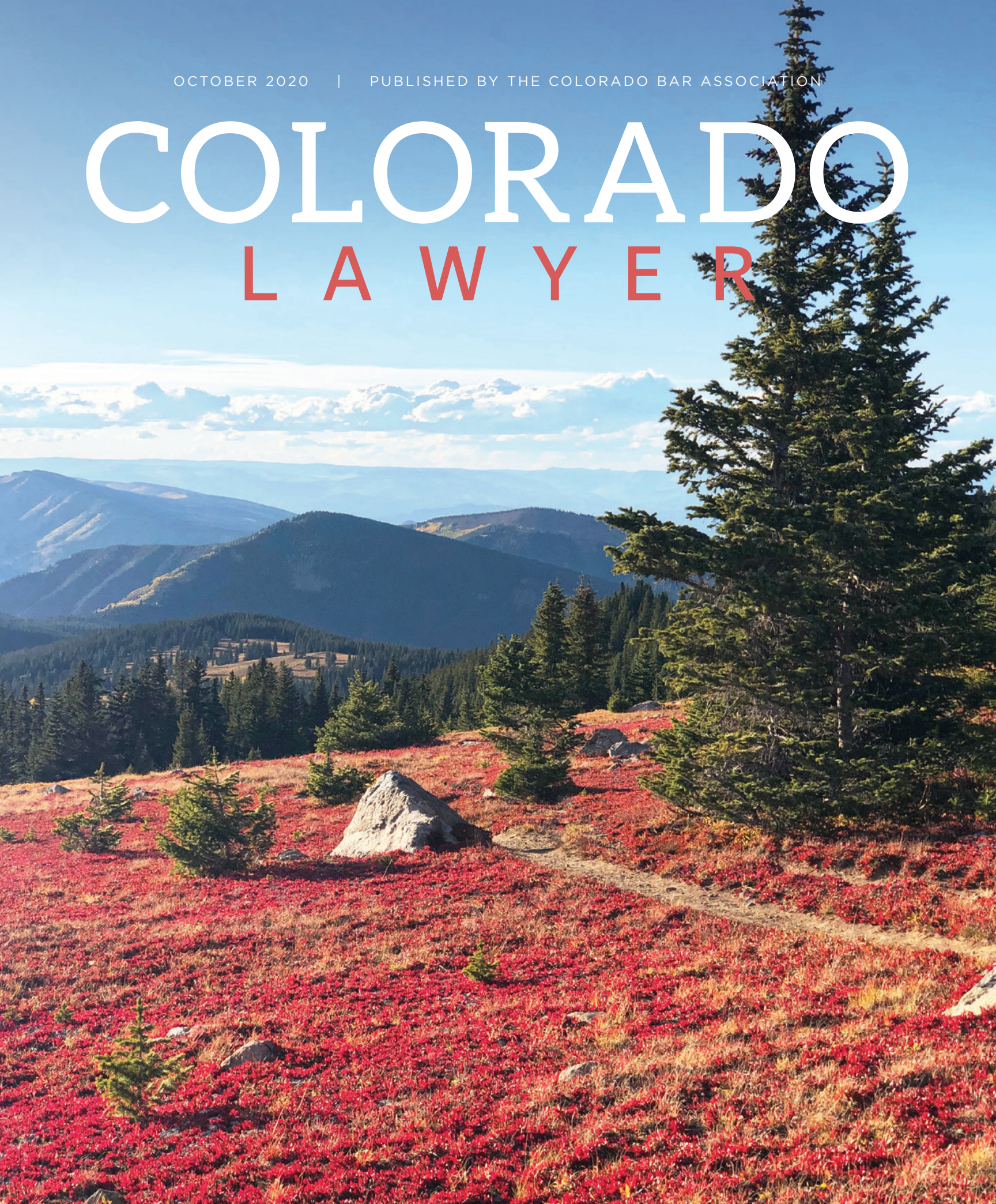
OCTOBER 2020 | PUBLISHED BY THE COLORADO BAR ASSOCIATION

COLORADO LAWYER



Civil Interlocutory Appeals in Colorado State Courts

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Colorado litigants need not always await a final judgment before taking an appeal. This article catalogues the various types of interlocutory appeals available to litigants in Colorado state appellate courts.

