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## C.A.R. RULE 3.4

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West's Colorado Revised Statutes Annotated Currentness

West's Colorado Court Rules Annotated

Appellate Rules

<sup>5</sup> Chapter 32. Colorado Appellate Rules        <sup>5</sup> Appeals from Judgments and Orders of Trial Courts and Agencies (Refs & Annos)**→ RULE 3.4 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., and including final orders of permanent legal custody entered pursuant to section 19-3-702, 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, except upon a showing of good cause pursuant to C.A.R. 2 and C.A.R. 26(b).

**(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 the appellant, if pro se. The notice must identify the party or parties initiating the appeal, specify the order or part thereof from which the appeal is taken, and set forth the date the order was reduced to writing, dated, and signed by the trial court. The notice must be signed by the appellant, if an adult, unless counsel states in the notice of appeal that the 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

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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);

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- (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 (general conclusory statements such as "the trial court's ruling is not supported by the law or the evidence" are not acceptable);
- (F) Supporting statutes, case law, or other legal authority for the issues raised, together with a statement of the legal proposition for which the legal authority stands and a concise explanation of its applicability to the issues presented on appeal; 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 (general conclusory statements such as "the trial court's ruling is supported by the law or the evidence" are not acceptable);
- (D) Supporting statutes, case law, or other legal authority in support of the response, together with a statement of the legal proposition for which the legal authority stands and a concise explanation of its applicability to the issues presented on appeal; 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

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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).

**(l) 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.

## CREDIT(S)

Adopted Feb. 10, 2005, eff. March 1, 2005. Amended eff. Nov. 9, 2006.

## RESEARCH REFERENCES

2007 Electronic Update

**Treatises and Practice Aids**

18 Colorado Practice Series § 12.2, Computation of Time for Filing an Appeal.

18 Colorado Practice Series § 12.8A, Dependency and Neglect.

## NOTES OF DECISIONS

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## 1/4. Validity

Parents whose rights are involuntarily terminated in a dependency and neglect proceeding are not similarly situated for equal protection purposes with parents subject to relinquishment and adoption proceedings or other civil proceedings that may affect their parental rights, and thus the application of new expedited appeal procedures in child neglect and dependency proceedings mandated by Supreme Court rule does not violate such parents' equal protection rights. *People ex rel. T.D.*, App.2006, 2006 WL 561116, modified and superseded 140 P.3d 205, rehearing denied, certiorari denied, certiorari denied 127 S.Ct. 564, 166 L.Ed.2d 411, certiorari denied 127 S.Ct. 565, 166 L.Ed.2d 419. *Infants* ⇌ 241

The expedited appeal procedure in child neglect and dependency mandated by Supreme Court rule does not violate due process; rule sufficiently protects parents in dependency and neglect cases against the risk of an erroneous deprivation of their appellate rights (1) by allowing appellate counsel for the parents a reasonable opportunity to review an unedited trial transcript and to raise possible issues for appeal, and (2) by allowing the assigned division of the Court of Appeals to review the complete record and order supplemental briefing when appropriate. *People ex rel. T.D.*, App.2006, 2006 WL 561116, modified and superseded 140 P.3d 205, rehearing denied, certiorari denied, certiorari denied 127 S.Ct. 564, 166 L.Ed.2d 411, certiorari denied 127 S.Ct. 565, 166 L.Ed.2d 419. *Infants* ⇌ 246

## 1/2. Purpose

The expedited appeal procedure in child neglect and dependency mandated by Supreme Court rule benefits children, whose parents have had their rights terminated by the trial court, by decreasing the time they are in legal limbo and either returning them to their parents or permitting legal adoption, which latter benefit furthers the state's interest in protecting children. *People ex rel. T.D.*, App.2006, 2006 WL 561116, modified and superseded 140 P.3d 205, rehearing denied, certiorari denied, certiorari denied 127 S.Ct. 564, 166 L.Ed.2d 411, certiorari denied 127 S.Ct. 565, 166 L.Ed.2d 419. *Infants* ⇌ 241

## 1. Unique circumstances doctrine

When the state seeks to terminate the relationship between a parent and child, it must comply with the due process clause, which requires a fundamentally fair procedure. *People ex rel. T.D.*, App.2006, 2006 WL 561116, modified and superseded 140 P.3d 205, rehearing denied, certiorari denied, certiorari denied 127 S.Ct. 564, 166 L.Ed.2d 411, certiorari denied 127 S.Ct. 565, 166 L.Ed.2d 419. *Constitutional Law* ⇌ 274(5)

