CHAPTER 15

REMEDIAL WRITS AND CONTEMPT

Rule 106. Forms of Writs Abolished

(a) Habeas Corpus, Mandamus, Quo Warranto, Certiorari, Prohibition, Scire Facias and Other Remedial Writs in the District Court. Special forms of pleadings and writs in habeas corpus, mandamus, quo warranto, certiorari, prohibition, scire facias, and proceedings for the issuance of other remedial writs, as heretofore known, are hereby abolished in the district court. Any relief provided hereunder shall not be available in the superior or county courts. In the following cases relief may be obtained in the district court by appropriate action under the practice prescribed in the Colorado Rules of Civil Procedure:

(1) Where any person not being committed or detained for any criminal or supposed criminal matter is illegally confined or restrained of his liberty;

(2) Where the relief sought is to compel a lower judicial body, governmental body, corporation, board, officer or person to perform an act which the law specially enjoins as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled, and from which he is unlawfully precluded by such lower judicial body, governmental body, corporation, board, officer, or person. The judgment shall include any damages sustained;

(3) When any person usurps, intrudes into, or unlawfully holds or exercises any office or franchise, the district attorney of the proper district may and, when directed by the governor so to do, shall bring an action against such person in the name of the people of the state, but if the district attorney declines so to do, it may be brought upon the relation and complaint of any person. The Rule heretofore existing requiring leave of court to institute such proceedings is hereby abolished. When such an action is brought against a defendant alleged to have usurped, intruded into, or who allegedly unlawfully holds or exercises any public office, civil or military, or any franchise it shall be given precedence over other civil actions except similar actions previously commenced. The judgment may determine the rightful holder of the office or franchise;

(4) Where any governmental body or officer or any lower judicial body exercising judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion, and there is no plain, speedy and adequate remedy otherwise provided by law:

(I) Review shall be limited to a determination of whether the body or officer has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer.

(II) Review pursuant to this subsection (4) shall be commenced by the filing of a complaint. An answer or other responsive pleading shall then be filed in accordance with the Colorado Rules of Civil Procedure.

(III) If the complaint is accompanied by a motion and proposed order requiring certification of a record, the court shall order the defendant body or officer to file with the clerk on a specified date, the record or such portion or transcript thereof as is identified in the order, together with a certificate of authenticity. The date for filing the record shall be after the date upon which an answer to the complaint must be filed.

(IV) Within 21 days after the date of receipt of an order requiring certification of a record, a defendant may file with the clerk a statement designating portions of the record not set forth in the order which it desires to place before the court. The cost of preparing the record shall be advanced by the plaintiff, except that the court may, on objection by the plaintiff, order a defendant to advance payment for the costs of preparing such portion of the record designated by the defendant as the court shall determine is unessential to a complete understanding of the controversy; and upon a failure to comply with such order,

the portions for which the defendant has been ordered to advance payment shall be omitted from the record. Any party may move to correct the record at any time.

(V) The proceedings before or decision of the body or officer may be stayed, pursuant to Rule 65 of the Colorado Rules of Civil Procedure.

(VI) Where claims other than claims under this Rule are properly joined in the action, the court shall determine the manner and timing of proceeding with respect to all claims.

(VII) A defendant required to certify a record shall give written notice to all parties, simultaneously with filing, of the date of filing the record with the clerk. The plaintiff shall file, and serve on all parties, an opening brief within 42 days after the date on which the record was filed. If no record is requested by the plaintiff, the plaintiff shall file an opening brief within 42 days after the defendant has served its answer upon the plaintiff. The defendant may file and serve an answer brief within 35 days after service of the plaintiff's brief, and the plaintiff may file and serve a reply brief to the defendant's answer brief within 14 days after service of the answer brief.

(VIII) The court may accelerate or continue any action which, in the discretion of the court, requires acceleration or continuance.

(IX) In the event the court determines that the governmental body, officer or judicial body has failed to make findings of fact or conclusions of law necessary for a review of its action, the court may remand for the making of such findings of fact or conclusions of law.

(5) When judgment is recovered against one or more of several persons jointly indebted upon an obligation, and it is desired to proceed against the persons not originally served with the summons who did not appear in the action. Such persons may be cited to show cause why they should not be bound by the judgment in the same manner as though they had been originally served with the summons, and in his answer any such person may set up any defense either to the original obligation or which may have arisen subsequent to judgment, except a discharge from the original liability by the statute of limitations.