Parties in civil cases sometimes may wish to appeal from an order that is not a final judgment and cannot be made one under Colorado Rule of Civil Procedure (CRCP) 54(b), either because it does not dispose of an entire claim for relief or because a party cannot show there is "no just reason for delay."[1] This article first reviews the legal bases for interlocutory appellate jurisdiction in the Colorado Supreme Court and Colorado Court of Appeals. It then discusses types of interlocutory orders that may be appealed as a matter of right. It concludes with discretionary review options available in the Colorado Supreme Court and Court of Appeals.

The Legal Framework for Jurisdiction to Review Interlocutory Orders

The Colorado Constitution established the Colorado Supreme Court, which has both original and appellate jurisdiction.[2] Article VI, § 2(2) provides:

> Appellate review by the supreme court of every *final judgment* . . . shall be allowed, and the supreme court shall have such *other* appellate review as may be *provided by law*.[3]

The Supreme Court has held that this provision allows the General Assembly to expand the Court's jurisdiction, but jurisdiction may not be expanded by rule of court.[4] Hence, "[s]tatutes pertaining to the creation of the appellate remedies take precedence over judicial rules of procedure," and the Supreme Court "cannot adopt a rule which changes jurisdiction of a court contrary to a provision of a statute."[5]

Consistent with article VI, § 2(2), the General Assembly authorized the Colorado Supreme Court to adopt rules of civil procedure.[6] So, to the extent the CRCP or Colorado Appellate Rules (CAR) authorize appellate review of an interlocutory order, review is proper.[7] Further, even if the Supreme Court's appellate jurisdiction might not extend to review of a particular order, review might be available in the Court's exercise of its original jurisdiction under CAR 21.

In contrast, the Colorado Court of Appeals is not a constitutional court; it was created by statute, and its jurisdiction is likewise defined by statute.[8] Under CRS § 13-4-102, the Court of Appeals has "initial jurisdiction over appeals from final judgments of . . . the district courts" (with specified exceptions) and final actions or orders of specified state agencies. Further, in adopting the CAR, the Colorado Supreme Court authorized the Court of Appeals to review any case where an interlocutory appeal can be taken.[9] However, under CRS § 13-4-110(1)(a), if a party asserts that a matter is not within the Court of Appeals' jurisdiction, the question is referred to the Supreme Court, which "shall decide the question of jurisdiction in a summary manner, and its determination shall be conclusive."[10]

Finally, a party is not required to file an interlocutory appeal, even where a statute or rule permits such an appeal, whether as of right or as a matter of the reviewing court's discretion. Rather, appeal of an interlocutory order is only permissive, so even if no immediate appeal is taken, the claim of error may be reviewed in a later appeal from a final judgment.[11]

Interlocutory Orders Appealable as a Matter of Right

There are multiple bases for interlocutory review as a matter of right, including the following.

CAR 1 Interlocutory Orders

CAR 1 describes three types of interlocutory orders from which an "appeal to the appellate court may be taken." This rule does not designate to which appellate court a particular appeal must go.

Water court cases. Under CAR 1(a)(2), an appeal will lie from a "judgment or decree" of the water court and from that court's "order refusing, granting, modifying, canceling, affirming, or continuing in whole or in part a conditional water right, or a determination that reasonable diligence or progress has or has not been shown in an enterprise granted a conditional water right[.]" These appeals go directly to the Supreme Court.[12]

Orders granting or denying a "temporary injunction." CAR 1(a)(3) permits an interlocutory appeal from "[a]n order granting or denying a temporary injunction." Note that CRCP 65, which governs the issuance of injunctions by district courts, does not use the term "temporary injunction." Rule 65 refers to a "temporary restraining order" (TRO) or a "preliminary injunction." CAR 1(a)(3), however, has been interpreted to apply only to preliminary injunctions, not TROs.[13] For this purpose, a preliminary injunction is an order issued after notice and hearing, and without the 10-day temporal limitation for TROs, irrespective of the trial court's description of its order.[14]

Orders concerning appointment or discharge of receivers. CAR 1(a)(4) allows an interlocutory appeal from "[a]n order appointing or denying the appointment of, or sustaining or overruling a motion to discharge, a receiver." This rule is straightforward and means what it says.[15]

Other Appealable Interlocutory Orders

In addition to those orders appealable under CAR 1, a number of other types of orders are subject to interlocutory appeal under various statutes and rules, as well as judicial precedent.