"Unique circumstances doctrine" applied to excuse father's late filing of notice of appeal from order terminating his parental rights in dependency proceeding, although appellate rule governing such appeals expressly prohibited extension of time for filing notice, where trial court's responses to trial counsel's motion to withdraw and for appointment of appellate counsel when court entered oral termination order was ambiguous and misled trial counsel into believing that withdrawal motion had been granted and that appellate counsel would be appointed in written order, which was not the case. *People ex rel. A.J.H.*, App.2006, 134 P.3d 528. *Infants* ⇌ 244.1

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## 2. Factual review

The expedited appeal procedure in child neglect and dependency mandated by Supreme Court rule does not alter the Court of Appeals' responsibility to examine thoroughly the record on factual issues, and does not place the court in the role of an advocate on legal issues. *People ex rel. T.D.*, App.2006, 2006 WL 561116, modified and superseded 140 P.3d 205, rehearing denied, certiorari denied, certiorari denied 127 S.Ct. 564, 166 L.Ed.2d 411, certiorari denied 127 S.Ct. 565, 166 L.Ed.2d 419. *Infants* ⇨ 252

## 3. Scope of review

Court of Appeals was authorized to proceed with expedited appeal of order awarding permanent custody of child to maternal grandmother in child dependency or neglect proceeding, though appellate rule providing for expedited appeals from orders in dependency or neglect proceedings did not extend to permanent custody orders entered in such proceedings, as appellate rule providing for suspension of rules in certain circumstances permitted appellate court to expedite decisions and "order proceedings in accordance with its direction." *People ex rel. K.A.*, App.2006, 2006 WL 3316108, certiorari denied 2007 WL 38368. *Infants* ⇨ 244.1

Court of Appeals' job under the expedited appeal procedure in child neglect and dependency mandated by Supreme Court rule is not to second-guess the factual decisions of the trial court or interfere with the exercise of its discretion, but to review the record for legal error and to correct such error if it affected the fairness and outcome of the proceedings, and new rule does not prevent Court of Appeals from performing that duty. *People ex rel. T.D.*, App.2006, 2006 WL 561116, modified and superseded 140 P.3d 205, rehearing denied, certiorari denied, certiorari denied 127 S.Ct. 564, 166 L.Ed.2d 411, certiorari denied 127 S.Ct. 565, 166 L.Ed.2d 419. *Infants* ⇨ 248.1

## 4. Record on appeal

The lack of a complete trial record under new expedited appeal procedures in child neglect and dependency proceedings mandated by Supreme Court does not prevent appellate counsel from adequately developing and presenting the issues on appeal and did not violate due process; rule provides access to an unedited transcript for preparation of the petition on appeal and an opportunity to identify the issues on appeal, verification of counsel's statement of facts is undertaken by the Court of Appeals after the complete transcript has been filed, the court must apply the appropriate legal authority cited by counsel to the verified facts in deciding the issues raised in the petition, and the court may also undertake its own supplemental research and order further briefing on any issues. *People ex rel. T.D.*, App.2006, 2006 WL 561116, modified and superseded 140 P.3d 205, rehearing denied, certiorari denied, certiorari denied 127 S.Ct. 564, 166 L.Ed.2d 411, certiorari denied 127 S.Ct. 565, 166 L.Ed.2d 419. *Constitutional Law* ⇨ 274(5)

Mother failed to demonstrate she was prejudiced by lack of access to transcripts of hearings on termination of her parental rights prior to preparation of her petition on appeal, as required to support her contention that such lack violated her due process rights, where appellate court's full review of official transcript demonstrated that substantive issues raised by mother on appeal did not entitle her to relief from termination judgment, and mother at no time moved to amend issues raised in petition or urge new grounds for relief, although official transcript had become available for her review in the interim. *People ex rel. N.A.T.*, App.2006, 134 P.3d 535, certiorari denied 2006 WL 1653332. *Constitutional Law* ⇨ 274(5); *Infants* ⇨ 246

## 5. Counsel

Good cause existed to warrant an extension of filing deadline to allow father to file an untimely notice of appeal following termination of his parental rights; father's trial counsel had failed to file a notice of appeal as she was obligated to do, father was not uninterested in appealing the termination, and appellate counsel's delays were

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largely due to difficulty in retrieving father's file from trial counsel and difficulty communicating with the father due to father's incarceration. People ex rel. T.L.B., App.2006, 148 P.3d 450. Infants ↪ 244.1

On appeal by mother from judgment terminating her parental rights, there was no showing that the unavailability of the complete trial record under new expedited appeal procedures in child neglect and dependency proceedings mandated by Supreme Court resulted in a deficient performance by appellate counsel. People ex rel. T.D., App.2006, 2006 WL 561116, modified and superseded 140 P.3d 205, rehearing denied, certiorari denied, certiorari denied 127 S.Ct. 564, 166 L.Ed.2d 411, certiorari denied 127 S.Ct. 565, 166 L.Ed.2d 419. Infants ↪ 246

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