an order setting forth that the parental notification requirements have been dispensed with by operation of law, pursuant to Section 12-37.5-107(2)(f), C.R.S.

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**(c) Setting.** At the time the petition is filed, the clerk shall immediately transfer the court file to the assigned judge for setting and inform the person filing the petition of the date, time and location of the hearing. The hearing shall be set as soon as practicable but in no event later than four

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calendar days after the date of filing. The hearing time shall accommodate the minor's schedule as practicable and shall be set before a district court or Denver juvenile court judge, and not a magistrate.

**(d) Transfer of Court File.** At the time the petition is filed, the clerk shall place the petition in a sealed envelope marked "SEALED MATERIALS - CONFIDENTIAL" identifying the file by case number only. The envelope shall be date stamped and forwarded immediately to the assigned judge for setting of the hearing. The clerk shall inform the judge of the four-day time limitation for the case and of any request for counsel and/or a guardian ad litem at that time.

**(e) Contents of Petition.** The petition shall include the following:

(1) the name and age of the minor;

(2) the length of the pregnancy;

(3) information to establish that the minor is unemancipated;

(4) a statement concerning whether the minor has been informed of the risks and consequences of the abortion;

(5) a statement that the minor seeks to have an abortion without notifying her parent(s), guardian or foster parent;

(6) the name, address and telephone number of the attending physician should the minor request to have the court inform the physician directly of its decision;

(7) a statement that the minor is sufficiently mature to decide whether to have an abortion without the notification of her parent(s), guardian or foster parent, and/or that parental notification would not be in her best interest;

(8) any request for court appointed counsel and/or a guardian ad litem; and

(9) contact information for confidential notification by the court of any court proceedings and/or rulings.

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(f) Grounds for waiver. In review of the petition, the court shall enter an order dispensing with the notice requirements of Section 12-37.5-104, C.R.S. if:

(1) the court determines, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to have an abortion; or

(2) the court determines, by a preponderance of the evidence, that the giving of parental notice would not be in the best interest of the minor.

(g) Orders. Any order allowing for or denying a waiver of the parental notification requirements, either on the record or in writing, shall include specific factual and legal conclusions in support of the decision. The order shall issue within four calendar days of the filing of the petition. If the court fails to act within four days, an order shall immediately be issued by the court setting forth that the parental notification requirements have been dispensed with by operation of law. A certified copy of any order issued shall be provided to the minor by the method requested in the petition, the minor's attorney, if represented, and the guardian ad litem, if one has been appointed. A certified copy of the order also shall be provided to the attending physician of the minor, as set forth in the petition. If the court denies the petition, the minor and/or her attorney, if she is represented, shall be notified of the right to appeal and provided with a copy of the notice of appeal form (Form 3) contained in Rule 6 of these rules.

(h) Appointment of Counsel and/or Guardian Ad Litem. The court may appoint counsel for the minor, if she is not represented. In addition, the court may appoint a guardian ad litem for the minor. Any appointed attorney or guardian ad litem shall be retained at no cost to the minor, shall act within the time frames provided in these rules and shall maintain the confidentiality of the court record and proceedings.

### Rule 3. Appeal to the Court of Appeals.

(a) Procedure. An appeal of an order denying a petition filed under these rules may be made to the Colorado Court of Appeals by the minor, or someone acting on her behalf, by promptly filing a "notice of appeal," as provided in Rule 6 (Form 3) of these rules. A copy of the district court order shall be attached to the notice of appeal. An advisory copy of the

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notice of appeal shall be filed with the district court. The appeal shall be decided on the record. A petitioner brief may be filed but is not required. Oral argument may be held at the discretion of the court.

**(b) Setting.** Upon receipt of the notice of appeal, the clerk of the Court of Appeals shall immediately request a transcript or any analog or digital recording of the district court proceedings. The clerk of the district court shall arrange for preparation of the transcript directly with the reporter if the proceeding was stenographically recorded. The clerk of the district court shall certify the contents and forward the entire district court file, including any prepared transcript or recording, in its sealed envelope to the clerk of the Court of Appeals via overnight or hand delivery forthwith, to be received in no event later than 48 hours after the notice of appeal was filed.

