

2005 (08) Rule Change

CHAPTER 35

COLORADO RULES FOR MAGISTRATES

Rule 1 and Rule 2. (No Change)

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BY THE COURT:

Nancy E. Rice
Justice, Colorado Supreme Court

2005 (08) Rule Change

**CHAPTER 35
COLORADO RULES FOR MAGISTRATES**

Rule 1. Scope and Purpose

These rules are designed to govern the selection, assignment and conduct of magistrates in civil and criminal proceedings in the Colorado court system. Although magistrates may perform functions which judges also perform, a magistrate at all times is subject to the direction and supervision of the chief judge or presiding judge.

Rule 2. Application

These rules apply to all proceedings conducted by magistrates in district courts, county courts, small claims courts, Denver Juvenile Court and Denver Probate Court, as authorized by law, except for proceedings conducted by water referees, as defined in Title 37, Article 92, C.R.S., and proceedings conducted by masters governed by C.R.C.P. 53.

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Rule 3. Definitions

The following definitions shall apply:

—(a) Magistrate: Any person other than a judge authorized by statute or by these rules to enter orders or judgments in judicial proceedings.

—(b) Chief Judge: The chief judge of a judicial district.

—(c) Presiding Judge: The presiding judge of the Denver Juvenile Court, the Denver Probate Court, or the Denver County Court.

—(d) Reviewing Judge: A judge designated by a chief judge or a presiding judge to review the orders or judgments of magistrates in proceedings to which the Rules for Magistrates apply.

—(e) Order or Judgment: All rulings, decrees or other decisions of a judge or a magistrate made in the course of judicial proceedings.

(f) Consent:

(1) Consent in District Court:

(A) For the purposes of the rules, where consent is necessary a party is deemed to have consented to a proceeding before a magistrate if:

(i) The party has affirmatively consented in writing or on the record; or

(ii) The party has been provided notice of the referral, setting, or hearing of a proceeding before a magistrate and failed to file a written objection within fifteen days of such notice; or

(iii) The party failed to appear at a proceeding after having been provided notice of that proceeding.

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

(2) Consent in County Court:

(A) When the exercise of authority by a magistrate in any proceeding is statutorily conditioned upon a waiver of a party pursuant to C.R.S. section 13-6-501, such waiver shall be executed in writing or given orally in open court by the party or the party's attorney of record, and shall state specifically that the party has waived the right to proceed before a judge and shall be filed with the court.

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

(3) Consent in Small Claims Court:

(A) A party will be deemed to accept the jurisdiction of the Small Claims Court unless the party objects pursuant to C.R.S. section 13-6-405 and C.R.C.P. 511(b).

(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.

Rule 4. Qualifications, Appointment, Evaluation and Discipline

The following rules shall apply to all magistrates and proceedings before magistrates:

—(a) To be appointed, a magistrate must be a licensed Colorado attorney with at least five years of experience, except in Class "C" or "D" counties the chief judge shall have the discretion to appoint a qualified licensed attorney with less than 5 years experience to perform all magistrate functions.

—(b) All magistrates shall be attorneys-at-law licensed to practice law in the State of Colorado, except that in the following circumstances a magistrate need not be an attorney:

- (1) A magistrate appointed to hear only Class A and Class B traffic infractions in a county court;
- (2) A county court judge authorized to act as a magistrate in a small claims court;
- (3) A county court judge authorized to act as a county court magistrate.

—(c) All magistrates shall be appointed, evaluated, retained, discharged, and disciplined, if necessary, by the chief or presiding judge of the district, with the concurrence of the chief justice.

—(d) Any person appointed pursuant to these rules as a district court, county court, probate court, juvenile court, or small claims court magistrate may, if qualified, and in the discretion of the chief or presiding judge, exercise any of the magistrate functions authorized by these rules.

Rule 5. General Provisions

(a) An order or judgment of a magistrate in any judicial proceeding shall be effective upon the date of the order or judgment and shall remain in effect pending review by a reviewing judge unless stayed by the magistrate or by the reviewing judge. Except for correction of clerical errors pursuant to C.R.C.P. 60 (a), a magistrate has no authority to consider a petition for rehearing.