Orders regarding immunity. Generally speaking, two types of immunity may be the subject of a pretrial order: immunity granted to public entities and public employees by the Colorado Governmental Immunity Act (CGIA),[16] and immunity possessed by public employees under 42 USC § 1983.[17] Because these types of immunity are, or may be, treated differently for appeal purposes, they must be considered separately.

▶ ***CGIA Immunity.*** The CGIA grants sovereign immunity to government entities, with limited exceptions. It provides that "sovereign immunity shall be a bar to any action against a public entity for injury which lies in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant."[18] The CGIA also immunizes public employees against claims for injuries sustained from acts or omissions alleged to have occurred during the performance of their duties and within the scope of their employment, "unless the act or omission causing such injury was willful and wanton."[19] The CGIA thus authorizes suits against a public employee in two instances: where the employee's act or omission was "willful or wanton," and where the entity's immunity has been waived under CRS § 24-10-106(1).[20]

The denial of a motion asserting sovereign immunity of a public entity or public employee is subject to interlocutory appeal.[21] CRS § 24-10-108 provides:

> If a public entity raises the issue of sovereign immunity prior to or after commencement of discovery, the court shall suspend discovery, except any discovery necessary to decide the issue of sovereign immunity and shall decide such issue on motion. The court's decision on such motion shall be a *final judgment* and shall be subject to *interlocutory appeal*.[22]

The CGIA sets forth substantively identical provisions with respect to sovereign immunity defenses asserted by public employees,[23] and as explained below, it is now clear that they too are entitled to interlocutory appeal of orders rejecting their immunity defenses.

The first significant case decided under this statute was *Trinity Broadcasting of Denver, Inc. v. City of Westminster*.[24] There, the Supreme Court held that, because the CGIA makes the Court's subject matter jurisdiction dependent on there being no sovereign immunity for a public entity, a trial court should decide the issue on a CRCP 12(b)(1) motion—not on a summary judgment motion—and should take evidence on the issue if necessary.[25] A pretrial order deciding the issue is appealable under CRS § 24-10-108.[26] The trial

court is not required to certify the order under CRCP 54(b) as a condition precedent to an immediate appeal.[27]

Early Colorado decisions held that a public employee's claim to qualified immunity does not go to the court's jurisdiction, but instead is an affirmative defense.[28] As such, these early decisions held that an order denying an employee's qualified immunity claim was not subject to interlocutory review.[29] In 2016, however, the Colorado Supreme Court decided that the CGIA does provide for interlocutory review of a trial court's ruling regarding a public employee's right to qualified immunity.[30] The Court recognized that while CRS § 24-10-118(2.5) authorizes an interlocutory appeal only on the issue of "sovereign immunity" (not "qualified immunity"), the "immunity" to which public employees are entitled under CRS § 24–10–118(2)(a) must be included within the procedural safeguards of CRS § 24-10-118(2.5).[31]

Moreover, because the CGIA governs claims that could have been brought in tort, an order denying a public entity's motion to dismiss a claim sounding in contract (or some other non-tort theory) for lack of subject matter jurisdiction may also be immediately appealable.[32] In addition, an order deciding the sufficiency of notice required by the CGIA is immediately appealable.[33] And if a trial court does not stay discovery but merely reserves ruling on a motion to dismiss under the CGIA, it might be equivalent to denial of the motion, in which case the "technical" requirement of CRCP 58(a) for a dated, written order signed by the judge will be waived.[34]

Finally, like all bases for interlocutory appeals, the statute permits but does not require an immediate appeal. So if a party chooses not to take an interlocutory appeal, it may nevertheless present the CGIA issue after the entry of a judgment disposing of the entire case.[35]

▶ ***42 USC § 1983.*** As to the second type of immunity, in *City of Lakewood v. Brace*, the Colorado Supreme Court noted that (1) the qualified immunity granted to public employees under 42 USC § 1983 is an "immunity from suit rather than a mere defense to liability," and (2) the US Supreme Court thus created an exception allowing immediate appeals from certain summary judgment orders based on qualified immunity.[36] Consequently, while an order denying summary judgment generally is not appealable under state law, federal law required the trial court to allow an interlocutory appeal of certain orders denying summary judgment motions based on qualified immunity.[37] Thus, an immediate appeal must be permitted if the order denied a public employee's qualified immunity defense based on a question of law, but not if the denial was based on the existence of a genuine issue of fact.[38]

> "Finally, a party is not required to file an interlocutory appeal, even where a statute or rule permits such an appeal, whether as of right or as a matter of the reviewing court's discretion."