(b) Limitations as to Time. Where a statute provides for review of the acts of any governmental body or officer or judicial body by certiorari or other writ, or for a proceeding in quo warranto, relief therein provided may be had under this Rule. If no time within which review may be sought is provided by any statute, a complaint seeking review under subsection (a)(4) of this Rule shall be filed in the district court not later than 28 days after the final decision of the body or officer. A timely complaint may be amended at any time with leave of the court, for good cause shown, to add, dismiss or substitute parties, and such amendment shall relate back to the date of filing of the original complaint.

Source: (a)(4)(IV), (a)(4)(VII), and (b) amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1(b).

Cross references: For original jurisdiction of the supreme court, see C.A.R. 21; for original jurisdiction of supreme court on certiorari, see C.A.R. 49 and 50; for effect of judgment against a partnership, see C.R.C.P. 54(e); for petition for writ of habeas corpus in criminal cases, see § 13-45-101, C.R.S.; for writ of habeas corpus in civil cases, see § 13-45-102, C.R.S.

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For article, "Mandamus and Other Writs", see 18 Dicta 333 (1941). For article, "One Year Review of Civil Procedure", see 34 Dicta 69 (1957). For article, "One Year Review of Civil Procedure", see 35 Dicta 3 (1958). For article, "One Year Review of Civil Procedure and Appeals", see 37 Dicta 21 (1960). For article, "One Year Review of Civil Procedure and Appeals", see 38 Dicta 133 (1961). For article, "One Year Review of Civil Procedure and Appeals", see 39 Dicta 133 (1962). For article, "One Year Review of Civil Procedure and Appeals", see 40 Den. L. Ctr. J. 66 (1963). For article, "One Year Review of Criminal Law and Procedure", see 40 Den. L. Ctr. J. 89 (1963). For note on current developments, "Civil Procedure Application of 'Indispensable Party' Provision of Colo. R. Civ. P. 19 — the 'Procedural Phantom' Still Stalks in Colorado", see 46 U. Colo. L. Rev. 609 (1974-75). For note, "Referendum and Rezoning: Margolis v. District Court", see 53 U. Colo. L. Rev. 745 (1982). For article, "Original Proceedings in the Colorado Supreme Court", see 12 Colo. Law. 413 (1983). For article, "Asserting Vested Rights in Colorado", see 12 Colo. Law. 1199 (1983). For article, "Judicial Review, Referral and Initiation of Zoning Decisions", see 13 Colo. Law. 387 (1984). For article, "C.R.C.P. Rule 106: Amendments Governing Appeals from Local Governmental Decisions", see 15 Colo. Law. 1643 (1986). For article, "Local Government Exactions from Developers after Beaver Meadows", see 16 Colo. Law. 42 (1987). For article, "Prosecuting an Appeal from a Decision of the Colorado Public Utilities Commission", see 16 Colo. Law. 2163 (1987).

Purpose of rule. Under the former Code of Civil Procedure complaints apparently setting out facts sufficient for relief were held demurrable because the actions sought special writs. It was because of this result that this rule was adopted abolishing forms of writs and the special forms of pleadings formerly required. Berryman v. Berryman, 115 Colo. 281, 172 P.2d 446 (1946).

The rationale behind section (b) requires that the challenging party have had notice and an opportunity to be heard in a proceeding, subject to certiorari review, which is judicial or quasi-judicial in character. Julesburg Sch. Dist. No. RE-1 v. Ebke, 193 Colo. 40, 562 P.2d 419 (1977).

The substantive aspects of remedial writs are preserved, and relief in the same nature as was formerly provided in such proceedings may be granted under the Rules of Civil Procedure in accordance with precedents established under the former practice. Leonhart v. District Court, 138 Colo. 1, 329 P.2d 781 (1958); People ex rel. Mijares v. Kniss, 144 Colo. 551, 357 P.2d 352 (1960).

Rule operates only on procedure. The present Rules of Civil Procedure, and particularly this rule, operate on or with respect to matters of procedure. Enos v. District Court, 124 Colo. 335, 238 P.2d 861 (1951).

Section (a) does not preclude a court from initiating a proceeding by means other than institution of a civil action. Pena v. District Court, 681 P.2d 953 (Colo. 1984).