~~—(a) Consent.~~

~~(1) Consent in District Court:~~

~~(A) For the purposes of the rules, a party is deemed to have consented to a proceeding before a magistrate if:~~

~~(i) The party has affirmatively consented in writing or on the record; or~~

~~(ii) The party failed to appear at a proceeding after having been provided notice of that proceeding.~~

~~(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.~~

~~(2) Consent in County Court:~~

~~(A) When the exercise of authority by a magistrate in any proceeding is statutorily conditioned upon a waiver of a party pursuant to C.R.S. section~~

~~13-6-501, such waiver shall be executed in writing or given orally in open court by the party or the party's attorney of record, and shall state specifically that the party has waived the right to proceed before a judge and shall be filed with the court.~~

~~(B) Once given, a party's consent to a magistrate in a proceeding may not be withdrawn.~~

~~(3) Consent in Small Claims Court:~~

~~(A) A party will be deemed to accept the jurisdiction of the Small Claims Court unless the party objects pursuant to C.R.S. section 13-6-405 and C.R.C.P. 511(b).~~

~~(b) An order or judgment of a magistrate in any judicial proceeding shall be effective upon the date of the order or judgment and shall remain in effect pending review by a reviewing judge unless stayed or modified by the magistrate or by the reviewing judge.~~

~~(e)~~ A magistrate may issue citations for contempt, conduct contempt proceedings, and enter orders for contempt for conduct occurring either in the presence or out of the presence of the magistrate, in any civil or criminal matter, ~~with or~~ without consent. Any order of a magistrate finding a person in contempt shall upon request be reviewed in accordance with the procedures for review set forth in rule 7 or rule 9 herein.

~~(c—(d))~~ A magistrate shall have the power to issue bench warrants for the arrest of non-appearing persons, to set bonds in connection therewith, and to conduct bond forfeiture proceedings.

~~(d—(e))~~ A magistrate shall have the power to administer oaths and affirmations to witnesses and others concerning any matter,

thing, process, or proceeding, which is pending, commenced, or to be commenced before the magistrate.

(e) A magistrate—~~(f) All magistrates~~ shall have the power to issue all writs and orders necessary for the exercise of their jurisdiction established by statute or rule, and as provided in section 13-1-115, C.R.S.

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~~(f—(g)~~ No magistrate shall have the power to decide whether a state constitutional provision, statute, municipal charter provision, or ordinance is constitutional either on its face or as applied. Questions pertaining to the constitutionality of a state constitutional provision, statute, municipal charter provision, or ordinance may, however, be raised for the first time on review of the magistrate's order or judgment.

(g—(h) All magistrates in the performance of their duties shall conduct themselves in accord with the provisions of the Colorado Code of Judicial Conduct. Any complaint alleging that a magistrate, who is an attorney, has violated the provisions of the Colorado Code of Judicial Conduct may be filed with the Office of Attorney Regulation Counsel for proceedings pursuant to C.R.C.P. 251.1, et. seq. Such proceedings shall be conducted to determine whether any violation of the Code of Judicial Conduct has occurred and what discipline, if any, is appropriate. These proceedings shall in no way affect the supervision of the Chief Judge over magistrates as provided in C.R.M. 1.

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Rule 6. Functions of District Court Magistrates

____ (a) Functions in Criminal Cases: A district court magistrate may perform any or all of the following functions in criminal proceedings:

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(1) ~~No~~Without consent necessary:+

____ (A) Conduct initial appearance proceedings, including advisement of rights, admission to bail, and imposition of conditions of release pending further proceedings.

____ (B) Appoint attorneys for indigent defendants and approve attorney expense vouchers.

____ (C) Conduct bond review hearings.

____ (D) Conduct preliminary and dispositional hearings pursuant to C.R.S. sections 16-5-301(1) and 18-1-404(1).

____ (E) Schedule and conduct arraignments on indictments, ~~and informations, or complaints.~~

____ (F) Order presentence investigations.

____ (G) Set cases for disposition, trial, or sentencing before a district court judge.

____ (H) Issue arrest and search warrants, including nontestimonial identifications under Rule 41.1.

____ (I) Conduct probable cause hearings pursuant to C.R.S. sections 24-60-301 to -309, the Uniform Act for Out-of-State Parolee Supervision.

