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## Amendments to the Rules of Civil Procedure

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## AMENDMENTS TO THE RULES OF CIVIL PROCEDURE

Adopted November 12, 1952

Effective February 12, 1953

### *Rule 59 (b)*

(b) **TIME FOR MOTION.** A motion for a new trial shall be filed not later than 10 days after the entry of the judgment, except that a motion for a new trial on the ground of newly discovered evidence may be made after the expiration of such period and before the expiration of 6 months after the entry of the judgment with leave of court obtained on notice and hearing and on a showing of due diligence. (Supplants Code Sec. 238)

### *Rule 111 (b)*

(b) **LIMITATION ON TIME OF ISSUANCE.** No writ of error shall be issued after 3 months from the entry of the judgment complained of in any case within paragraphs (1) or (2) of subdivision (a) of this rule nor after 60 days from the entry of the order complained of in any case within paragraphs (3) or (4) of subdivision (a) of this rule; provided that in pending cases within paragraph (1) or paragraph (2) of subdivision (a) of this rule, where the judgment sought to be reviewed became final prior to the effective date of this proviso, the writ of error may be issued within 12 months after the entry of the judgment, or within 3 months from the effective date of this proviso, whichever period expires first; and provided further that in special proceedings, where a different period is fixed by the applicable statute for the issuance of a writ of error, the statute shall control. (Supplants Supreme Court Rule 18 and Code Sec. 427. Also see 3 C. S. A., Chap. 97, Sec. 43.)

#### COMMITTEE NOTE:

*As to special proceedings, see Rule 81 (a) and Sitler v. Brians, ..... Colo. ...., ..... Pac. (2d) .....*

### *Rule 111 (c)*

(c) **HOW OBTAINED.** To obtain a writ of error a party, within the time fixed by this rule, shall docket the case in the supreme court either by filing the record on error prepared in compliance with Rule 112 or by filing a praecipe for a writ of error. There shall be filed at the time of such docketing a designation of the parties which lists the names of the plaintiffs in error and of the defendants in error. Where the record is not filed at the time of the docketing, the clerk of the supreme court shall issue and transmit to the clerk of the trial court a writ of error commanding that the record on error shall be certified to the supreme

court within sixty days from the receipt of such writ or within such other or additional time as the supreme court may order and the party seeking the writ of error shall do any and all things necessary under Rule 112 to obtain such record on error. The trial court shall have jurisdiction to make any and all orders relative to such record on error as may be proper under Rule 112 except that it may not extend the time for the doing of any act pertaining to the preparation of such record on error, or any part thereof, beyond the time fixed by the supreme court for the certification of such record on error to the supreme court. If, for any reason, the record on error cannot be certified to the supreme court within the time fixed by the supreme court or any extension thereof, then, at the end of such time or extension, the clerk of the trial court shall certify to the supreme court that the record on error has not been made available for such certification, stating the reasons therefor if known to him. A copy of such certificate shall at the same time be served by the clerk of the trial court on all interested parties in accordance with Rule 5. After receipt of such certification the supreme court shall make whatever disposition of the writ of error or take whatever other action it deems proper. Where the record on error is filed at the time of the docketing, the clerk of the supreme court shall issue a writ of error and shall file the same with the record of the case. (Part new and part from Supreme Court Rule 19.)

COMMITTEE NOTE:

*After the filing of the praecipe for writ of error within the period allowed by Rule 111 (b), the 60 day period for filing the record on error may be enlarged or extended by the supreme court under Rule 6 (b).*

*Rule 111 (f)*

(f) GROUND FOR REVERSAL, ETC. No assignments of error, assignments of cross error or formal joinder in error, nor any specification of points or cross specification of points shall be filed. In lieu thereof each party in his brief in his summary of the argument required by Rule 115 (c) shall state clearly and briefly the grounds upon which he relies in seeking a reversal or modification of the judgment or the correction of adverse findings, orders, or rulings of the trial court. He will be limited to the grounds so stated although the court may in its discretion notice any error appearing of record. When a writ of error has issued, it shall not be dismissed upon motion of a plaintiff in error without notice to all interested parties whose appearances have been entered in the supreme court, and order of the court permitting such dismissal; if dismissal is objected to by any such interested party, he may, in the court's discretion, seek reversal, modification, or correction of the judgment. (Supplants parts of Supreme Court Rules 23, 27A, 29, 34 and all of 32, also Code Sec. 421.)

