

Colorado Constitution, Article VI

Section 5

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(3) The supreme court shall appoint a court administrator and such other personnel as the court may deem necessary to aid the administration of the courts. Whenever the chief justice deems assignment of a judge necessary to the prompt disposition of judicial business, he may: (a) Assign any county judge, or retired county judge who consents, temporarily to perform judicial duties in any county court if otherwise qualified under section 18 of this article, or assign, as hereafter may be authorized by law, said judge to any other court; or (b) assign any district, probate, or juvenile judge, or retired justice or district, probate, or juvenile judge who consents, temporarily to perform judicial duties in any court. For each day of such temporary service a retired justice or judge shall receive compensation in an amount equal to 1/20 of the monthly salary then currently applicable to the judicial position in which the temporary service is rendered.

Colorado Revised Statutes

§ 13-3-105. Personnel - duties - qualifications - compensation - conditions of employment. (1) The supreme court, pursuant to section 5 (3) of article VI of the state constitution, shall prescribe, by rule, a personnel classification plan for all courts of record to be funded by the state, as provided in section 13-3-104.

(2) Such personnel classification and compensation plan shall include:

(a) A basic compensation plan of pay ranges to which classes of positions are assigned and may be reassigned;

(b) The qualifications for each position or class of positions, including education, experience, special skills, and legal knowledge;

(c) An outline of the duties to be performed in each position or class of positions;

(d) The classification of all positions based on the required qualifications and the duties to be performed, taking into account, where applicable, the amount and kinds of judicial business in each court of record subject to the provisions of this section;

(e) The number of full-time and part-time positions, by position title and classification, in each court of record subject to the provisions of this section;

(f) The procedures for and the regulations governing the appointment and removal of court personnel; and

(g) The procedures for and regulations governing the promotion or transfer of court personnel.

(3) The supreme court shall also prescribe by rule:

(a) The amount, terms, and conditions of sick leave and vacation time for court personnel, including annual allowance and accumulation thereof; and

(b) Hours of work and other conditions of employment.

(4) To the end that all state employees are treated generally in a similar manner, the supreme court, in promulgating rules as set forth in this section, shall take into consideration the compensation and classification plans, vacation and sick leave provisions, and other conditions of employment applicable to employees of the executive and legislative departments.

CHAPTER 35 Colorado Rules for Magistrates

Adopted by the
SUPREME COURT OF COLORADO
April 25, 1985,
Effective July 1, 1985
Amended June 16, 1988,
Effective January 1, 1989

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 by whom the magistrate has been appointed.

Source: Entire chapter amended June 16, 1988, effective January 1, 1989; entire rule amended and effective September 12, 1991.

Magistrates exercise authority only at the discretion of the judges who appoint them. Therefore no impropriety in the provision of a court memorandum prohibiting magistrates from conducting bond hearings. *Wiegand v. Larimer County Court Magistrate*, 937 P.2d 880 (Colo. App. 1996).

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.

Source: Entire chapter amended June 16, 1988, effective January 1, 1989; entire rule amended and effective September 12, 1991.

When magistrates act in probate matters. The powers of magistrates and appellate review of their orders are governed, in the first instance, by these rules. When magistrates are acting in probate matters, their powers are additionally controlled by the Colorado Rules of Probate Procedure. *Estate of Jordan v. Estate of Jordan*, 899 P.2d 350 (Colo. App. 1995).

When magistrates act in juvenile matters. The procedural powers of a juvenile court after reviewing a juvenile magistrate's findings are governed by these rules and by relevant provisions of the Children's Code. *People in Interest of R.A.*, 937 P.2d 731 (Colo. 1997).

Rule 3. Definitions

The following definitions shall apply:

(a) "Magistrate" means any person other than a judge authorized by statute or by these rules to enter orders or judgments in judicial proceedings.

(b) "Chief Judge" means the chief judge of a judicial district.

(c) "Presiding Judge" means the presiding judge of the Denver Juvenile Court, the Denver Probate Court, or a county court, as the case may be.

(d) "Reviewing Judge" means 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 of Magistrates apply.

(e) "Order of Judgment" includes all rulings, decrees or other decisions of a judge or a magistrate in the course of judicial proceedings.

Source: Entire chapter amended June 16, 1988, effective January 1, 1989; (a), (d), and (e) amended and effective September 12, 1991.

Rule 4. Qualifications

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

(a) A magistrate shall be an attorney 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 non-lawyer county judge authorized by statute to act as a county court magistrate or a juvenile court magistrate;

(3) a non-lawyer county judge performing as a magistrate in a small claims court.

(b) Any person appointed as a district court, county court, probate court or small claims court magistrate, or juvenile court magistrate, may, if qualified, exercise any of the magistrate functions authorized by these rules.

Source: Entire chapter amended June 16, 1988, effective January 1, 1989; entire rule amended and effective September 12, 1991.