This rule preempts municipal provisions for review. Local ordinance provisions may not control the filing of a petition seeking review under section (a)(4). Gold Star Sausage Co. v. Kempf, 653 P.2d 397 (Colo. 1982); Sky Chefs v. City & County of Denver, 653 P.2d 402 (Colo. 1982).

The 30-day time limit in section (b) preempts a municipal code's 20-day time limit for seeking review. Gold Star Sausage Co. v. Kempf, 653 P.2d 397 (Colo. 1982); Sky Chefs v. City & County of Denver, 653 P.2d 402 (Colo. 1982).

Despite a municipal code's requirement of verification, a proceeding for review under this rule may be initiated without a verified petition because this rule does not so require. Gold Star Sausage Co. v. Kempf, 653 P.2d 397 (Colo. 1982).

A municipal requirement that a bond be posted before a proceeding under this rule may be commenced is invalid. Sky Chefs v. City & County of Denver, 653 P.2d 402 (Colo. 1982).

This rule and C.A.R. 21 are to be construed together. Solliday v. District Court, 135 Colo. 489, 313 P.2d 1000 (1957).

Certiorari complaint not amendable under C.R.C.P. 15(c). Because invoking the relation-back doctrine of C.R.C.P. 15(c) to amend a certiorari complaint filed pursuant to this rule would undermine the important public policies of expediting resolution of challenges to zoning and annexation proceedings and of removing municipal planning and individual properties from a cloud of uncertainty, when the original complaint fails to state a claim for relief, said rule 15(c) has no application to the proceedings or to any further pleadings which may be filed. Richter v. City of Greenwood Vill., 40 Colo. App. 310, 577 P.2d 776 (1978).

"District court" refers to state and not federal courts. City of Colo. Springs v. Blanche, 761 P.2d 212 (Colo. 1988).

This rule applies only to relief sought in the district courts against inferior courts, administrative boards, and officials. Gen. Aluminum Corp. v. Arapahoe County Dist. Court, 165 Colo. 445, 439 P.2d 340 (1968).

It does not apply to original proceedings. Lucas v. District Court, 140 Colo. 510, 345 P.2d 1064 (1959).

This rule does not apply to original proceedings in the supreme court. Nolan v. District Court, 195 Colo. 6, 575 P.2d 9 (1978).

Rule to show cause limited to exceptional cases. A superior tribunal should exercise great caution and circumspection before issuing a rule to show cause to an inferior tribunal, and then only when such court is satisfied that the ordinary remedies provided by law are not ap-

plicable or are inadequate. Only in exceptional cases or classes of cases should applications of this character be allowed. Leonhart v. District Court, 138 Colo. 1, 329 P.2d 781 (1958).

Party must exhaust available administrative remedies before seeking judicial review pursuant to this rule or district court lacks jurisdiction to hear the case. This doctrine cannot be circumvented by seeking declaratory relief. City & County of Denver v. United Air Lines, Inc., 8 P.3d 1206 (Colo. 2000).

"Quasi-judicial action" defined. A quasi-judicial action, reviewable under section (a)(4), is generally characterized by the following factors: (1) A local or state law requiring that notice be given before the action is taken; (2) a local or state law requiring that a hearing be conducted before the action is taken; and (3) a local or state law directing that the action results from the application of prescribed criteria to the individual facts of the case. Baldauf v. Roberts, 37 P.3d 483 (Colo. App. 2001).

Administrative segregation actions by department of corrections are quasi-judicial actions reviewable under section (a)(4) of this rule. Baldauf v. Roberts, 37 P.3d 483 (Colo. App. 2001).

Action by the department of corrections that affects a protected liberty interest of an inmate falls within the realm of reviewable quasi-judicial activity, and review is appropriate. Fisher v. Colo. Dept. of Corr., 56 P.3d 1210 (Colo. App. 2002).

Department of corrections' (DOC) classification of inmate as sex offender is a quasi-judicial action subject to review under this rule. Vondra v. Colo. Dept. of Corr., 226 P.3d 1165 (Colo. App. 2009).

Prison officials engage in quasi-judicial action when they decide to limit an inmate's ability to file future grievances. Brooks v. Raemisch, 2016 COA 32, 371 P.3d 738.