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**(c) Decision.** A decision shall issue no later than five calendar days after the notice of appeal was filed. If no decision is rendered within five days, the court shall immediately issue an order setting forth that the parental notification requirements have been dispensed with by operation of law, pursuant to Section 12-37.5-107(2) (f), C.R.S. A certified copy of any order issued shall be provided to the minor by the method requested in the petition, the minor's attorney, if represented, and the guardian ad litem, if one has been appointed. A certified copy of the order also shall be provided to the attending physician of the minor, as set forth in the petition.

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**Rule 4. No Fees or Costs.** No court fees or costs of any kind, including transcript fees, shall be assessed against the minor in connection with the filing of the petition or an appeal pursuant to these rules.

**Rule 5. Confidentiality of Court Record and Proceedings.**

**(a) Court proceedings.** All district court and appellate court proceedings shall be closed to the public. All hearings shall be held in a location where there is privacy and limited access.

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**(b) Court record.** The entire district court and appellate court record relating to the petition, excluding any published decisions but including, without limitation, the petition, pleadings, submissions, transcripts, court reporter notes and tapes, tape recordings, exhibits, orders, evidence, findings,

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conclusions, and any other material to be maintained, shall be stored in a closed file contained in a sealed envelope and conspicuously marked "SEALED MATERIALS - CONFIDENTIAL." The envelope shall be identified within the clerk's office only through reference to the case number. Access to the court file shall be limited to essential court personnel, the minor, the minor's attorney, any appointed guardian ad litem, and/or the court for use only in connection with court proceedings conducted under these rules. The court record shall not be open to public inspection or public disclosure, unless otherwise ordered by the court.

**Rule 6. Forms.** The following forms may be used and shall be sufficient. The authorization of these forms shall not prevent the use of other forms which substantively comply with the requirements of these rules of procedure.

## INSTRUCTIONS FOR OBTAINING JUDICIAL BYPASS OF PARENTAL NOTIFICATION REQUIREMENTS CONCERNING ABORTIONS FOR MINORS

THESE STANDARD INSTRUCTIONS ARE FOR INFORMATIONAL PURPOSES ONLY AND DO NOT CONSTITUTE LEGAL ADVICE ABOUT YOUR CASE.

If reviewing the instructions online, please view the relevant statute, [§12-37.5-107, C.R.S.](#)  
By accessing the statute, you will be leaving the Colorado Judicial Branch's website at [www.courts.state.co.us](http://www.courts.state.co.us)

### GENERAL INFORMATION

If you are under the age of 18 and you want to have an abortion, your doctor must first inform your parent(s) (which would include any court-appointed guardian or foster parent(s) you may have), UNLESS:

- You are at least 15 years old, don't live with your parents, guardian or foster parent and financially support and take care of yourself (in other words, you are "emancipated");
- You are married and you don't live with your parent(s), guardian or foster parent;
- You have been abused by a parent, guardian or foster parent and you tell your doctor or nurse about it. The doctor or nurse will be required by law to report your name and other information to law enforcement once you tell them you have been abused; or
- The doctor decides there is a medical emergency that has to do with your pregnancy and that you must have an abortion immediately.
- A court has determined you are mature enough to make the decision to have an abortion without letting your parent(s), guardian or foster parent know, or alternatively, that it is in your best interest not to let them know. THIS IS CALLED "JUDICIAL BYPASS OF THE PARENTAL NOTIFICATION REQUIREMENTS." THE PROCEDURES FOR A JUDICIAL BYPASS ARE OUTLINED IN THESE INSTRUCTIONS. IT INVOLVES ASKING A COURT FOR PERMISSION TO HAVE AN ABORTION WITHOUT TELLING YOUR PARENT(S), GUARDIAN OR FOSTER PARENT.

If you do not want to tell your parent(s), guardian or foster parent of your decision to have an abortion, you may file a petition in any district court of the State of Colorado or Denver Juvenile court by using the this petition form. You are entitled to get a decision from the court on your petition within four calendar days of the day the petition is filed.

You may ask that the court give you a lawyer for free. The lawyer would represent you and help explain to the court that you are mature enough to make your decision on your own without telling your parent(s), guardian, or foster parent and/or that it would not be in your best interest to tell. If the judge appoints a lawyer for you, you should contact the lawyer immediately.