*Rule 112 (e)*

(e) **AGREED STATEMENT.** When the questions presented by a writ of error can be determined without an examination of all the pleadings, evidence, and proceedings in the court below, the parties may prepare and sign a statement of the case showing how the questions arose and were decided in the trial court and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the questions by the supreme court. The statement shall include a copy of the judgment sought to be reviewed and a concise statement of the grounds to be relied on by the plaintiff in error. If the statement conforms to the truth, it, together with such additions as the court may consider necessary fully to present the questions raised by the writ of error, shall be approved by the trial court and shall then be certified to the supreme court as the record on error. (From Federal Rule 76.)

*Rule 113 (a)*

(a) **APPLICATION FOR; AFTER RECORD FILED.** Whenever plaintiff in error desires a stay of execution pending the determination of a writ of error, he may apply to the supreme court for a supersedeas at any time after the filing therein of the record prepared and certified in accordance with Rule 112. A succinct brief shall be filed with such application for supersedeas and served upon the defendant in error. Within 10 days after such service the defendant in error may file and serve upon the plaintiff in error a brief in opposition. The plaintiff in error may reply thereto within 5 days from such service. The application shall then stand submitted. Briefs filed under this rule may be typewritten or mimeographed or otherwise reproduced, or at the election of the party filing the same may be printed, in conformity with Rule 115 (h). At the time of filing his first brief either party may request a final determination of the controversy. Upon the application for a supersedeas the court may affirm or reverse the judgment. Pending the determination of an application for supersedeas, the court may order a stay of execution or make any other order appropriate to preserve the status quo or to protect the rights of the parties. (From Supreme Court Rules 22 and 23.)

*Rule 114 (b)*

(b) **PROCEEDING BY A POOR PERSON.** Any litigant upon filing in the supreme court a motion under oath that because of his poverty he is unable to pay the fees in the supreme court, and that he believes he is entitled to the redress he seeks by such writ of error, and that sets forth briefly a statement of the grounds on which he intends to rely, may, in the discretion of the court, be permitted to prosecute a writ of error without being required

to pay such fees or costs. If permission is granted, he may proceed on a brief that is typewritten or mimeographed or otherwise reproduced in conformity with the provisions of Rule 115 (h). (New.)

*Rule 114 (c)*

(c) COSTS. Unless otherwise ordered the successful party on writ of error shall recover as costs in the supreme court his actual costs paid to the clerk of the supreme court, his expenses actually and necessarily incurred in procuring the record on error not exceeding thirty cents per folio, and, if, at the time the printed abstract of record was filed, such abstract of record was required by these rules to be filed, his expenses actually and necessarily incurred for printing the abstract of record, not exceeding \$2.75 per page. The supreme court may impose additional costs or order the remission of costs. (From Supreme Court Rule 51.)

*Rule 115. Briefs, Motions and Withdrawal of Papers*

(a) STATEMENT OF CASE. No abstract of the record is required. Plaintiff in error shall set forth in his brief a concise statement of the case outlining the substance of the pleadings, the facts based upon the evidence material to the decision of the case, rulings of the trial court on the admissibility of evidence if objections were made and are relied upon, instructions given if essential to a determination of the case, instructions refused if objections to such refusals were made and are relied upon, any final opinion of the trial court, any preliminary opinion of the trial court which is material to the disposition of the case, the verdict or the findings of fact and conclusions of law, the master's report if any, and the rulings, orders, and judgment sought to be reviewed. Such statement shall be supported by specific references to folio numbers of the record. It shall consist only of the essential facts and shall not contain any argument relative to the evidence or law; provided, that in the interest of brevity a plaintiff in error may, if he elects, cause any part or parts of the foregoing material to be placed in an appendix to be filed as a part of, or separately from but simultaneously with, his brief, in which event references thereto in his brief shall be to both the folio numbers of the record and the pages of the appendix. If the defendant in error disagrees with the statement of the case by plaintiff in error, he shall set forth in his brief in a supplemental statement each correction or addition which he desires to make or considers material; and if as provided in Rule 111 (f) he seeks a reversal or modification of a judgment, or the correction of findings, orders, or rulings of the trial court, he shall set forth such thereof as are not contained in the brief or appendix of plaintiff in error. Defendant in error may file an appendix if he so elects. The requirements of reference to folio numbers of the record, pages of the appendix, if any, and the prohibition against argument shall be observed in any supplemental statement of the case. (New.)