Section (a)(4) review is sufficient for purposes of assuring that university's and regents' actions were functionally equivalent to the judicial process and therefore merited quasi-judicial immunity. Churchill v. Univ. of Colo. at Boulder, 293 P.3d 16 (Colo. App. 2010), aff'd, 2012 CO 54, 285 P.3d 986, cert. denied __ U.S. __, 133 S. Ct. 1724, 185 L. Ed. 2d 785 (2013).

Reviewing court must apply abuse of discretion or made without justification or jurisdiction standard when reviewing DOC classification of inmate as sex offender. If the evidence is conflicting, the hearing panel's findings are binding on appeal. Vondra v. Colo. Dept. of Corr., 226 P.3d 1165 (Colo. App. 2009).

Review pursuant to C.R.C.P. 57 is more appropriate than review pursuant to this rule in the context of a quasi-judicial proceeding where a declaratory judgment is requested and this rule does not provide an adequate remedy. Constitutional questions and challenges to the overall validity of a statute or ordinance are more properly reviewed under C.R.C.P. 57. Native Am. Rights Fund, Inc. v. City of Boulder, 97 P.3d 283 (Colo. App. 2004).

District attorney may appear on his or her own behalf or on behalf of a county court and a county court judge who are named defendants in an action brought under section (a)(4) of this rule. It would make little sense to prohibit the district attorney from appearing or representing the county court or its judge when the people of the state are, in practice, the real parties in interest as to the county court's ruling, nor is there any basis to disqualify the district attorney. Huang v. County Court of Douglas County, 98 P.3d 924 (Colo. App. 2004).

Constitutional violation is not a prerequisite to review. Section (a)(4) did not require that inmate allege a protected liberty interest or a violation of due process to challenge an administrative segregation action by the department of corrections. Baldauf v. Roberts, 37 P.3d 483 (Colo. App. 2001).

Where no statute provides a different limitations period, a claim seeking review under section (a)(4) that is filed more than 28 days after the governmental body or officer's final decision must be dismissed. Auxier v. McDonald, 2015 COA 50, 363 P.3d 747.

Plaintiff did not give adequate notice in the original complaint that he sought relief against municipal commission under section (a)(4). As a result, the court properly treated plaintiff's section (a)(4) claim against the planning commission in the amended complaint as a new claim. Absent an exception allowing such a claim to be brought for the first time more than 28 days after the planning commission's final decision, the court properly dismissed the claim. Auxier v. McDonald, 2015 COA 50, 363 P.3d 747.

Review under section (a)(4) must be taken within 30 days of the date of the action for which review is sought and failure to comply with the 30-day limitations period divests the district court of subject matter jurisdiction to hear the action. Crawford v. State Dept. of Corr., 895 P.2d 1156 (Colo. App. 1995); Baker v. City of Dacono, 928 P.2d 826 (Colo. App. 1996).

A litigant invokes district court jurisdiction and commences section (a)(4) review by e-filing a section (a)(4) complaint with the district court by the 28-day jurisdictional deadline; a section (a)(4) complaint is deemed to have been filed on the date it is transmitted to the e-system provider; and a section (a)(4) complaint that is not filed in the district court by the 28-day jurisdictional deadline must be dismissed for lack of subject matter jurisdiction. Maslak v. Town of Vail, 2015 COA 2, 345 P.3d 972.

The fact that litigants e-filed their section (a)(4) complaint with a district court other than the one they intended did not deprive the intended county district court of its subject matter jurisdiction over the action. This rule does not state that district court jurisdiction over a section (a)(4) action is limited to the district court where a section (a)(4) complaint is originally filed, nor does it state that district court jurisdiction over a section (a)(4) action is limited to the district court where venue is proper. Maslak v. Town of Vail, 2015 COA 2, 345 P.3d 972.

A clerk's rejection of a section (a)(4) complaint does not, and cannot, alter the fact that the complaint had been "filed" in the district court on the date that it was transmitted to the e-system provider. The rejection also does not, and cannot, alter the fact that the litigants had invoked district court jurisdiction — including that of the intended county district court — on the date that they e-filed their complaint with the other district court. A clerk's rejection of a complaint under a chief justice directive rejection list cannot deprive a court of jurisdiction because the rejection list is administrative and is not a jurisdictional rule. Granting district court clerks discretionary authority under a chief justice directive to determine the district court's subject matter jurisdiction over an e-filed section (a)(4) action would render the filing rules set forth in C.R.C.P. 121 § 1-26(4) and (5) and section (a)(4) of this rule meaningless. Maslak v. Town of Vail, 2015 COA 2, 345 P.3d 972.