____ (J) Any other function authorized by statute or rule.

____ (2) Consent necessary:

____ ~~(2) With consent:~~

____ (A) Enter pleas of guilty.

____ (B) Enter deferred prosecution and deferred sentence pleas.

____ (C) Modify the terms and conditions of probation or deferred prosecutions and deferred sentences.

~~_____~~ (b) ~~_____~~ -Functions in Matters Filed Pursuant to Colorado Revised Statutes Title 14 and Title 26: Family Law Cases:

(1) No Consent Necessary

~~_____~~ (A) ~~_____~~ -A district court magistrate shall have the power to preside over all proceedings arising under ~~Title~~Titles 14 ~~and 26~~, except as described in section 6 (b) (2) of this Rule. ~~that a district court magistrate may not hear contested permanent orders without the consent of the parties.~~

~~_____~~ (B) A district court magistrate shall have the power to preside over all motions to modify permanent orders concerning property division, maintenance, child support or allocation of parental responsibilities, except petitions to review as defined in C.R.M. 7.

~~_____~~ (C) A district court magistrate shall have the power to determine an order concerning child support filed pursuant to Section 26-13-101 et. seq.

~~_____~~ (D) Any other function authorized by statute.

~~_____~~ (2) Consent Necessary: With the consent of the parties, a district court magistrate may preside over contested hearings which result in permanent orders concerning property division, maintenance, child support or allocation of parental responsibilities.

~~_____~~ (2) ~~A family law magistrate, as defined in 13-5-301 (1) and so designated by the chief judge of the district may perform any or all of the duties specified in C.R.S. sections 13-5-301, to 305.~~

~~_____~~ (c) ~~_____~~ -Functions in Civil Cases: A district court magistrate may perform any or all of the following functions in civil proceedings:

(1) ~~No-Without~~ consent necessary +

~~_____~~ (A) ~~_____~~ -Conduct settlement conferences.

~~_____~~ (B) ~~_____~~ -Conduct default hearings, enter judgments pursuant to C.R.C.P. 55, and conduct post-judgment proceedings.

~~_____~~ (C) ~~_____~~ -Conduct hearings and enter orders authorizing sale, pursuant to C.R.C.P. 120.

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____ (D) ~~___~~ -Conduct hearings as a master pursuant to C.R.C.P. 53.

____ (E) ~~___~~ -~~Act as a mediator or arbitrator, pursuant to C.R.C.P. 109.~~

____ ~~(F)~~ -Hear and rule upon all motions relating to disclosure, discovery, and all C.R.C.P. 16 and 16.1 ~~(b)~~ matters.

____ (F) Conduct proceedings involving protection orders pursuant to C.R.S. Section 13-14-101 et.seq.

____ (G) Any other function authorized by statute.

(2) ~~___~~ -~~With~~ Consent Necessary: A magistrate may perform any function in a civil case except that a magistrate may not preside over jury trials.

____ (d) ~~___~~ -Functions in Juvenile Cases: A juvenile court magistrate shall have all of the powers and be subject to the limitations prescribed for juvenile court magistrates by the provisions of Title 19, Article 1, C.R.S. ~~., and proceedings conducted by juvenile court magistrates shall be governed by the provisions of Title 19, C.R.S.~~

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____ (e) ~~___~~ -Functions in Probate and Mental Health Cases: ~~A district court magistrate may perform any or all of the following functions in probate and mental health cases:~~

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(1) ~~___~~ ~~No-Without~~ consent necessary:+

____ (A) ~~___~~ -Perform any or all of the duties which may be delegated to or performed by a probate registrar, magistrate, or clerk, pursuant to C.R.P.P. 34 and C.R.P.P. 35.

____ (B) ~~___~~ -Hear and rule upon petitions for emergency protective orders and petitions for temporary orders.

____ (C) Any other function authorized by statute.

____ (2) Consent Necessary

____ ~~(2) With consent:~~

(A) ~~___~~ -Hear and rule upon all matters filed pursuant to C.R.S. Title 15.

____ (B) ~~—~~Hear and rule upon all matters filed pursuant to C.R.S. Title 25 and Title 27.

~~____ (f) A district court magistrate may perform any other function specifically authorized by statute.~~

Rule 7. Review of District Court Magistrate Orders or Judgments

~~____ (a) Orders or judgments entered when without consent not necessary. Magistrates shall include in any order or judgment entered in a proceeding in which consent is not necessary a written notice that the order or judgment was issued in a proceeding where no consent was necessary, and that any appeal must be taken within 15 days pursuant to Rule 7(a). ~~—~~ The chief judge shall designate one or more district judges to review orders or judgments of district court magistrates entered without consent of the parties.~~

(1) Unless otherwise provided by statute, this Rule is the exclusive method to obtain review of a district court magistrate's order or judgment issued in a proceeding in which consent of the parties is not necessary.