In the later case of *Johnson v. Fankell*, however, the US Supreme Court held that federal law does not require states to authorize an interlocutory appeal of a pretrial denial of qualified immunity in a § 1983 action.[39] Nevertheless, in *Furlong v. Gardner*, the Colorado Supreme Court confirmed that, in spite of *Johnson*, state statutes and rules of procedure authorized an interlocutory appeal from a pretrial order denying summary judgment based on qualified immunity under § 1983.[40] The Court reaffirmed its holding in *Brace* that such an appeal was permitted so long as the denial was based on a ruling of law.[41]

Orders regarding arbitration. Colorado has adopted the Uniform Arbitration Act (Act).[42] Under the Act, parties may apply to the court for an order directing "the parties to arbitrate."[43] A court may also stay arbitration if it finds that there is no agreement to arbitrate. If arbitration is ordered, after the arbitrator enters an award, the court may enter an order confirming or vacating the award, requiring a rehearing before the arbitrator, or modifying or correcting the award.[44] The Act provides for a variety of appeals, both interlocutory and otherwise, from the following:

- an order denying a motion to compel arbitration;
- an order granting a motion to stay arbitration;
- an order confirming or denying confirmation of an award;
- an order modifying or correcting an award;
- an order vacating an award without directing a rehearing; or
- a final judgment entered pursuant to the Act.[45]

Note that while the Act permits interlocutory appeals from orders denying or staying arbitration, it does not allow immediate appeals from orders compelling arbitration or requiring a new arbitration hearing. Those orders are not subject to appellate review until the arbitration proceedings have been completed and the court has entered a final order confirming or vacating the award. Colorado courts have restricted a party's right to appeal consistent with these provisions.[46] In addition, the courts have refused to allow parties, by some special arbitration agreement, to expand on their rights to appeal under the Act.[47]

If, however, the arbitration agreement is alleged as an affirmative defense, and the court dismisses the action based on that agreement (rather than merely entering a stay order), the resulting judgment is appealable.[48] Likewise, if the court enters an injunctive order designed to maintain the status quo pending completion

of the arbitration proceedings, that order is appealable to the same extent that any other preliminary injunction is appealable.[49]

Even if an order directing arbitration is not appealable, the Colorado Supreme Court may review it in a discretionary original proceeding under CAR 21.[50] The Colorado Court of Appeals may also review such orders under CRS § 13-4-102.1 and its implementing rule, CAR 4.2.[51] Finally, even if the parties' agreement does not provide for arbitration as such but establishes some other form of dispute resolution, so that the Act does not apply, the Act's concepts nevertheless may provide the framework for determining the validity and enforceability of such provisions and, perhaps, the appealability of orders respecting such proceedings.[52]

"Temporary" orders in dissolution of marriage proceedings. Orders entered in dissolution of marriage proceedings before entry of a final decree of dissolution and permanent orders are plainly interlocutory. Nevertheless, Colorado appellate courts have authorized an appeal from some such orders, but not from others.

Temporary orders that establish the parties' financial relationship are appealable, the rationale being that such orders create financial rights and obligations pending entry of permanent orders.[53] This same rationale supports the interlocutory appealability of an award of temporary attorney fees.[54] In contrast, an award of child custody on a temporary basis is not immediately appealable.[55] But there may be circumstances in which a temporary custody order is, in fact, of such indefinite duration as to render the order final for appeal purposes.[56]

Orders in dependency and neglect proceedings. The Colorado Children's Code provides for bifurcated proceedings in dependency and neglect actions. First, the court determines whether the child is dependent or neglected; second, if the court sustains the petition, it moves to the dispositional phase, which commences with a hearing and adoption of a treatment plan.[57]

Under CAR 3.4(a), which governs appeals in dependency and neglect cases, a party may appeal orders in dependency or neglect proceedings as permitted by CRS § 19-1-109. CRS § 19-1-109(2)(c) provides that "[a]n order decreeing a child to be neglected or dependent shall be a final and appealable order after the entry of the disposition pursuant to section 19-3-508[.]" In *People in the Interest of H.T.*,[58] the Court of Appeals clarified that under the statute's plain language, "adjudicatory orders are final and appealable but dispositional orders, by themselves, are not."[59] Nonetheless, "a party that is seriously aggrieved by a dispositional order may still ask the Colorado Supreme Court to review it under CAR 21."[60]

After the initial dispositional order has been entered, post-dispositional orders that do not terminate rights to parental custody are not final and appealable.[61] On the other hand, orders that terminate or refuse to terminate the parent-child legal relationship are final and appealable.[62]

Orders granting or denying intervention. CRCP 24 provides two vehicles through which a non-party with an interest in a lawsuit may become a party to the suit. CRCP 24(a) provides for intervention as a matter of right, while CRCP 24(b) provides for permissive intervention. An order granting intervention is not final and not appealable.[63] An order denying intervention is appealable, for all practical purposes, although how one arrives at that conclusion is somewhat complicated.

