

Rule Change #2005(4)

CHAPTER 32

COLORADO APPELLATE RULES

Rule 3.4. (New) Appeals from Proceedings in Dependency or Neglect

(a) How Taken. Appeals from orders in dependency or neglect proceedings, as permitted by section 19-1-109(2) (b) and (c), C.R.S., shall be in the manner and within the time prescribed by this rule.

(b) Time for Appeal.

(1) A Notice of Appeal and Designation of Record (Form 1) shall be filed with the clerk of the Court of Appeals and an advisory copy served on the clerk of the trial court within twenty-one days after the entry of the order from which the appeal is taken. If a motion for post-trial relief is timely filed pursuant to C.R.C.P. 59, the time for filing the notice of appeal begins to run upon the entry of an order denying the motion or upon the date the motion is deemed denied under C.R.C.P. 59(j), whichever occurs first. An order is entered within the meaning of this rule when it is entered pursuant to C.R.C.P. 58. If notice of the entry of the order is mailed to the parties, the time for filing the notice of appeal shall commence from the date of mailing.

(2) If a timely notice of appeal is filed, any other party may file a Notice of Cross-Appeal and Designation of Record (Form 1) within five days of the date on which the notice of appeal was filed or within the twenty-one days for the filing of the notice of appeal, whichever period expires last.

(3) The time in which to file a notice of appeal or a notice of cross-appeal and the corresponding designation of record will not be extended.

(c) Docketing the Appeal. The appeal shall be docketed in accordance with C.A.R. 12(a).

(d) Notice of Appeal. The Notice of Appeal and Designation of Record (Form 1) must be prepared and signed by the appellant's trial counsel or by appellant, if pro se. The notice must set forth the party or parties initiating the appeal and specify the order or part thereof from which the appeal is taken. The notice must be signed by appellant, if an adult, unless counsel states in the notice of appeal that appellant has specifically authorized the filing of the appeal. If counsel is unable to file a notice of appeal because the appellant is

unavailable, counsel may file a Certificate of Diligent Search (Form 2) with the clerk of the trial court.

(e) Record on Appeal.

(1) The record on appeal shall include the trial court file, including all exhibits, and any transcripts ordered by the parties pursuant to this rule.

(2) The appellant and the cross-appellant, if any, shall (A) complete a Notice of Appeal (Cross-Appeal) and Designation of Record (Form 1); (B) file Form 1 with the clerk of the trial court and the clerk of the Court of Appeals; and (C) serve Form 1 on any court reporter listed therein.

(3) The designation of record portion of Form 1 shall identify the dates of the proceedings for which transcripts are requested and the names of the court reporters. Service of the Notice of Appeal and Designation of Record (Form 1) and the Supplemental Designation of Record (Form 3), if any, on the court reporter shall constitute a request for transcription of the specified proceedings.

(4) Within five days after service of a designation of record, any appellee may complete and file a Supplemental Designation of Record (Form 3) with the clerk of the trial court and the clerk of the Court of Appeals and serve it on the court reporter listed therein.

(5) Within five days after service of the Notice of Appeal and Designation of Record (Form 1), the designating party or public entity responsible for the cost of transcription shall make arrangements for payment with the court reporter. Within ten days after service of the Notice of Appeal and Designation of Record (Form 1), the court reporter shall file a statement with the clerk of the trial court and the clerk of the Court of Appeals indicating whether arrangements for payment have been made.

(6) After arrangements for payment of the transcript have been made, any party may request a copy of the unedited transcript from the court reporter for use in preparing the petition on appeal or the response to the petition on appeal (cross-appeal). The unedited transcript may be in electronic form and is not an official transcript of the trial court proceedings. The court reporter may require a signed waiver of liability for any errors in the unedited transcript.

(f) Transmission of Record.

(1) Within forty days after the filing of the Notice of Appeal and Designation of Record (Form 1), the record, including any transcripts or exhibits, shall be transmitted to the Court of Appeals in accordance with C.A.R. 11(b).

(2) The appellant may request an extension of time of no more than fifteen days in which to file the record, which will

be granted only upon a showing of good cause. If the request is based on the court reporter's inability to complete the transcript, it must be supported by an affidavit of the reporter specifying why the transcript has not been completed.

(g) Petition on Appeal.

(1) Within twenty days after the filing of the Notice of Appeal and Designation of Record (Form 1), the appellant shall file an original and five copies of a Petition on Appeal (Form 4). The petition shall be prepared by appellant if proceeding pro se, by appellant's trial counsel, or by substitute counsel so long as substitute counsel has filed an entry of appearance. Except for extraordinary circumstances, substitution of counsel shall not be grounds for an extension of time.

(2) The appellant may request one extension of time of no more than seven days in which to file the petition, which will be denied except upon a showing of manifest injustice.

