

Appeals Quick Guide

Petition for Magistrate Review

Typical Duration

2 - 3 Months

Typical Costs

Transcripts: Varies
Attorney's Fees: Possibly

Quick Facts

Step by Step

Step 1 – Decide if you Need a Transcript

Why: The Judge may need a transcript to review the case.

Form: [Transcript Request - JDF 4](#).

Cost: About \$150/hour you were in court.

Step 2 – Request More Time to File the Petition

Why: Time to have the transcripts created before filing.

Form: [Motion - JDF 76](#) and [Order - JDF 77](#).

Due: Must be filed within 14 days of the Final Order.

Step 3 – Arguments for Review

Why: The arguments on appeal.

Form: [Petition for Magistrate Review - JDF 76](#).

Due: 14 days after a Final Order. Or, as extended (see Step 2).

Step 4 – Response to Review

Why: The arguments responding to the appeal.

Form: [Objection to Magistrate Review - JDF 81](#).

Due: 14 days after the Petition is filed.

Step 5 – Decision

What: Order on Magistrate Review.

When: Varies. Usually within 3-6 weeks.

Who: Decided by a District Court Judge.

Step 6 - Further Appeal

Form: [Notice of Appeal - JDF 647](#).

Where: Colorado Court of Appeals.

Due: Within 49 days of the Order on Magistrate Review.

Limits: Limited to the Issues argued in the Petition.

1. Where Filed: The forms for a Magistrate Review are filed into the same trial court case. The Petition will be assigned to a Judge for review.

2. Transcript Needed? Without a Transcript, the Judge will have to assume that the information presented at the trial supported the Magistrate's decision.

3. Final Order: The Judge may only review a case when it has fully concluded. Examples of a final order include a decision resolving a request to modify child support or parenting time.

4. Review of an Order: This is a review to see if the final decision was acceptable. It is not a review of the conduct of attorneys or witnesses, or to see if there is a better solution.

5. Issues on Appeal: The alleged mistakes the magistrate made in deciding the case.

6. What the Judge Will Do: The Judge will look at the issues and decide if there were any errors in the law, clearly wrong factual findings, or if there was an abuse of the Magistrate's decision-making authority.

Petition for Magistrate Review

Review of a Magistrate's Final Order when consent wasn't necessary as per C.R.M. 7(a).

1. **Purpose:** You will make your arguments for how the issues in your case should have been decided in a document called a Petition for Magistrate Review.
2. **When Needed:** Reviews of Magistrate's decisions may only occur on final orders. Some final decisions are reviewed by the Court of Appeals. Most final orders need to be reviewed by a Judge first.
 - a. Needs Magistrate Review by a Judge: A Judge in the same county will review these decisions before an appeal to the Court of Appeals can happen:
 - i. Decisions on a Motion to Modify or Terminate:
 1. Child Support
 2. Parenting time (custody)
 3. Parental Decision Making
 4. Maintenance (alimony)
 - ii. Enforcement of Parenting Time Orders
 - iii. Contempt of Court Determinations
 - iv. Determination of Paternity
 - b. Reviewed Directly by the Court of Appeals: These final orders skip Magistrate Review and are appealed directly to the Court of Appeals:

Contested Permanent Orders:

1. Decree of Dissolution of Marriage
2. Allocation of Parental Responsibilities

3. **Due Dates:** The due date for the Petition depends on whether the written and signed final orders were given to you in court, or mailed to you.

In Court: 14 Days.

OR

Mailed: 21 Days.

4. **A Witness Lied:** It's too late. Your opportunity to challenge someone who was lying (their credibility) occurred at the hearing. This is the purpose of cross examination (asking questions to the other party's witnesses) and exhibits. The Judge and any future appellate court is locked into what evidence and what witnesses the Magistrate found to be believable.

5. **Costs:** There is no filing fee for a Petition for Magistrate Review. The transcript will cost about \$150 for each hour you were in court. You may have to pay the other parties' costs and attorney's fees if you lose.
6. **The Form:** A designated Petition for Magistrate Review hasn't been created. You may use the provided outline, or use a [General Motion Form - JDF 76](#).

Case Caption (1st Page)

- a. Fill in the county of the District Court.
- b. Enter the District Court's address.
- c. Enter the parties' names under their role in the case.
- d. Enter your name and contact information.
- e. Enter the case number, and division or courtroom.
- f. Title the document "Petition for Magistrate Review."

Certificate of Compliance

State how many words and pages are in your Petition for Magistrate Review. Your Petition cannot be more than 15 pages (or contain more than 4,000 words).