An order denying intervention is appealable if intervention was sought as a matter of right,[64] but an order denying permissive intervention is not appealable unless the trial court abused its discretion.[65] Under the latter rule, the appealability of an order denying permissive intervention turns on the merits. This was illustrated in *Concerning Application for Underground Water Rights* and *Grijalva v. Elkins*, where the Supreme Court dismissed the appeals after finding that the trial court did not abuse its discretion in refusing to permit intervention.[66]

Thus, Colorado appellate courts will reach the merits of appeals from the denial of either type of intervention. The only difference lies in the formal disposition of such appeals if the denial is upheld. If the court upholds the denial of intervention as a matter of right, it will affirm.[67] If it upholds the denial of permissible intervention, it will dismiss the appeal for lack of jurisdiction.[68]

Contempt orders. CRCP 107 governs the imposition of sanctions for both direct and indirect contempt of court. Direct contempt occurs in the presence of the court and concerns behavior that has been repeated despite the court's warning to desist, or is so extreme that no warning is necessary.[69] Indirect contempt, on the other hand, occurs outside the presence of the court and is initiated by the court's issuance of a contempt citation, followed by a hearing.[70]

CRCP 107(f) provides that "[f]or the purposes of appeal, an order deciding the issue of contempt and sanctions shall be final." Several decisions have clarified that orders relating to contempt qualify as final and appealable orders only if they decide both "(1) the issue of contempt and (2) whether sanctions are warranted."[71] Therefore, "the determination of sanctions must be completed."[72]

In situations involving direct contempt entered summarily by the court, the finding of contempt and entry of sanctions often occur simultaneously and, therefore, the time for appeal is clear.[73] However, in direct contempt cases that are not summarily decided or in indirect contempt cases, the time for appeal may be harder to identify. For example, in a direct contempt proceeding where a person is held in contempt during trial but final adjudication and sentencing occur after trial,[74] the finding of contempt would not be appealable until after final adjudication and sentencing (i.e., entry of sanctions).[75] Similarly, in cases involving indirect contempt where the proceeding was initiated by the court's issuance of a contempt citation and later followed by a contempt hearing,[76] the issuance of the citation alone would not be appealable, because the issues of contempt and sanctions would remain unresolved.

In *People v. Proffitt*, the Court of Appeals unsurprisingly held that orders denying requests to issue contempt citations generally are not final or appealable.[77] The Court analogized such orders to dismissing a complaint without prejudice for failure to state a claim.[78] However, the Court reached the merits of the district court's ruling that, as a matter of law, it had no power to hold another district court judge in

contempt. It reasoned that the plaintiff would be unable to reinstate this motion by making further factual allegations or by correcting a procedural defect.[79]

One final point bears noting: Where a court enters a contempt order imposing sanctions that continue to accrue until the contemnor complies with the court's orders, "[t]he fact that the court would be required to tally the total fine at a later date ha[s] no bearing on the finality of the Contempt Order."[80] In other words, the time to appeal the contempt order runs from the entry of the contempt order imposing sanctions, not the later order fixing the final amount of sanctions.[81]

Orders Granting New Trials—Chartier *Review*

Under CRCP 59(h), an order granting a new trial is "not . . . an appealable order." Likewise, while an order denying a CRCP 60(b) motion is appealable independently from the underlying judgment,[82] an order granting a CRCP 60(b) motion that vacates the underlying judgment is, like an order granting a new trial, not appealable.[83] Strictly speaking, interlocutory appeal from these types of orders is unavailable.