(3) Unless the petition contains no more than 6,300 words, it shall not exceed twenty pages, excluding the attachments required by this Rule 3.4(g)(3)(G). The petition on appeal shall conform to the requirements in C.A.R. 32(a) and shall include:

(A) A cover page containing the information set forth in C.A.R. 32(c);

(B) A statement of the nature of the case and the relief sought;

(C) The date the trial court order was entered;

(D) A concise statement of the material facts as they relate to the issues presented in the petition on appeal (references to page and line numbers in the record are not required);

(E) A concise statement of the legal issues presented for appeal, including a statement of how the issues arose;

(F) Supporting statutes, case law, or other legal authority for the issues raised; and

(G) Copies of the petition in dependency or neglect, the motion to terminate, the trial court's adjudicatory order and/or order of termination, and rulings on any post-trial motions.

(h) Response to Petition on Appeal (Cross-Appeal).

(1) Within twenty days after service of the appellant's petition on appeal, any appellee may file an original and five copies of a Response to Petition on Appeal (Cross-Appeal) (Form 5). The response (cross-appeal) shall be prepared by trial counsel or by substitute counsel so long as substitute counsel has filed an entry of appearance. Except for extraordinary circumstances, substitution of counsel shall not be grounds for an extension of time.

(2) An appellee may request one extension of time of no more than seven days in which to file a response (cross-appeal), which will be denied except upon a showing of manifest injustice.

(3) Unless the response (cross-appeal) contains no more than 6,300 words, it shall not exceed twenty pages, excluding the attachments required by this Rule 3.4(h)(3)(E). The response (cross-appeal) shall conform to the requirements of C.A.R. 32(a) and shall include:

(A) A cover page containing the information set forth in C.A.R. 32(c);

(B) A concise statement of the material facts as they relate to the issues presented (references to page and line numbers in the record are not required);

(C) A concise response to the legal issues presented;

(D) Supporting statutes, case law, or other legal authority in support of the response; and

(E) If a cross-appeal, copies of the petition in dependency or neglect, the motion to terminate, the trial court's adjudicatory order and/or order of termination, and rulings on any post-trial motions.

(i) Oral Argument. Oral argument will be allowed upon the written request of a party or upon the court's own motion, unless the court, in its discretion, dispenses with oral argument. A request for oral argument shall be made in a separate, appropriately titled document filed no later than the date on which the party's petition on appeal or response is due. Unless otherwise ordered, argument shall not exceed fifteen minutes for the appellant(s) and fifteen minutes for the appellee(s).

(j) Ruling.

(1) Appeals in dependency or neglect proceedings shall be advanced on the calendar of the Court of Appeals pursuant to section 19-1-109(1), C.R.S., and shall be set for disposition upon the filing of the response to the petition on appeal or upon the time the response is due, whichever is earlier.

(2) After reviewing the petition on appeal, any response, and the record, the Court of Appeals may, by opinion in conformity with C.A.R. 35, affirm the trial court decision, reverse, or vacate the trial court decision, remand the case to the trial court, or set the case for supplemental briefing on issues raised by the parties or noticed by the court. If supplemental briefing is ordered, new counsel may be substituted upon a showing of good cause. Such request must be filed with the Court of Appeals within seven days after the case is set for supplemental briefing.

(k) (1) Petition for Rehearing. A petition for rehearing in the form prescribed by C.A.R. 40(b) may be filed within ten days after entry of judgment. The time in which to file the petition for rehearing shall not be extended.

(2) Petition for Writ of Certiorari. Review of the judgment of the Court of Appeals may be sought by filing a petition for writ of certiorari in the Supreme Court in accordance with C.A.R. 51. The petition shall be filed within ten days after the expiration of the time for filing a petition for rehearing or the date of denial of a petition for rehearing by the Court of Appeals. Any cross-petition or opposition brief to a petition for writ of certiorari shall be filed within ten days after the filing of the petition. The petition for writ of certiorari, any cross-petition, and any opposition brief shall be in the form prescribed by C.A.R. 53(a)-(c) and filed and served in accordance with C.A.R. 53(f).

(1) Issuance of Mandate. The mandate shall be in the form prescribed by C.A.R. 41(a) and shall issue twenty-two days after entry of the judgment. The timely filing of a petition for rehearing will stay the mandate until the Court of Appeals has ruled on the petition. If the petition is denied, the mandate shall issue twelve days after entry of the order denying the petition. The mandate may also be stayed in accordance with C.A.R. 41.1.

(m) Filing and Service. All papers required or permitted by this rule shall be filed and served in accordance with C.A.R. 25, unless otherwise provided in this rule.

(n) Computation of Time. Computation of any time period prescribed by this rule shall be in accordance with C.A.R. 26(a) and (c), unless otherwise provided in this rule.

Adopted by the Court, En Banc, February 10, 2005, effective March 1, 2005.

BY THE COURT:

Justice Nancy E. Rice