Body of the Form

- a. **Issues on Review:** List the questions you want the Judge to answer. These are the errors you believe the Magistrate made in deciding your case. C.R.M. 7(a)(7). Examples of common errors include the following:
 - i. **Clearly Wrong Factual Finding:** Both parties present their versions of the facts. The Magistrate then selects the facts they believe to be true. These are called the Findings of Fact. Did the Magistrate determine a fact incorrectly because there is no support in the court record (exhibits or testimony) for that fact?
 - ii. **Wrong Use of a Law:** Did the Magistrate use the wrong law or incorrectly interpret the law?
 - iii. **Unreasonable Decision:** Was the Magistrate's decision not among the possible reasonable decisions that could have been made?
 - iv. **Now or Never:** This is your opportunity to raise these issues for review. If you don't raise them here, and discuss them in the next sections, you may not be able to raise them in an appeal to the Court of Appeals.
- b. **Statement of the Case:** Let the Judge know the facts of your case. Focus only on the facts that the Judge will need to know to review the issues. Include a

citation to the transcript, an exhibit, or a case filing where each fact can be found. For example:

- i. **Court File:** If you want to cite to a document that was filed in the case, include the date it was filed, the name of the document, and the page number. For example, “Petition - June 3, 2017, Pg. 3”.
 - ii. **Transcript:** If you want to cite to something that was said in court, cite to the page number and line number in the transcript that you purchased. For example, “Hearing - July 13, 2017, Pg. 16, line 3.”
 - iii. **Exhibits:** If you would like to cite to an exhibit, state the exhibit number, the name of the document, and give a page number in that document. For example, “Exhibit B - Expert Report, Pg. 5.”
- c. **Argument:** Argue one issue at a time. Include a Standard of Review and Discussion section for each issue you raise in your Petition.
- i. **Standard of Review:** The Judge may evaluate different issues with different levels of review. For example:
 - a. **Issues of Law:** The Judge will decide the issue on its own, regardless of what the Magistrate decided. This standard is called “*de novo*” and is used for issues of law, such as interpreting a statute.
 - b. **Issues of Fact:** The Judge will accept (affirm) the Magistrate’s findings of facts unless those findings are clearly wrong. Facts are clearly wrong when they cannot be supported by any of the evidence (exhibits or testimony) at the hearing. If you are challenging the fact findings you **MUST** purchase and provide a transcript. Read C.R.M. 7(a)(9) for more information.
 - c. **Issues of Discretion:** At some point, to resolve the conflict in your case, someone must make a judgment call. In this case, that was the role of the Magistrate. A reviewing court gives a lot of deference to the Magistrate.

The Judge will accept (affirm) what the Magistrate decided if it falls into the zone of possible reasonable decisions that could have been made. A decision becomes unreasonable if the law was applied incorrectly, a factor was considered that should not have been, a factor was not considered when it had to be, or a clearly wrong fact was used (see Issues of Fact above). If you are challenging discretion, you will most likely need a transcript.

- ii. **Discussion:** This is where you will make your arguments for the issue. You will choose how the argument is organized and what sources to include. One way to organize your argument is as follows:
 - a. **Introduction:** Introduce the issue and state the error that the Magistrate made.
 - b. **Law:** Cite to the law that affects this issue.
 - c. **Facts:** State the facts from your case that are relevant for resolving the issue. Cite to the record where those facts can be found.
 - d. **Apply Facts to Law:** Discuss why the Court must resolve the case in your favor. Do this by applying the facts of your case to the law.
 - e. **Apply Standard of Review:** Discuss how the Magistrate’s resolution of the issue was wrong and how the Standard of Review (see the section above) has been met.
 - f. **Conclude:** State how the Judge should resolve the issue.
- d. **Conclusion:** State exactly what you want the reviewing Judge to do with your case.

Certificate of Service

You must send a copy of the Petition to each party’s attorney or directly to a party who does not have an attorney. Certify the date that you sent the Petition and how service was made (by mail or in-person). List the address you used for each party (or attorney) in the case.

- 7. **Proposed Order:** Fill out just the case caption of a [Proposed Order - JDF 77](#) and file that with your Petition.
- 8. **Where to File:** File the Petition and Proposed Order in the District Court where your case is located.
- 9. **Transcript:** If you are challenging the Magistrate’s factual findings, you must include a transcript. C.R.M. 7(a)(9). If you don’t include a transcript, the Judge will have to assume the facts support the Magistrate’s decision.

The cost of a transcript may not be waived. If you need a transcript, fill out a [Transcript Request Form - JDF 4](#) and submit this to the District Court. The transcriptionist will be in contact with you about the cost to prepare the transcript.

10. More Time: If you need more time to file your Petition for Review or if you need to include a transcript, fill out a [General Motion Form - JDF 76](#) and [Proposed Order - JDF 77](#). File your request for an extension within 14 days of the final orders. If you are asking for a transcript, ask for an extension of 42 days.