Rule 5. General Provisions -- Applicable to All Magistrates

(a) When the exercise of authority by a magistrate in any proceeding is conditioned upon the consent of a party, such consent 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. Once given, a party's consent to the exercise of authority by a magistrate in a proceeding may not be withdrawn.

(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.

(c) 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 county court magistrate finding a person in contempt shall, upon request, be reviewed by a county judge in accordance with the procedures for review applicable to district court magistrates under rule 6(e).

(d) A magistrate shall have the power to issue bench warrants for the arrest of non-appearing defendants in felony, misdemeanor, petty offense, or traffic offense cases, to set bonds in connection therewith, and to conduct bond forfeiture proceedings.

(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.

(f) 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.

Source: Entire chapter amended June 16, 1988, effective January 1, 1989; (a) amended September 6, 1990, effective January 1, 1991; entire rule (including rule title) amended and effective September 12, 1991; (f) added and effective February 3, 1994.

Rule 6. District Court Magistrates

(a) Appointment. With the approval of the chief justice of the supreme court, the chief judge of a judicial district may, by written order, appoint one or more district court magistrates to serve in that judicial district.

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

(1) conduct initial appearance proceedings, including advisement of rights, admission to bail and imposition of conditions of release pending further proceedings;

(2) appoint attorneys for indigent defendants and approve attorney expense vouchers;

(3) conduct bond review hearings;

(4) conduct preliminary hearings;

(5) schedule and conduct arraignments on indictments and informations;

(6) order presentence investigations;

(7) set cases for disposition, trial or sentencing before a district court judge.

(c) Functions in Civil Cases With Consent. A district court magistrate may perform any or all of the following functions in civil proceedings upon obtaining the consent of all parties:

(1) conduct trials to court; and

(2) conduct contested permanent orders hearings in domestic relations cases.

(d) Functions in Civil Cases Without Consent. A district court magistrate may perform any or all of the following functions in civil proceedings without obtaining the consent of the parties:

(1) conduct settlement conferences;

(2) conduct temporary orders hearings and enter temporary orders in domestic relations cases, including issues of custody and visitation;

(3) issue, modify, or vacate restraining orders and emergency protection orders in domestic relations matters;

(4) conduct hearings concerning visitation and the modification of visitation orders in domestic relations cases where custody is not an issue;

(5) conduct noncontested proceedings arising under the Uniform Dissolution of Marriage Act, Title 14, Article 10, C.R.S.;

(6) conduct proceedings authorized by the Revised Uniform Reciprocal Enforcement of Support Act, Title 14, Article 5, C.R.S., and issue citations for contempt, conduct contempt proceedings, and enter orders for contempt in proceedings authorized by such Act;

(7) conduct default hearings, enter judgments pursuant to C.R.C.P. 55, and conduct post-judgment proceedings;

(8) conduct hearings and enter orders authorizing sale, pursuant to C.R.C.P. 120;

(9) conduct hearings as a master, pursuant to C.R.C.P. 53;

(10) act as an arbitrator, pursuant to C.R.C.P. 109;

(11) 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; and

(12) Hear and rule upon motions in domestic relations cases including establishment and modification of child support whether temporary or permanent.

(e) Review of Orders and Judgments.

(1) The chief judge shall designate one or more district judges to review orders and judgments of district court magistrates.

(2) A party to a proceeding conducted by a district court magistrate 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 subsequent to the date of the order or judgment. If review is not requested, the findings and recommendations of the magistrate shall become the order or judgment of the district court.

(3) 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.

(4) 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.

(5) 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 Rule 6 (e) (2) of these Rules.

(6) Orders of magistrates in proceedings conducted pursuant to C.R.P.P. 34 shall be subject to the provisions of C.R.P.P. 34 (c) rather than to the provisions of Rule 6 (e) of these Rules.

Source: Entire chapter amended June 16, 1988, effective January 1, 1989; (c)(1), (d)(2), and (d)(3) amended and (12) added September 6, 1990, effective January 1, 1991; (rule title), (a), IP(b), IP(c), IP(d), (d)(11), and (e) amended and effective September 12, 1991.

Failure to file motion for review with the reviewing judge justifies dismissal of appeal with prejudice. *Matter of Estate of Burnford*, 746 P.2d 51 (Colo. App. 1987); *Estate of Jordan v. Estate of Jordan*, 899 P.2d 350 (Colo. App. 1995).

A party is not entitled to appellate review unless the party has first filed a timely motion for district court review of the magistrate's order. Such a motion for review must be filed within 15 days after the date of the magistrate's order. *In re McCord*, 910 P.2d 85 (Colo. App. 1995).

Determination of the sequence of death is not a power that may be delegated by the probate court and exercised by a magistrate under subsection (d)(11). *Estate of Jordan v. Estate of Jordan*, 899 P.2d 350 (Colo. App. 1995).

Rule 7. County Court Magistrates

(a) Appointment. In Class A counties, as defined in Title 13, Article 6, C.R.S., county court magistrates may be appointed by the presiding judge, subject to the approval of the chief justice of the supreme court. In all other counties the chief judge may, with the approval of the chief justice of the supreme court, appoint one or more county court magistrates to serve in the county court. County court magistrates shall not conduct jury trials.