(2) The chief judge shall designate one or more district judges to review orders or judgments of district court magistrates entered when consent is not necessary.

(3) Only a final order or judgment of a magistrate is reviewable under this Rule. A final order or judgment is that which fully resolves an issue or claim.

(4) A final order or judgment is not reviewable until it is written, dated, and signed by the magistrate. A Minute Order which is signed by a magistrate will constitute a final written order or judgment.

(5) A party may obtain review of a magistrate's final order or judgment by filing a petition to review such final order or judgment with the reviewing judge no later than fifteen days subsequent to the final order or judgment if the parties are present when the magistrate's order is entered, or fifteen days from the date the final order or judgment is mailed or otherwise transmitted to the parties. If the final order or judgment is mailed or otherwise transmitted, three days shall be added pursuant to the provisions of C.R.C.P. 6 (e).

(6) A request for extension of time to file a petition for review must be made to the reviewing judge within the fifteen day time limit within which to file a petition for review. A motion to correct clerical errors filed with the magistrate pursuant to C.R.C.P. 60 (a) does not constitute a petition for review and will not operate to extend the time for filing a petition for review.

(7) A petition for review shall state with particularity the alleged errors in the magistrate's order or judgment and may be accompanied by a memorandum brief discussing the authorities relied upon to support the petition. Copies of the petition and any supporting brief shall be served on all parties by the party seeking review. Within ten days after being served with a petition for review, a party may file a memorandum brief in opposition.

(8) The reviewing judge shall consider the petition for review on the basis of the petition and briefs filed, together with such review of the record as is necessary. The reviewing judge also may conduct further proceedings, take additional evidence, or order a trial de novo in the district court.

(9) Findings of fact made by the magistrate may not be altered unless clearly erroneous. The failure of the petitioner to file a transcript of the proceedings before the magistrate is not grounds to deny a petition for review but, under those circumstances, the reviewing judge shall presume that the record would support the magistrate's order.

(10) The reviewing judge shall adopt, reject, or modify the initial order or judgment of the magistrate by written order, which order shall be the order or judgment of the district court.

(11) Appeal of an order or judgment of a district court magistrate may not be taken to the appellate court unless a timely petition for review has been filed and decided by a reviewing court in accordance with these Rules.

(12) If timely review in the district court is not requested, the order or judgment of the magistrate shall become the order or judgment of the district court. Appeal of such district court order or judgment to the appellate court is barred.

~~(1) A party may obtain review of the magistrate's order or judgment by filing a motion to review such order or judgment with the reviewing judge no later than fifteen days, unless a shorter period of time has been set by statute, subsequent to the date of the order or judgment. A motion for review shall state with particularity the alleged errors in the magistrate's order or judgment and may be accompanied by a memorandum brief discussing the authorities relied upon to support the motion. Copies of the motion and any supporting brief shall be served on all other parties by the party seeking review. Within ten days after being served with a motion for review, a party may file a memorandum brief opposing the motion.~~

~~(2) The reviewing judge shall consider a motion for review on the basis of the motions and briefs filed, together with such review of the record as may be necessary. Findings of fact made by the magistrate may not be altered unless clearly erroneous. The reviewing judge may conduct further proceedings, take additional evidence, or order a trial de novo in the district court. The reviewing judge shall adopt, reject, or modify the initial order or judgment of the magistrate by written order, which order shall be the order or judgment of the district court.~~

~~(3) If timely review is not requested, the order or judgment of the magistrate shall become the order or judgment of the district court.~~

~~(4) A party to a proceeding conducted by a district court magistrate shall not be entitled to appellate review of any order or judgment entered in that proceeding, unless such party has filed a motion for review of the order or judgment pursuant to these Rules.~~

~~(b) Orders or judgments entered whenwith consent is necessary. + Any order or judgment entered with the consent of the parties in a proceeding in which such consent is necessary is not subject to review under Rule 7(a), but shall be appealed pursuant to the Colorado Rules of Appellate Procedure Rules in the same manner as an orderorders or judgmentjudgments of a the district court. Magistrates shall include in any order or judgment entered in a proceeding in which consent is necessary a written notice that the order or judgment was issued with consent, and that any appeal must be taken pursuant to Rule 7(b).~~

Rule 8. Functions of County Court Magistrates

____ (a) Functions in Criminal Cases: A county court magistrate may perform any or all of the following functions in a criminal proceeding:

(1) ~~No~~Without consent necessary:+

____ (A) Appoint attorneys for indigent defendants and approve attorney expense vouchers.

____ (B) Conduct proceedings in traffic infraction matters.

____ (C) Conduct advisements and set bail in criminal and traffic cases.

____ (D) Issue mandatory protection~~restraining~~ orders pursuant to C.R.S. section 18-1-1001.

____ (E) Any other function authorized by statute.

____ (2) Consent necessary:

____ ~~(2) With consent~~:

____ (A) Conduct hearings on motions, conduct trials to court, accept pleas of guilty, and impose sentences in misdemeanor, petty offense, and traffic offense matters.