However, litigants whose favorable judgments have been vacated by the grant of a new trial motion may engage in a gambit designed to allow an immediate appeal, if they are brave enough. As set out in *Chartier v. Winslow Crane Service Co.*, "the litigant against whom the new trial has been ordered may elect to stand on this order, obtain a dismissal of the action and thereupon seek a review of the order."[84] An immediate appeal will lie from that order dismissing the action, and if the litigant can convince the appellate court that the trial court erred in ordering a new trial, the original, favorable judgment will be reinstated. If the litigant loses this argument, however, he or she has no further recourse.[85]

The Court of Appeals most recently addressed this maneuver in its 1969 decision in *Rice v. Groat*.[86] In *Rice*, the Court acknowledged that, despite an intervening amendment to CRCP 59(g) clarifying that participation in a new trial did not waive a litigant's objections to the granting of a new trial, *Chartier* still allowed a litigant to "decline to participate in a new trial, permit judgment to be entered against him and sue out writ of error for a determination of the correctness of the order granting a new trial."[87] Nonetheless, since *Rice*, there do not appear to be any more recent examples of a Colorado litigant employing *Chartier*'s appeal process. This may be because the gambit is just too risky.

Interlocutory Orders Appealable as a Matter of Discretion

There are several categories of orders appealable as a matter of discretion.

Orders Granting or Denying Class Certification

An order granting or denying class certification is immediately appealable if the appeal is filed within 14 days after entry of the order.[88] The Court of Appeals has discretion whether to hear the interlocutory appeal.[89]

In deciding how to exercise its discretion, the Court in *Clark v. Farmers Insurance Exchange* adopted the five-factor test articulated by the Eleventh Circuit:

- Is the ruling likely dispositive, because either it effectively prevents the plaintiff from continuing to pursue the matter in that the stakes are too low, or it puts the defendant in a position where it would experience irresistible pressure to settle? This is often referred to as the "death-knell" factor.
- Has the appellant shown that the trial court's class certification decision likely constitutes an abuse of discretion?
- Will allowing the appeal permit resolution of an unsettled legal issue important to the litigation and important in itself?
- What are the nature and status of the litigation, including the status of discovery, the pendency of relevant motions, and the length of time the matter has been pending?
- What is the likelihood that future events could make immediate appellate review more or less appropriate? This includes whether the lower court views its class certification decision as conditional or subject to revision.[90]

The factors are nonexclusive guideposts, and none of them is necessarily dispositive.[91] However, the death-knell factor is the most important consideration.[92]

Interlocutory Review under CRS § 13-4-102.1 and CAR 4.2

CRS § 13-4-102.1 allows discretionary interlocutory appeals to the Court of Appeals of orders that trial courts have certified for such review. CRS § 13-4-102.1 is similar to 28 USC § 1292(b). It permits review of an interlocutory order if (1) the trial court certifies that immediate review may promote a more orderly disposition or a final disposition of the litigation, and (2) the order involves a controlling and unresolved question of law.[93]

The statute is not self-executing. It authorizes the Court of Appeals to hear interlocutory appeals under rules promulgated by the Colorado Supreme Court.

CAR 4.2 implements CRS § 13-4-102.1 and includes both substantive and procedural aspects.[94] Substantively, CAR 4.2(a) reiterates that the Court of Appeals has discretion to permit appeals of certified orders. CAR 4.2(b) reiterates the grounds for certifying and allowing appeals under § 13-4-102.1(1)(a) and (b), and it defines "unresolved question of law" as a question "that has not been resolved by the Colorado Supreme Court or determined in a published decision of the Colorado Court of Appeals, or a question of federal law that has not been resolved by the United States Supreme Court."[95]

Procedurally, CAR 4.2(c) establishes a 14-day deadline to request the trial court to certify an order. If all parties stipulate to certification, the trial court "must forthwith" certify the order.[96] Once an order is certified, the party seeking to appeal has a second 14-day deadline to file a petition to appeal in the Court of Appeals (and serve an advisory copy on the trial court).[97] Accordingly, the timetable for discretionary interlocutory appeals is different than for interlocutory appeals as a matter of right, which are subject to the appellate rules governing appeals from final judgments.