Submitting a section (a)(4) complaint to the correct court pursuant to another district court clerk's e-filing rejection notice instructions did not constitute the filing of an entirely new and entirely separate action for purposes of invoking district court jurisdiction within section (b)'s 28-day jurisdictional window. Maslak v. Town of Vail, 2015 COA 2, 345 P.3d 972.

Since defendant did not appeal his sex offender classification in a timely manner, the parole board had the authority to impose sex offender conditions and treatment as part of defendant's parole. Similarly, the trial court lacked jurisdiction to consider defendant's claims regarding his parole conditions since the claims were based upon his classification as a sex offender. People v. Jones, 222 P.3d 377 (Colo. App. 2009).

Trial court properly determined that it lacked jurisdiction to hear claims for review of planning commission's June 8, 2005 final decision to issue a building permit. Section (a)(4) of this rule provides for district court review of final, quasi-judicial decisions of a governmental entity; however, such claims must be filed within 30 days after the challenged decision was rendered. If the claims are not timely filed, the district court lacks jurisdiction to hear them under section (b) of this rule. Here, because plaintiffs did not file their complaint until August 23, 2005, they exceeded the 30-day deadline. JJR 1, LLC v. Mt. Crested Butte, 160 P.3d 365 (Colo. App. 2007).

Plaintiffs' claim for declaratory relief asserting that planning commission did not provide sufficient notice to them of a permit review meeting was also properly dismissed under rule. Because section (a)(4) of this rule is the exclusive remedy for reviewing quasi-judicial decisions, all claims that effectively seek such review (whether framed as claims under section (a)(4) of this rule or not) are subject to the 30-day deadline under section (b). Thus, claims for declaratory relief under C.R.C.P. 57 that seek review of quasi-judicial decisions must be filed within 30 days. JJR 1, LLC v. Mt. Crested Butte, 160 P.3d 365 (Colo. App. 2007).

Although plaintiffs' claim against town for monetary damages under 42 U.S.C. § 1983 seeks review of quasi-judicial decisions, it also requests a "uniquely federal remedy" and, therefore, is not subject to the filing deadline of section (b). Because facial challenges seek review of quasi-legislative actions rather than quasi-judicial actions, they are also not subject to the filing deadline of section (b). JJR 1, LLC v. Mt. Crested Butte, 160 P.3d 365 (Colo. App. 2007).

Since action pursuant to section (a)(4) can only be commenced pursuant to C.R.C.P. 4, C.R.C.P. 6(e) cannot apply to extend the time. Cadnetix Corp. v. City of Boulder, 807 P.2d 1253 (Colo. App. 1991).

The time restriction in section (b) deals only with certiorari or other writs taken from quasi-judicial proceedings. Julesburg Sch. Dist. No. RE-1 v. Ebke, 193 Colo. 40, 562 P.2d 419 (1977).

Section (b) of this rule has to be read together with the balance of the rule. Vigil v. Indus. Comm'n, 160 Colo. 23, 413 P.2d 904 (1966).

When so examined in connection with section (a)(2) and section (4), it is clear that section (b) must be so interpreted as not to defeat the limitations in section (a)(2) and section (4). Vigil v. Indus. Comm'n, 160 Colo. 23, 413 P.2d 904 (1966).

Strict adherence to section (b) required. Strict adherence to the deadline imposed by section (b) of this rule is required. Civil Serv. Comm'n v. District Court, 186 Colo. 308, 527 P.2d 531 (1974); Danielson v. Zoning Bd. of Adjustment, 807 P.2d 541 (Colo. 1991).

A claim for relief pursuant to section (a)(4) does not prevent the complaint from being amended as to other claims. Krupp v.

Breckenridge Sanitation Dist., 1 P.3d 178 (Colo. App. 1999).

Failure to join indispensable parties within 30 days not fatal. As a result of the 1981 amendment to section (b), the failure to join indispensable parties within the 30-day time limit established by section (b) need no longer result in dismissal. Tri-State Generation & Transmission Co. v. City of Thornton, 647 P.2d 670 (Colo. 1982).

Failure to file a claim for judicial review within thirty days is not jurisdictionally fatal when such claim is combined with a claim for declaratory judgment. Section (b) does not prevent the district court from considering a declaratory judgment claim that challenges the constitutionality of a city's zoning ordinance even though judicial review is barred for failure to file a timely claim. Danielson v. Zoning Bd. of Adjustment, 807 P.2d 541 (Colo. 1991).