It does not cost anything to file a petition with the court. You also do not have to pay the lawyer or guardian ad litem, if one is appointed to you.

The process outlined in these instructions is private and confidential. No one can find out from the court that you filed a petition and the people working at the courthouse are not allowed to tell your parent(s), guardian or foster parent.

The court must hear and decide your request within four calendar days of the day the petition is filed at the courthouse. If the court does not make a decision within four days, you are entitled to an automatic order granting the petition and allowing you to have the abortion without telling your parent(s), guardian or foster parent.

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If the court allows you to have the abortion without telling your parent(s), guardian or foster parent, and you have provided the court with the name and address of your doctor in your petition, the court will send your doctor a certified copy of the order. The court order is what allows the doctor to perform the abortion.

If the court decides you cannot have the abortion without telling your parent(s), guardian or foster parent, you may ask a higher level court, the Colorado Court of Appeals, to give you permission. You, or someone on your behalf, would need to file a Notice of Appeal with the Colorado Court of Appeals and also give a copy to the district court. You should receive a copy of the notice of appeal form from the district court if it denies your petition.

If the Court of Appeals denies your appeal and does not allow you to have the abortion without telling your parent(s), guardian or foster parent, you may ask the Colorado Supreme Court which may or may not agree to hear a further appeal. You can file your request for free in the form of a letter to the Supreme Court, attaching a copy of the Court of Appeals order. To keep it private, you should file it in a sealed envelope marked "CONFIDENTIAL."

#### **COMMON TERMS**

- ⊗ Petition: Document officially starting the Judicial Bypass process. The petition may be filed by you (the minor) by yourself, by your attorney, if you have one, or by someone else on your behalf.
- ⊗ Petitioner: The minor, you, or someone acting on your behalf.
- ⊗ May: In legal terms, "may" is defined as "optional" or "can".
- ⊗ Shall: In legal terms, "shall" is defined as "required".

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#### **FEES**

The proceedings are free. No filing fee or any other court fees or costs may be assessed against you.

**FORMS:** (To access the forms online, please click either PDF or WORD below). **A hard copy must be filed at the courthouse.**

<input type="checkbox"/>	JDF 11	Petition for Waiver of Parental Notification Requirements	PDF	WORD
<input type="checkbox"/>	JDF 12	Setting Notice	PDF	WORD
<input type="checkbox"/>	JDF 15	Notice of Appeal	PDF	WORD

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#### **STEPS TO PROCESSING YOUR PETITION**

**Step 1:** File the Petition. Complete the Petition and caption of the Setting Notice. Arrange for both documents to be delivered by yourself or someone on your behalf to the district court clerk of court's office at the courthouse.

**Step 2:** Get a Hearing Date. The court clerk will give your petition to the judge and then let you know the date, time and location for the hearing. The court is required to give you a hearing date that is within four calendar days of the day the petition is filed. If you have asked for a lawyer or guardian ad litem, tell the clerk when the petition is filed.

**Step 3: Attend the Hearing.** Be prepared for your hearing and arrive on time. You may be asked questions by the court about your maturity and/or why it is not in your best interest to tell your parent(s), guardian or foster parent about your decision to have an abortion. You may bring witnesses to testify on your behalf.

**Step 4:** Await a Decision – Four-Day Decision Deadline.

- If your petition is granted, you will get an Order stating such which you can take to your doctor to get the abortion.

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- By law, your petition shall be heard and decided within four calendar days of the day you filed it. If the court does not hear and decide your petition within four days, you are entitled to an immediate order which grants your petition.
- If your petition is denied, you will be provided with an Order stating such and a copy of the Notice of Appeal form you will need to file with the Colorado Court of Appeals if you want that court to review the decision.
- If the Court does not make a decision at the hearing, the clerk will need to send you a copy of the court's decision. There is a place on the petition form for you to tell the court how to send it to you. One option is to have the clerk place a certified copy of the Order in your court file for you or someone acting on your behalf to pick up at the courthouse.
- If you do not receive any document from the Court within four calendar days of the day your papers were filed, you should contact the court's clerk to find out why.



☐ I do not want to be represented by a lawyer.