*Rule 115 (b)*

(b) BRIEFS; WHEN FILED. Except as provided by Rule 118 (b) and subdivision (k) of this rule, the brief of plaintiff in error shall be filed within 30 days after filing the record or, where application for supersedeas is pending, within 30 days from the date of the determination thereof unless the court makes final determination of the case on such application for supersedeas. The defendant in error shall file his brief within 30 days after service upon him of copies of the brief of the plaintiff in error. The plaintiff in error may file a reply brief within 20 days after service of the brief of the defendant in error upon him. Supplemental briefs shall be filed only upon leave of court. (From Supreme Court Rules 38 and 39 and Code Sec. 442.)

*Rule 115 (c)*

(c) BRIEFS; CONTENTS. Every brief filed in the supreme court, except one filed in support of or in opposition to a motion or an application for supersedeas shall contain separately in the order following:

(1) A subject index of the entire brief.

(2) A table of all cases and statutes cited. Cases shall be first stated in alphabetical order giving title, volume and page with citations to the official reports and to the reporter system. Colorado statutes shall be cited by reference to official publication only. Each case or statute shall be indexed to every page on which it is cited.

(3) The statement of the case as required by subdivision (a) of this rule.

(4) A concise summary of the argument setting forth clearly and succinctly the grounds relied on by the party presenting the brief as required by Rule 111 (f).

(5) The argument exhibiting clearly, separately, and without unnecessary repetition the points of fact and law being presented and citing the authorities and statutes relied upon. When other than a Colorado statute is cited so much thereof as may be necessary to the decision shall be printed in full either in the body of the argument or in an appendix. References to the record shall be accompanied by appropriate folio numbers and references to material appearing in an appendix shall be by appropriate page numbers. When the reference is to the evidence, to the giving or refusal to give an instruction, or to a ruling upon the report of a master, the folio citation must be specific, and if the reference is to an exhibit, both the folio number at which the exhibit appears and at which it was offered in evidence must be indicated.

(6) Such appendices as are proper under these rules.

Briefs of defendants in error need not contain a statement of the case except under the circumstances provided for in Rule 115 (a). Reply briefs shall be confined strictly to answering new

matters raised by the adversary's brief. (From Supreme Court Rules 37 to 42, both inclusive. Also from Rule 27, U. S. Supreme Court, and the rules of the U. S. Courts of Appeal.)

*Rule 115 (d)*

(d) **FAILURE TO FILE BRIEF; EFFECT OF.** If plaintiff in error neglects to file a brief as required, the opposite party may proceed ex parte, or, after giving all interested parties whose appearances have been entered in the supreme court an opportunity to file objections to such dismissal, the court upon motion of a party or upon its own motion may dismiss the writ of error. If defendant in error fails to file his brief as required disposition of the writ of error may be had ex parte. (From Supreme Court Rules 34 and 40.)

*Rule 115 (e)*

(e) **TIME TO FILE; TIME FOR FILING MAY BE EXTENDED OR ABRIDGED BY COURT ONLY.** No stipulation or motion shall suspend the operation of the rules, but for good cause shown, the court, or a justice thereof in vacation, may extend or abridge the time for filing briefs or other papers. If previous extensions of time for the performance of any act have been granted by the court, the party seeking a further extension shall include in his motion a statement setting forth all previous extensions and on whose application such extensions were granted. (From Supreme Court Rule 41.)

*Rule 115 (f)*

(f) **MOTIONS AND BRIEFS THEREON.** All motions shall be typewritten or mimeographed or otherwise reproduced in conformity with the provisions of Rule 115 (h) with respect to briefs. The party filing any such motions shall have 3 days in which to file a brief in support thereof; the party opposing shall have 5 days after service thereof to answer, and 3 days shall then be allowed after service for reply. The motion shall then stand submitted. (From Supreme Court Rule 46.)

