

APPENDIX

Rule 21. Original Proceedings in the Supreme Court

(a) In General.

(1) *Original Jurisdiction Under the Constitution.* This rule applies only to the original jurisdiction of the supreme court to issue writs as provided in Section 3 of Article VI of the Colorado Constitution and to the exercise of the supreme court's general superintending authority over all courts as provided in Section 2 of Article VI of the Colorado Constitution.

(2) *Extraordinary Nature and Availability of Relief.* Relief under this rule is extraordinary in nature and is a matter wholly within the discretion of the supreme court. Such relief will be granted only when no other adequate remedy is available, including relief available by appeal, under C.R.C.P. 106, or under Crim. P. 35.

(3) *Forms of Writs Subject to this Rule.* Petitions for writs of habeas corpus, mandamus, quo warranto, injunction, prohibition, and other forms of writs cognizable under the common law are subject to this rule. The petitioner need not designate a specific form of writ when seeking relief under this rule.

(b) Initiating an Original Proceeding.

The petitioner must file a petition for an order to show cause specifying the relief sought and requesting the court to issue to one or more proposed respondents, as set forth in subsection (e)(1), an order to show cause why the relief requested should not be granted.

(c) Docket Fees. Upon the filing of a petition under this rule, the petitioner must pay to the clerk of the supreme court the docket fee of \$225.00 and must comply with C.A.R. 12.

(d) Form, Caption, and Title of the Petition.

(1) *Form.* Unless otherwise provided, the petition and all documents filed under this rule must comply with the requirements of C.A.R. 28(g) for opening briefs

and C.A.R. 32.

(2) Caption and Title.

(A) If there is no underlying proceeding, the petition must be captioned, "In Re [Petitioner v. Proposed Respondent(s)]."

(B) If there is an underlying proceeding, the petition must use the full, exact, and unmodified caption given by the lower court or tribunal in the underlying proceeding, "In Re [Caption of Underlying Proceeding]." Only one case may be listed as the underlying proceeding in the caption.

(C) The petition must be titled "Petition for Order to Show Cause Pursuant to C.A.R. 21."

(e) Contents of the Petition. The petitioner has the burden of showing that the court should issue an order to show cause. To enable the court to determine whether to issue an order to show cause, the petition must set forth in sufficient detail the following:

(1) the identity of the petitioner and of the proposed respondent(s), together with, if applicable, their party status in the underlying proceeding (e.g., plaintiff, defendant, etc.). The proposed respondent(s) must be the real party (or parties) in interest against whom relief is sought. When a petition seeks a writ of mandamus or prohibition directed to a court or tribunal, the proposed respondents must be the lower court or tribunal, if appropriate, and all parties to the underlying proceeding other than the petitioner;

(2) the identity of the court or other underlying tribunal, the case name and case number or other identification of the underlying proceeding, if any, and identification of any other related proceeding;

(3) the ruling, action, or failure to act complained of and the relief being sought;

(4) the reasons why no other adequate remedy is available;

(5) the issues presented;

(6) the facts necessary to understand the issues presented;

(7) argument and points of authority explaining why the court should issue an order to show cause and grant the relief requested;

(8) a list of supporting documents, or an explanation of why supporting documents are not available; and

(9) the names, addresses, telephone numbers, and e-mail addresses (if any) of all parties to the underlying proceeding; or, if a party is represented by counsel, the attorney's name, address, telephone number, and email address (if any).

(f) Service. The petitioner must serve the petition on every party and proposed respondent and on the lower court or tribunal. All documents filed under this rule must be served in accordance with C.A.R. 25. If a case is filed through the court's E-System, E-Service on a party must be completed in the supreme court case; the supreme court will not accept service of documents made in the underlying proceeding or in the lower court.

(g) Supporting Documents.

(1) Proceedings initiated under this rule are not subject to C.A.R. 10.

(2) A petition must be accompanied by a separate, indexed appendix of available supporting documents necessary for a complete understanding of the issues presented. The appendix must include an index or table of contents of the supporting documents with page numbers noting where the documents appear. If the supporting documents are unavailable, the petition must explain why they are unavailable, consistent with subsection (e)(8).

(3) In cases involving an underlying proceeding, the following documents must be included in the appendix:

(A) the order or judgment from which relief is sought if applicable;

(B) documents and exhibits submitted in the underlying proceeding that are necessary for a complete understanding of the issues presented; and
(C) a transcript of the proceeding leading to the underlying order or judgment if available.

(4) The filing party is responsible for reviewing all supporting documents, including any attachments, exhibits, and appendices, to determine if the document contains information that should be excluded from public access pursuant to Chief Justice Directive 05-01 section 4.60. Any supporting document filed by a party that is not accessible to the public pursuant to Chief Justice Directive 05-01 section 4.60 must be accompanied by a motion to suppress or seal as prescribed in subsection (g)(4). The filing party must certify compliance with this subsection as directed by C.A.R. 32(h).
(5) Any document submitted as sealed or suppressed pursuant to Chief Justice Directive 05-01 sections 3.07 and 3.08 must be filed as a separate supporting document and must be accompanied by a motion for leave to file the document as sealed or suppressed. The motion must:

(A) identify with particularity the specific document containing sensitive information;

(B) explain why the sensitive information cannot reasonably be redacted in lieu of filing the entire document as sealed or suppressed;

(C) articulate the substantial interest that justifies depriving the public of access to the document; and

(D) cite any applicable rule, statute, case law, or prior court order sealing or suppressing the document.