____ (B) Conduct deferred prosecution and deferred sentence proceedings in misdemeanor, petty offense, and traffic offense matters.

____ (C) Conduct misdemeanor and petty offense proceedings pertaining to wildlife, parks and outdoor recreation, as defined in Title 33, C.R.S.

____ (D) Conduct all proceedings pertaining to recreational facilities districts, control and licensing of dogs, campfires, and general regulations, as defined in Title 29, Article 7, C.R.S. and Title 30, Article 15, C.R.S.

____ (b) Functions in Civil Cases: A county court magistrate may perform any or all of the following functions in a civil proceeding:

(1) ~~No~~Without consent necessary:+

____ (A) Conduct proceedings with regard to petitions for name change, pursuant to C.R.S. section 13-15-101.

_____ (B) Perform the duties which a county court clerk may be authorized to perform, pursuant to C.R.S. section 13-6-212.

_____ (C) Serve as a small claims court magistrate, pursuant to C.R.S. section 13-6-405.

_____ (D) ~~_____ (2) With consent:~~

~~_____ (A) Conduct civil trials to court and hearings on motions.~~

~~_____ (B) Conduct proceedings involving protection orders, preliminary or permanent injunctions, pursuant to C.R.S. sections 13-14-101 et. seq. and conduct proceedings pursuant to C.R.C.P. 365.~~

_____ (E) Any other function authorized by statute.

_____ (2) Consent necessary:

_____ (A) Conduct civil trials to court and hearings on motions.

_____ (B)(C) Conduct default hearings, enter judgments pursuant to C.R.C.P. 355, and conduct post-judgment proceedings.

~~_____ (D) Conduct proceedings involving temporary restraining orders, pursuant to C.R.S. sections 13-14-101 to 102.~~

~~_____ (e) A county court magistrate may perform any other function specifically authorized by statute.~~

Rule 9. Review of County Court and Small Claims Court Magistrate Orders or Judgments

_____ (a) An order or judgment of a county or small claims court magistrate shall be the order or judgment of the county or small claims court.

_____ (b) Any party to a proceeding before a county court magistrate shall appeal an order or judgment entered by the magistrate in that proceeding in the manner authorized by statute or rule for the appeal of orders or judgments of the county court.

_____ (c) Any party to a proceeding before a small claims court magistrate shall appeal an order or judgment entered by the magistrate in that proceeding in the manner authorized by statute or rule for the appeal of orders or judgments of the small claims court.

Rule 10. Preparation, Use, and Retention of Record

— (a) Record of Proceedings: Except as provided in C.R.C.P. 16.2(c)(2)(e), a ~~A~~ verbatim record of all proceedings and trials conducted by magistrates shall be maintained by either electronic devices or by stenographic means. The magistrate shall be responsible for maintaining such record and, in the event of subsequent review, for certifying its authenticity.

— (b) Use of the Record: If otherwise admissible, a certified transcript of the testimony of a witness at a trial or other proceeding before a magistrate may be admitted as evidence in a later trial or proceeding.

— (c) Custody and Retention of Record: A reporter's notes or the electronic recordings of trial or other proceedings conducted by a magistrate shall be the property of the state, and shall be retained by the appropriate court for a period prescribed in the Colorado Judicial Department Records Management manual. During the period of retention, notes and recordings shall be made available to the reporter of record, or to any other reporter or person the court may designate. During the trial or the taking of other matters on the record, the notes and recordings shall be considered the property of the state, even though in custody of the reporter, judge, or clerk. After the trial and review or appeal period, the reporter shall list, date and index all notes and recordings and shall properly pack them for storage. Where no reporter is used, the clerk of the court shall perform this function. The court shall provide storage containers and space.

Rule 11. Title of Rules and Abbreviation

The title to these rules shall be Colorado Rules for Magistrates and may be abbreviated as C.R.M.

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