(b) Functions in Criminal Cases With Consent. Upon obtaining the consent of the defendant and the prosecuting authority, a county court magistrate shall have authority to perform any or all of the following functions in county court proceedings:

(1) conduct hearings on motions, conduct trials to the court, accept pleas of guilty and impose sentences in misdemeanor and petty offense matters;

(2) conduct deferred prosecution and deferred sentence proceedings;

(3) conduct proceedings other than Class A and Class B traffic infraction proceedings in traffic offense matters;

(4) conduct all proceedings related to misdemeanors or petty offenses arising from violations of legislation pertaining to wildlife and parks and outdoor recreation, as defined in Title 33, Article 14, C.R.S.;

(5) conduct all proceedings related to offenses arising from the violation of county resolutions 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.; and

(6) conduct advisements and set bail in criminal and traffic cases, pursuant to Crim. P. 5.

(c) Functions in Criminal Cases Without Consent. A county court magistrate shall have authority to perform any or all of the following functions in county court criminal proceedings without obtaining the consent of the parties:

(1) appoint attorneys for indigent defendants and approve attorney expense vouchers;

(2) conduct proceedings in Class A and Class B traffic infraction matters, as provided by Title 42, Article 4, C.R.S.

(d) Functions in Civil Cases With Consent of All Parties. A county court magistrate shall have the authority to perform any or all of the following functions in county court civil proceedings upon obtaining the consent of all parties:

(1) conduct civil trials to court and hearings on motions in civil cases;

(2) conduct proceedings with regard to petitions for name change, pursuant to Title 13, Article 15, C.R.S.;

(3) conduct proceedings involving preliminary or permanent injunctions, pursuant to C.R.C.P. 365;

(4) perform the duties which a county court clerk may be authorized to perform, pursuant to Title 13, Article 6, C.R.S.; and

(5) serve as a small claims court magistrate, pursuant to Title 13, Article 6, C.R.S.

(e) Functions in Civil Cases With Consent of Appearing Parties. A county court magistrate shall have the authority to perform any or all of the following functions in county court civil proceedings upon obtaining the consent of the appearing party or parties:

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

(2) conduct proceedings involving temporary restraining orders, pursuant to C.R.C.P. 365.

(f) Appeal of Orders and Judgments.

(1) an order of judgment of a county court magistrate rendered in a proceeding governed by this Rule 7 shall be the order or judgment of the county court.

(2) any party to a proceeding before a county court magistrate may 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 and judgments of the county court.

Source: Entire chapter amended June 16, 1988, effective January 1, 1989; (rule title), (a), IP(b), IP(c), IP(d), (d)(5), IP(e), and (f) amended and effective September 12, 1991.

Magistrates exercise authority only at the discretion of the judges who appoint them. Therefore no impropriety in the provision of a court memorandum prohibiting magistrates from conducting bond hearings. *Wiegand v. Larimer County Court Magistrate*, 937 P.2d 880 (Colo. App. 1996).

Rule 8. Juvenile Court Magistrate

With the approval of the chief justice of the supreme court, a chief judge or the presiding judge in the Denver Juvenile Court may appoint by written order one or more juvenile court magistrates to serve the court. Juvenile court magistrates 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.

Source: Entire chapter amended June 16, 1988, effective January 1, 1989; entire rule (including title) amended and effective September 12, 1991.

Rule 9. Denver Probate Court Magistrates

The appointment and conduct of a magistrate in the Denver Probate Court shall be governed by Rule 6 of these Rules for Magistrates, the Colorado Rules of Probate Procedure, and any additional rules for probate court magistrates adopted in writing by the presiding judge of that court or established by the provisions of Title 13, Article 5, C.R.S., or Title 15, C.R.S.

Source: Entire chapter amended June 16, 1988, effective January 1, 1989; entire rule (including title) amended and effective September 12, 1991; entire rule amended December 5, 1996, effective January 1, 1997.

Rule 10. Small Claims Court Magistrates

The appointment of a small claims court magistrate shall be governed by the provisions of Title 13, Article 6, C.R.S. A small claims court magistrate shall be subject to the rules of procedure for small claims courts and shall have all of the powers and be subject to the limitations prescribed for small claims court magistrates by the provisions of Title 13, Article 6, C.R.S.

Source: Entire chapter amended June 16, 1988, effective January 1, 1989; entire rule (including title) amended and effective September 12, 1991.

Rule 11. Preparation, Use and Retention of Record

(a) Record of Proceedings. 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. When the testimony of a witness at trial or other proceeding before a magistrate is recorded by electronic devices or by stenographic means, a transcript of such testimony may be admitted as evidence at a later trial if the transcript is certified by the person who transcribed the testimony, if the testimony is otherwise admissible.

(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 the 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 13. Title of Rules and Abbreviation

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