11. Potential Outcomes: The Judge may find the orders were wrong (Reject/Remand) and make modifications or send them back to the Magistrate to be fixed. Or the Judge may accept what the Magistrate decided (Adopt/Affirm). C.R.M. 7(a)(10). Or a new hearing may occur in the Judge's courtroom (De Novo Hearing) C.R.M. 7(a)(8).

12. Legal Research: To understand the law and make persuasive arguments you will have to do legal research.

a. **Statutes & Rules:** To read the Colorado statutes and rules online, visit:

<http://www.lexisnexis.com/hottopics/colorado/>

b. **Case Law:** To read and search Colorado cases online, visit:

www.scholar.google.com

13. Be Sure to Read: The Colorado Rules for Magistrates (C.R.M.) 6 and 7(a), Colorado Rules of Civil Procedure (C.R.C.P.) 10, and 121 § 1-15.

14. For Further Appeal: You must start the [appeals process](#) within 49 days of the Judge's Order deciding the Petition for Magistrate Review.

Steps & Timelines:

1. Petition for Magistrate Review - due 14 or 21 days after Magistrate's Orders.
2. Opposition Brief - (By the other side) due 14 days after Petition is filed.
3. Judge's Orders are issued - (times vary by Judge).

<p>_____ County District Court</p> <p>Street Address: _____</p> <p>City: _____ State: _____ Zip: _____</p> <hr/> <p>Plaintiff/Petitioner: _____</p> <p>_____</p> <p>v.</p> <p>Defendant/Respondent: _____</p> <p>_____</p> <hr/> <p>Filing Party Name: _____</p> <p>Street Address: _____</p> <p>City: _____ State: _____ Zip: _____</p> <p>Phone: _____</p> <p>E-Mail: _____</p>	<p style="text-align: center;">▲ FOR COURT USE ▲</p> <hr/> <p>District Court Case Number: _____</p> <p>Courtroom: _____</p> <p>Division: _____</p>
<h3 style="margin: 0;">Motion for More Time to File</h3>	

I respectfully request an extension of 42 days to file a Petition for Magistrate Review.

I will be requesting a transcript to be included as part of the review. This time will allow me to have the transcript created and draft the Petition for Magistrate Review.

Dated: _____ Respectfully submitted,

Signature: _____

Print Name: _____

Certificate of Service

I certify that on (date) _____,

I { mailed }, or { hand delivered }

A copy of the Motion to the people listed below:

(You must send a copy to each party. If a party has a lawyer, send the copy to the lawyer)

Name of Person Served: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Name of Person Served: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Name of Person Served: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Space for other parties served:

Signature: _____

Print Name: _____

_____ County District Court Street Address: _____ City: _____ State: _____ Zip: _____ <hr/> Plaintiff/Petitioner: _____ _____ v. Defendant/Respondent: _____ _____	▲ FOR COURT USE ▲ <hr/> District Court Case Number: _____ Courtroom: _____ Division: _____
Order re More Time to File for Magistrate Review	

The Court has reviewed the Motion for More Time to File the Petition for Magistrate Review. That request is:

Denied. The request was filed outside of the time permitted to file a Petition for Magistrate Review.

Granted or Partially Granted. The Petition is due by _____.

So Ordered.

Dated: _____ Signature: _____

District Court Judge

<p>_____ County District Court</p> <p>Street Address: _____</p> <p>City: _____ State: _____ Zip: _____</p> <hr/> <p>Plaintiff/Petitioner: _____</p> <p>_____</p> <p>v.</p> <p>Defendant/Respondent: _____</p> <p>_____</p> <hr/> <p>Filing Party Name: _____</p> <p>Street Address: _____</p> <p>City: _____ State: _____ Zip: _____</p> <p>Phone: _____</p> <p>E-Mail: _____</p>	<p style="text-align: center;">▲ FOR COURT USE ▲</p> <hr/> <p>District Court Case Number: _____</p> <p>Courtroom: _____</p> <p>Division: _____</p>
<h2 style="margin: 0;">Petition for Magistrate Review</h2>	

Issues for Review

Statement of the Case

Discussion

Conclusion

Dated: _____

Respectfully submitted,

Signature: _____

Print Name: _____

Certificate of Service

I certify that on (date) _____,

I { mailed }, or { hand delivered }

A copy of the Motion to the people listed below:

(You must send a copy to each party. If a party has a lawyer, send the copy to the lawyer)

Name of Person Served: _____

Street Address: _____

City: _____ State: _____ Zip: _____

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City: _____ State: _____ Zip: _____

Name of Person Served: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Space for other parties served:

Signature: _____

Print Name: _____