But the district court may not exercise jurisdiction where claimant failed to challenge in the district court proceedings the facial constitutionality of a city's zoning ordinance. The district court may not raise the constitutional issue on its own motion. Danielson v. Zoning Bd. of Adjustment, 807 P.2d 541 (Colo. 1991).

Section (b) of this rule is controlling on actions to review rezoning divisions of county commissioners. Hidden Lake Dev. Co. v. District Court, 183 Colo. 168, 515 P.2d 632 (1973).

Where the concerned parties in a rezoning determination have notice of a public hearing in which they may participate, it is not unfair to require that they litigate their challenge, be it constitutional or statutory, within the time limits established in section (b). Snyder v. City of Lakewood, 189 Colo. 421, 542 P.2d 371 (1975).

Under section (b), a county's final decision in a subdivision approval process took place when the board of county commissioners voted publicly to approve the subdivisions, even though the approval was subject to conditions. 3 Bar J Homeowners Assoc., Inc. v. McMurry, 967 P.2d 633 (Colo. App. 1998).

When a written resolution is revised, it is the date of adoption of the revised version that constitutes the point of administrative finality for purposes of section (b). Here, the "point of administrative finality" was May 15, 1997, the date the revised resolution was signed. Thus, the 30-day period under section (b) did not begin to run until that date, and plaintiffs' complaint was thus timely filed on Monday, June 16, 1997. Wilson v. Bd. of County Comm'rs of Weld County, 992 P.2d 668 (Colo. App. 1999).

Section (b) may prevent town board from reconsidering own action. Where the town board permitted its grant of the variance to stand long after the 30-day review period under section (b) had expired, plaintiffs were entitled to, and did, rely on the variance, and, absent a change of circumstances, the board was without authority to reconsider. Andreatta v. Kuhlman, 43 Colo. App. 200, 600 P.2d 119 (1979).

Ordinances that contemplated later legislative action for purposes of meeting the conditions precedent required by the city charter were not final action under section (b). Therefore, judicial review was premature. Pub. Serv. Co. v. City of Boulder, 2016 COA 138, __ P.3d __.

Unilateral action taken by a school board in refusing to grant teachers longevity increments in salary for one school for year fell outside the scope of section (b) of this rule. Julesburg Sch. Dist. No. RE-1 v. Ebke, 193 Colo. 40, 562 P.2d 419 (1977).

Petition stating grounds for relief not limited to remedy under this rule. A plaintiff who has misconceived his remedy and is seeking relief to which he is not entitled under the law should not have his petition dismissed. The remedy provided by this rule is not exclusive, and, if under the allegations of the petitions he is entitled to any relief, the court upon a hearing may grant him the relief to which he is entitled regardless of the prayer in the petition. The question, therefore, is not whether a plaintiff in a case at bar is asking for the proper remedy, but whether under his pleadings he is entitled to any remedy. Regennitter v. Fowler, 132 Colo. 489, 290 P.2d 223 (1955).

Where a review of the record made by the board of adjustment would be wholly inadequate to provide a remedy for plaintiff, the remedy provided by this rule is not exclusive. If a plaintiff elects so to do, an action should proceed upon the issues made by the pleadings as in other cases independent of this rule. Regennitter v. Fowler, 132 Colo. 489, 290 P.2d 223 (1955); Morris v. Bd. of County Comm'rs, 150 Colo. 33, 370 P.2d 438 (1962).

No deprivation of due process. Standard of review provided by this rule did not deny due process to owner of building challenging safety code application. Van Sickle v. Boyes, 797 P.2d 1267 (Colo. 1990).

The determinative date for review under this rule was when the final decision was rendered and not the date upon which the decision was received. Crawford v. State Dept. of Corr., 895 P.2d 1156 (Colo. App. 1995).

Thirty-day limitations period under section (b) is jurisdictional and begins to run at the point of administrative finality, which occurs when the action complained of is complete, leaving nothing further for the agency to decide. Cadnetix Corp. v. Boulder, 807 P.2d 1253 (Colo. App. 1991); Baker v. Dacono, 928 P.2d 826 (Colo. App. 1996); 3 Bar J Homeowners Ass'n., Inc. v. McMurry, 967 P.2d 633 (Colo. App. 1998); Carney v. Civil Serv. Comm'n, 30 P.3d 861 (Colo. App. 2001).