*Rule 115 (h)*

(h) **FORM OF BRIEFS, PETITIONS, AND MOTIONS.** All motions, petitions, and briefs shall bear, on the front cover, the number and title of the case, the court to which the writ of error lies, the name of the trial judge, and the names and addresses of the attorneys filing the same. Any brief of 35 pages or less in length, including any appendix whether filed separately or not, and all briefs filed in support of or in opposition to an application for supersedeas, or a motion, or under Rules 114 (b) or 115 (k), and all motions and petitions may be typewritten or mimeographed

or reproduced by some other method approved by the clerk of the supreme court, provided that all such briefs shall be plainly and distinctly legible, double spaced, and upon good and durable paper eight and one-half inches by thirteen inches and shall be bound at the top. Except as otherwise provided, all briefs shall be printed and shall be on opaque and unglazed paper. They shall be printed on pages nine and one-quarter inches by six and one-eighth inches when trimmed, in plain face eleven or twelve point type adequately leaded, with type matter four and one-sixteenth by seven and one-sixteenth inches. Extract and quotations must be in the same type indented by two ems. All printed briefs shall be bound on the left hand side. Motions, petitions, and briefs not in conformity herewith may not be accepted by the clerk for filing except on order of the court. (New.)

*Rule 115 (i)*

(i) NUMBER OF COPIES TO BE FILED AND SERVED.

Ten copies of each motion, petition, brief, or other paper which is typewritten, mimeographed or reproduced by some method other than printing, and fifteen copies of each thereof when printed shall be filed. Two copies of each motion, petition, brief, or other paper shall be served upon all parties except that in the case of typewritten motions, briefs, or other papers only one copy need be served. Proof of service shall be filed with the clerk. No such service shall be required upon a defendant in error who has not entered his appearance in the supreme court as stated in the summons to hear errors, but in lieu of such service one additional copy of each such paper shall be filed. (From Supreme Court Rules 38 and 46.)

*Rule 115 (j)*

(j) WITHDRAWAL OF PAPERS FROM FILES. No paper shall be taken from the files, without leave of court, except the record, which may be withdrawn by counsel for 20 days for the purpose of preparing briefs or appendices. Every paper taken from the files must be retained in the custody of the party withdrawing it and must not be in any manner mutilated, taken apart, cut or marked. (From Supreme Court Rule 47.)

*Rule 115 (k)*

(k) INDUSTRIAL COMMISSION. On motion for writs of error in cases determined by the Industrial Commission the record of the proceedings before the commission shall be arranged in chronological order, omitting all duplicates, with folio numbers on the left margin, and a table of contents, which shall refer to the folio numbers. Briefs may be printed, typewritten, mimeographed or otherwise reproduced in conformity with the provisions of Rule 115 (h). Within 15 days after issuance of the writ plaintiff in error shall file his brief; within 10 days after service thereof upon him defendant in error shall file his brief, and within



5 days after service thereof upon him plaintiff in error may file a reply brief. Such cases shall not be argued orally except upon order of the court. (From Supreme Court Rules 44A and 45.)

*Rule 118 (b)*

(b) **ADVANCEMENT ON DOCKET.** Any pending action may be advanced on the docket and may be disposed of in such order as the court shall determine. In matters of great public importance the court may make such orders relating to the time and necessity for the filing of printed, typewritten, mimeographed or otherwise reproduced briefs, and the time and necessity for oral argument as it deems the circumstances demand. (From Code Secs. 329 and 330.)

*Rule 118 (c)*

(c) **REHEARINGS.** A petition for rehearing shall bear the cover endorsement prescribed in Rule 115 (h), the name of the justice who wrote the opinion, and shall state whether the decision was en banc or in department. It may be filed within 15 days after the filing of the opinion of the court, and shall briefly state the points claimed to have been overlooked or misapprehended by the court with proper references to the particular portion of the record and briefs relied upon. Such petition may be printed, mimeographed or typewritten or otherwise reproduced in conformity with the provisions of Rule 115 (h) with respect to briefs, and shall not contain more than three pages without consent of the court. In no case will any argument be permitted in support of such petition. If argumentative matter is contained therein, the petition may be stricken. No answer will be permitted and no action will be taken save to grant or deny the rehearing. The filing of such petition shall suspend proceedings under the decision until the petition is disposed of, unless the court shall direct otherwise. (From Supreme Court Rules 48 and 49.)

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It isn't the critic who counts, not the man who points out how the strong man stumbled, where the doer of deeds could have done better; the credit belongs to the man who is actually in the arena, whose face is marred with sweat and dust and blood, who strives valiantly, who errs and comes short again and again; because there is no effort without error and shortcoming. But who knows the great enthusiasms, the great emotions, who spends himself in worthy cause, who at the best knows at the end the triumph of high achievement and who at the worst, if he fails, at least fails while daring greatly, so that his place shall never be with those cold and dead souls who know neither victory nor defeat.

THEODORE ROOSEVELT.