11. I understand that the court proceedings and my court file are confidential and cannot be disclosed to anyone, including my parent(s), guardian or foster parent.

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12. The Court can let me know of any Court proceedings or decisions in the following way:

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☐ Via Fax: # \_\_\_\_\_; Attn: \_\_\_\_\_

☐ Via Telephone: # \_\_\_\_\_; Attn: \_\_\_\_\_

☐ Via E-mail: \_\_\_\_\_

☐ Via Beeper or Pager # \_\_\_\_\_

☐ Via First Class Mail: \_\_\_\_\_

☐ Via My Attorney

13. I ask that the Court provide me with a certified copy of the court's order in the following way (check one):

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☐ Via First Class Mail: \_\_\_\_\_

☐ Via My Attorney

☐ Via the Court File for pickup by me or \_\_\_\_\_ who has my permission to pick up the certified copy on my behalf from the court file at the courthouse

14. The best days and times for me to come to court are:

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\_\_\_\_\_  
\_\_\_\_\_

**WHEREFORE, I request to the Court enter an order allowing me to have the abortion without telling my parent(s), guardian or foster parent.**

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Signature of Minor

\_\_\_\_\_  
Signature of Attorney, if Petitioner is represented



<u>Colorado Court of Appeals</u> <u>2 East Fourteenth Avenue, Suite 300</u> <u>Denver, Colorado 80203-2115</u>		
<u>District Court, Judge _____, Case # _____</u>		
<u>IN THE MATTER OF THE PETITION OF:</u>  <u>_____ [Name of Minor]</u>		<u>σ COURT USE ONLY σ</u>
<u>For a Waiver of Parental Notification Requirements Concerning an Abortion</u> <u>Attorney, if Minor Represented (Name and Address):</u>		<u>Case Number:</u>
<u>Phone Number:</u> _____ <u>E-mail:</u> _____ <u>FAX Number:</u> _____ <u>Atty. Reg. #:</u> _____	<u>Division _____ Courtroom _____</u>	
<b><u>NOTICE OF APPEAL</u></b>		

The Petitioner, a minor, states:

1. The district court has denied my petition to have an abortion without telling my parent(s), guardian or foster parent.
2. I ask that I be given permission by this court to have the abortion without telling my parent(s), guardian or foster parent on the grounds stated in the Petition filed with the district court on \_\_\_\_\_, 20\_\_.
3. I believe the district court was wrong in its decision because:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
4. A copy of the district court's decision is attached to this Notice of Appeal.
5. ☐ I ask the court to appoint a lawyer to represent me at no cost to me.  
☐ I have a lawyer and ask the court to appoint that person to continue to represent me. My lawyer's name, business address, telephone and fax numbers are: \_\_\_\_\_  
\_\_\_\_\_  
☐ I do not want to be represented by a lawyer.
6. I understand that the court proceedings and my court file are confidential and cannot be disclosed to anyone, including my parent(s), guardian or foster parent.
7. I request that the court contact me about its decision in the following way (check one):  
☐ Via Fax: # \_\_\_\_\_; Attn: \_\_\_\_\_  
☐ Via Telephone: # \_\_\_\_\_; Attn: \_\_\_\_\_  
☐ Via E-mail: \_\_\_\_\_  
☐ Via Beeper or Pager # \_\_\_\_\_  
☐ Via First Class Mail: \_\_\_\_\_  
\_\_\_\_\_

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☐ Via My Attorney

8. I request that the Court provide me with a certified copy of the court's order in the following way (check one):

☐ Via First Class Mail: \_\_\_\_\_  
\_\_\_\_\_

☐ Via My Attorney

☐ Via the Court File for pickup by me or \_\_\_\_\_ who has my permission to pick up  
the certified copy from the court file at the courthouse

9. The name, business address, and telephone number of the clinic or doctor who would perform the abortion are  
(this information is not necessary but optional if you want to have the court's decision sent directly to the clinic  
or doctor): \_\_\_\_\_  
\_\_\_\_\_.

WHEREFORE, I request that this court reverse the district court and allow me to have the abortion without telling  
my parents.

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Signature of the Minor

\_\_\_\_\_  
Signature of Attorney, if minor is represented

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