



HB 1395 - Concerning Interlocutory Appeals in Civil Cases

By Representative Bob Gardner and Senator Pat Steadman

The Colorado Bar Association urges your support for HB 1395.

- This bill is the result of efforts by a special subcommittee of the Colorado Supreme Court Appellate Rules Committee (Appellate Rules Committee.) The bill is a required instrument to permit the Supreme Court to promulgate appropriate rules and a limited legislative increase of the jurisdiction of the Colorado Court of Appeals.
- The bill permits limited discretionary interlocutory appeals of certified questions of law in certain limited instances. An **interlocutory appeal** is an appeal of a ruling by a trial court that is made before the trial itself has concluded.
- The Appellate Rules Committee has drafted a new rule to implement the provisions of HB 1395, if passed. The proposed new rule (attached – Draft C.A.R. 4.2) is based on current Colorado Appellate Rule 21 which relates to original proceedings in the Colorado Supreme Court. Interlocutory appeals are also utilized in the U.S. Court of Appeals.
- The Appellate Rules Committee believes that the rule anticipated with this legislation will be extremely limited in its scope and use. The grounds to proceed with an Interlocutory Appeal are:
 1. Where immediate review may promote a more orderly disposition or establish a final disposition of the litigation; and
 2. The order involves a controlling or unresolved question of law
- To ensure that the use of this procedure is limited - even where grounds exist, the trial court must either, upon exercise of its discretion, certify the particular order for the Interlocutory Appeal, or all parties must stipulate to the certification. Even with grounds and certification in the trial court, the Court of Appeals has discretion in whether to allow the Interlocutory Appeal.
- Though it is anticipated that the procedure will not be used much, it will fill a definite need in cases where the only other means of resolving an impasse is to continue with trial and appeal and the associated time and expense.
- This procedure is long overdue and will help facilitate the resolution of cases and benefit the entire court system.

For more information, please contact Michael Valdez 303.887.1295 or Amy Redfern 720.837.5435

Rule 4.2 Interlocutory Appeals in Civil Cases

(a) **Discretionary Interlocutory Appeals.** Upon certification by the trial court, or stipulation of all parties, the court of appeals may, in its discretion, allow an interlocutory appeal of an order in a civil action.

(b) **Grounds for Granting Interlocutory Appeal.** Grounds for certifying and allowing an interlocutory appeal are:

(1) Where immediate review may promote a more orderly disposition or establish a final disposition of the litigation; and

(2) The order involves a controlling and unresolved question of law.

(c) **Procedure in the Trial Court.** The party seeking to appeal shall move for certification or submit a stipulation signed by all parties within fourteen days after the date of the order to be appealed, stating that the appeal is not being sought for purposes of delay. The trial court may, in its discretion, certify an order as immediately appealable, but if all parties stipulate, the trial court must forthwith certify the order. Denial of a motion for certification is not appealable.

(d) **Procedure in the Appellate Court.** If the trial court certifies an order for an interlocutory appeal, the party seeking an appeal shall file a petition to appeal with the clerk of the court of appeals with an advisory copy served on the clerk of the trial court within fourteen days of the date of the trial court's certification.

(1) **Docketing of Petition and Fees; Form of Papers.** Upon the filing of a petition to appeal, appellant shall pay to the clerk of the court of appeals the applicable docket fee. All papers filed under this rule shall comply with C.A.R. 32.

(2) **Number of Copies to be Filed and Served.** An original and five copies of each petition or brief shall be filed. One set of supporting documents shall be filed. If the court grants the petition to appeal, the appellant shall file an additional five copies of supporting documents no later than the date on which any reply is due.

(3) Content of Papers and Service.

(A) The petition shall contain a caption that complies with C.A.R. 3(d)(1) and C.A.R. 32.

(B) To enable the court to determine whether the petition should be granted, the petition shall disclose in sufficient detail the following:

(i) The identities of all parties and their status in the proceeding below;

(ii) The order being appealed;

(iii) The reasons why immediate review may promote a more orderly disposition or establish a final disposition of the litigation and why the order involves a controlling and unresolved question of law;

(iv) The issues presented;

(v) The facts necessary to understand the issues presented;

(vi) Argument and points of authority explaining why the petition to appeal should be granted and why the relief requested should be granted; and

(vii) A list of supporting documents, or an explanation of why supporting documents are not available.

(C) The petition shall include the names, addresses, email addresses and telephone and fax numbers, if any, of all parties to the proceeding below; or, if a party is represented by counsel, the attorney's name, address, email address and telephone and fax numbers.

(D) The petition shall be served upon each party and the court below.

(4) Supporting Documents. A petition shall be accompanied by a separate, indexed set of available supporting documents adequate to permit review. Some or all of the following documents may be necessary:

(A) The order being appealed;

(B) Documents and exhibits submitted in the proceeding below that are necessary for a complete understanding of the issues presented;

(C) A transcript of the proceeding leading to the order below.

(5) **No Initial Response to Petition Allowed.** Unless requested by the court of appeals, no response to the petition shall be filed prior to the court's determination of whether to grant or deny the petition.

(6) **Briefs.** If the court grants the petition to appeal, the petition to appeal shall serve as appellant's opening brief. The appellee shall file an answer brief and the appellant may file a reply brief according to a briefing schedule established by the court in its order granting the petition to appeal. The petition and briefs shall comply with the limitations on length contained in C.A.R. 28(g).

(7) **Oral Argument.** Oral argument is governed by C.A.R. 34.

(8) **Petition for Rehearing.** In all proceedings under this Rule 4.2, where the court of appeals has issued an opinion, a petition for rehearing may be filed in accordance with the provisions of C.A.R. 40.

(e) Stay of Trial Court Proceedings

(1) The filing of a petition under this rule does not stay any proceeding below or the running of any applicable time limit. If the appellant seeks temporary stay pending the court's determination of whether to grant the petition to appeal, a stay ordinarily shall be sought in the first instance from the trial court. If a request for stay below is impracticable or not promptly ruled upon or is denied, the appellant may file a separate motion for temporary stay in the court of appeals supported by accompanying materials justifying the requested stay.

(2) An order granting the petition to appeal by the court of appeals automatically stays all proceedings below until final determination of the interlocutory appeal in the court of appeals unless the court, sua sponte, or upon motion lifts such stay in whole or in part.

(f) **Effect of Failure to Seek or Denial of Interlocutory Review.** Failure to seek or obtain interlocutory review shall not limit the scope of review upon an appeal from entry of the final judgment.

(g) Supreme Court Review. Denial of a petition to appeal is not subject to certiorari review. A decision of the court of appeals on the merits shall be subject to certiorari review. No provision of this rule limits the jurisdiction of the Supreme Court under C.A.R. 21.

COMMENT

An "unresolved question of law" is (1) a question of Colorado law that has not been resolved by the Colorado Supreme Court or determined in a published decision by the Colorado Court of Appeals, or (2) a question of federal law that has not been resolved by the United States Supreme Court.