(6) Original proceedings involving the specific case types listed in Chief Justice

Directive 05-01 section 4.60(b)(1)-(9) are not accessible to the public. Unless a party intends to seal the proceeding pursuant to subsection (g)(5), it is unnecessary to file a motion to suppress the proceeding.

(h) Stay.

(1) *Pending a Decision to Issue an Order to Show Cause.* The filing of a petition under this rule does not stay any underlying proceeding or the running of any applicable time limit. If the petitioner seeks a temporary stay in connection with the petition pending the court's determination whether to issue an order to show cause, a stay ordinarily must be sought first from the lower court or tribunal. If a request for stay below is impracticable, not promptly ruled upon, or is denied, the petitioner may file a separate motion for a temporary stay in the supreme court supported by accompanying materials justifying the requested stay.

(2) *Upon Issuance of an Order to Show Cause.* Issuance of an order to show cause by the supreme court automatically stays all underlying proceedings until final determination of the original proceeding in the supreme court unless the court, acting on its own, or upon motion, lifts the stay in whole or in part.

(i) No Initial Responsive Pleading to Petition Allowed. Unless requested by the supreme court, no responsive pleading to the petition may be filed prior to the court's determination of whether to issue an order to show cause.

(j) Ruling on the Petition.

(1) *Denial.* The court may deny the petition without explanation and without an answer by any respondent.

(2) *Issuance of an Order to Show Cause.* The court may issue an order to show cause. The clerk will serve the order on all persons ordered or invited by the court to respond and on the lower court or tribunal in the underlying proceeding.

(k) Response to Order to Show Cause.

(1) The court in its discretion may invite or order any party, including a party in

the underlying proceeding, to respond to the order to show cause within a fixed time. Any party in the underlying proceeding may request permission to respond to the order to show cause but may not respond unless invited or ordered to do so by the court. Those ordered by the court to respond are the respondents.

(2) The response to an order to show cause must comply with the requirements of C.A.R. 28(g) for answer briefs and with C.A.R. 32.

(3) Two or more respondents may respond jointly.

(l) Reply to Response to Order to Show Cause.

The petitioner may submit a single reply brief within the time fixed by the court. A reply must comply with the requirements of C.A.R. 28(g) for reply briefs and with C.A.R. 32.

(m) Amicus Briefs. Any amicus curiae may file a brief only by leave of the court after a case number has been assigned. A brief submitted by an amicus curiae must comply with C.A.R. 29(a), (b), (c), (d), (f), and (g).

(1) *Before Ruling on a Petition.* Before the court rules on a petition an amicus curiae may tender a brief with a motion for leave to file supporting a petitioner, but the court may act on a petition at any time after the petition is filed, including before the submission of an amicus brief.

(2) *After Issuing an Order to Show Cause.* If the court issues an order to show cause, an amicus brief supporting a petitioner must be filed within seven days after the issuance of the show cause order, or such other time as the court may order for the submission of amicus briefs. An amicus brief supporting a respondent must be tendered by the deadline for the respondent's response, or such other time as the court may order for the submission of amicus briefs. An amicus curiae that does not support either party must file its brief no later than seven days after the issuance

of an order to show cause, or such other time as the court may order for the submission of amicus briefs.

(3) *No Reconsideration.* The filing of an amicus brief within the deadlines established by this rule but after the court has acted on a petition is not a ground for reconsideration of the court's decision to issue an order to show cause or deny a petition.

(n) No Oral Argument. There will be no oral argument unless ordered by the court.

(o) Disposition of an Order to Show Cause. The court in its discretion may discharge the order or make it absolute, in whole or in part, with or without opinion. Orders issued without an opinion will not be designated for official publication by the court and will remain

unpublished. Unpublished orders may not be cited as precedent.

(p) Petition for Rehearing. A petition for rehearing may be filed only when the court has issued an opinion discharging the order to show cause or making the order absolute. Any petition for rehearing may be filed in accordance with C.A.R. 40(c)(2). No petition for rehearing may be filed after denial of a petition without explanation, if the order was discharged without opinion, or if the order was made absolute without opinion.

COMMENT 2024 Amendment

Except for the revisions made to subsection (g), most of the rule revisions to C.A.R. 21 are not substantive. The amendments were made for clarity, readability,

and to reflect the current practices of the supreme court clerk's office.

To parallel the language of original jurisdiction rules in other states, the term "rule to show cause" was replaced with "order to show cause." The change in terminology does not affect the substance of the rule or the relief requested or granted by the rule. Parties may continue to rely on case law referring to a "rule to show cause," as the terms "rule to show cause" and "order to show cause" are used interchangeably.

The court may dispose of an order to show cause with or without an opinion. Any ruling made without an opinion will be unpublished and may not be cited as precedent. Parties may file a petition for rehearing only if the court issues an opinion.



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- 2018 - \$16 million verdict for client electrocuted on the job, Largest Personal Injury Verdict in Colorado 2018 and largest premises liability verdict in Colorado History (affirmed by COA and settled for \$15.7 million).
- A retired NFL Player, a bizarre shooting, and CTE. Zaner Harden advocates for the innocent victim in a civil suit. — USA Today

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