

Review of District Court Magistrate Orders or Judgments - C.R.M. 7

(a) Orders or judgments entered without consent: 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) 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 with consent: Any order or judgment entered with the consent of the parties is not subject to review under Rule 7(a), but shall be appealed pursuant to the Colorado Appellate Rules in the same manner as orders or judgments of the district 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; entire chapter amended September 30, 1999, effective January 1, 2000.

Section (a) of this rule, rather than former rule, applies to a motion filed after the effective date of this rule concerning 1996 child support stipulation. People ex rel. Garner v. Garner, 33 P.3d 1239 (Colo. App. 2001).

The consent distinctions in this rule relate to the "with consent" and "without consent" categories established in C.R.M. 6. Thus, review of matters that may be heard by a magistrate without consent of the parties is governed by section (a) of this rule. Conversely, review of those matters that, by rule or statute, required the consent of the parties is governed by section (b). People ex rel. Garner v. Garner, 33 P.3d 1239 (Colo. App. 2001).

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); In re Estate of Hillebrandt, 979 P.2d 36 (Colo. App. 1999).

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).

District court erred in denying appellant's motion for review based on the failure timely to provide a transcript. The Colorado rules for magistrates do not contain a separate section on procedure or any procedural rules specifying any time limits for filing a transcript of a hearing before a magistrate. There is no requirement that a transcript be filed at all in a review proceeding, and there is no requirement that the district court must consider a transcript, if one is provided, when reviewing a magistrate's order. In re Schmidt, 42 P.3d 81 (Colo. App. 2002).

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When a magistrate enters an order outside the presence of the parties, the 15 days to file for review of the order begins to run on the date the order is mailed, not the date the order is made. In re Talbott, 43 P.3d 734 (Colo. App. 2002).