If a petition is granted, the court will set a briefing schedule. The briefing requirements are similar to CAR 21 in terms of both the petition's

contents and the supporting documents.[98] Other aspects of the rule also mimic Rule 21. There is no automatic stay upon the mere filing of a petition, but if the petition is granted, the district court proceedings are automatically stayed.[99] Likewise, no initial response to a petition is allowed, unless the Court of Appeals requests one.[100] If the petition is granted, it serves as the appellant's opening brief, and the court will set deadlines for a response and reply briefs.[101]

As a practical matter, Rule 4.2 review is not easy to obtain. The Court of Appeals has interpreted the scope of its jurisdiction to hear Rule 4.2 appeals narrowly and has granted full or partial relief in such appeals in very few instances.[102]

As with other types of interlocutory appeals, Rule 4.2 permits further review by filing petitions for rehearing and certiorari.[103] Likewise, the failure to seek or obtain discretionary interlocutory review under Rule 4.2 does not limit a party from raising the issue on appeal from a final judgment.[104]

CAR 21

There is one final option for obtaining immediate review of an interlocutory order: A party may ask the Colorado Supreme Court to review the order in the exercise of its original jurisdiction. Colorado Constitution article VI, § 3 grants the Court the power to "issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction, and such other original and remedial writs as may be provided by rule of court . . . ." CAR 21 implements this constitutional provision.

While the rule governs petitions for issuance of various common law writs, the petitioner seeking relief under CAR 21 need not designate the particular writ sought.[105] The procedural requirements for Rule 21 petitions appear in CAR 21(b) through (f). No responsive pleading is permitted before the Court's decision on whether to issue a rule to show cause.[106] If the petition is granted, the rule to show cause automatically stays the lower court proceedings.[107] The Court then fixes due dates for response and reply briefs.[108]

The Court's exercise of its original jurisdiction is discretionary.[109] Rule 21(a)(1) provides that all original petitions to the Supreme Court are subject to this rule, but relief "is extraordinary in nature" and "shall be granted only when no other adequate remedy, including relief by appeal . . . is available."[110] Consistent with the rule, the Supreme Court seldom exercises its original jurisdiction. Of the approximately 250 petitions filed annually over the last eight years, the Court reviewed on average only 12 per year.[111]

The Court may grant review only if the petitioner can show that (1) the lower tribunal is exceeding its jurisdiction or has been guilty of an abuse of discretion, and (2) the order in question is one for which an appeal would provide no adequate relief.[112]

The Court generally does not grant CAR 21 review to simply correct an error of law or to provide a substitute for an appeal.[113] Thus, the Court will not exercise its original jurisdiction to review an order if a party foregoes another adequate appellate remedy.[114]

On the other hand, if the petitioner can demonstrate that the interlocutory order is not immediately appealable and an appeal after final judgment would be substantially meaningless, the Court may accept jurisdiction. The Court has stated that exercise of its original jurisdiction is appropriate "when a pre-trial ruling places a party at a significant disadvantage in litigating the merits of the controversy and conventional appellate remedies would prove inadequate."[115] The Court may also exercise its original jurisdiction to review cases that raise issues of first impression that are of significant public importance.[116] Examples of orders the Court has reviewed include those:

- denying or compelling pretrial discovery;[117]
- denying pleading amendments;[118]
- denying motions to dismiss for lack of personal jurisdiction;[119]
- concerning whether parties must engage in contractually required alternative dispute resolution;[120]
- requiring arbitration of claims;[121] and
- granting or denying motions to disqualify counsel.[122]

Comparing CAR 4.2 and 21

CAR 4.2(g) expressly provides that "[n]o provision of this rule limits the jurisdiction of the Supreme Court under CAR 21." Appellants thus have a tactical choice: They can either seek interlocutory review in the Court of Appeals under Rule 4.2 or go straight to the Supreme Court under CAR 21. Though both forms of interlocutory review are discretionary, and though the two processes are similar once review is granted, there are several important differences between the two options:

- Rule 21 does not require a trial court to certify an order for review and has no filing deadline. However, failure to promptly file a CAR 21 petition may undermine the apparent urgency for immediate review.
- There is no CAR 21 requirement that the issue involve a controlling and unresolved issue of law; therefore, a petitioner is more likely to obtain review of a trial court's discretionary rulings under CAR 21.[123]
- CAR 21 review "is extraordinary in nature" and "will be granted only when no other adequate remedy, including relief by appeal . . . is available."[124] Thus, an appellant must show that normal appellate review would be inadequate. This consideration is absent from Rule 4.2, which requires only that immediate review promote a more orderly disposition of the case.

Conclusion

In the mine run of cases, disappointed litigants must await a final judgment before seeking appellate review of an adverse ruling. But the Colorado Appellate Rules and common law provide options for immediate review in many circumstances. Practitioners should familiarize themselves with these options and consider their use in appropriate cases. CL


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