Because plaintiff's original complaint did not seek review under section (a)(4), his amended complaint seeking such relief did not relate back to the original complaint. The district court, therefore, correctly dismissed as untimely the section (a)(4) claim set forth in the amended complaint. Section (b) permits a plaintiff to add, dismiss, or substitute parties in order to correct or complete a claim previously asserted under section (a)(4), but the plaintiff may not amend the complaint to seek review under section (a)(4) if such relief was not timely requested in the original complaint. If the complaint does not satisfy the criteria specified in section (a)(4), it is not a timely complaint within the meaning of section (b). Auxier v. McDonald, 2015 COA 50, 363 P.3d 747.

For purposes of judicial review of actions of the civil service commission pursuant to section (a)(4), the final decision of the commission was rendered on the date of certification and publication of the eligibility register, not on the date the commission announced that the promotional examination would contain a personnel record evaluation (PRE) component. The injury of which plaintiffs complain was not complete until the examination results were published and certified, which was the point of administrative finality. Carney v. Civil Serv. Comm'n, 30 P.3d 861 (Colo. App. 2001).

Action filed by nonexistent corporation is a nullity. A nonprofit corporation's lawsuit is void ab initio when it was filed after expiration of the 30-day period but before the secretary of state accepted and filed amended articles of incorporation. Therefore, no good cause can be shown to allow substitution of parties. Black Canyon Citizens Coalition, Inc. v. Bd. of County Comm'rs of Montrose County, 80 P.3d 932 (Colo. App. 2003).

Court's review under section (a)(4) is on a de novo basis, based on the record made before the lower tribunal. Feldewerth v. Joint Sch. Dist. 28-J, 3 P.3d 467 (Colo. App. 1999); Carney v. Civil Serv. Comm'n, 30 P.3d 861 (Colo. App. 2001).

Court's scope of review regarding sentence imposed by county court judge is strictly limited to whether the judge exceeded his jurisdiction or abused his discretion. Held that where the county judge immediately imposed sentence based on representations that defendant met the criteria for immediate sentencing under § 42-4-1301 and discovered later that defendant did not meet those criteria, county judge did not exceed his jurisdiction or abuse his discretion in resentencing the defendant. Walker v. Arries, 908 P.2d 1180 (Colo. App. 1995).

Notwithstanding C.R.C.P. 54(d), § 13-16-111 allows a prevailing plaintiff in an action under section (a)(4) of this rule to recover costs against the state, its officers, or agencies. Branch v. Colo. Dept. of Corr., 89 P.3d 496 (Colo. App. 2003).

Applied in Mesch v. Bd. of County Comm'rs, 133 Colo. 223, 293 P.2d 300 (1956); Larson v. City & County of Denver, 33 Colo. App. 153, 516 P.2d 448 (1973); Precision Heating & Plumbing, Inc. v. Bd. of Review, 184 Colo. 346, 520 P.2d 109 (1974); Civil Serv. Comm'n v. District Court, 185 Colo. 179, 522 P.2d 1231 (1974); People in Interest of D.H., 37 Colo. App. 544, 552 P.2d 29 (1976), aff'd, 192 Colo. 542, 561 P.2d 5 (1977); Hernandez v. District Court, 194 Colo. 25, 568 P.2d 1168 (1977); Harris v. Owen, 39 Colo. App. 494, 570 P.2d 26 (1977); Adams County Ass'n for Retarded Citizens, Inc. v. City of Westminster, 196 Colo. 79, 580 P.2d 1246 (1978); Tihonovich v. Williams, 196 Colo. 144, 582 P.2d 1051 (1978); Bedford v. Bd. of County Comm'rs, 41 Colo. App. 125, 584 P.2d 90 (1978); Bachicha v. Municipal Court, 41 Colo. App. 198, 581 P.2d 746 (1978); Crittenden v. Hasser, 41 Colo. App. 235, 585 P.2d 928 (1978); Schlager v. Greenwood, 41 Colo. App. 449, 586 P.2d 248 (1978); Frankmore v. Bd. of Educ., 41 Colo. App. 416, 589 P.2d 1375 (1978); Associated Dry Goods Corp. v. City of Arvada, 197 Colo. 491, 593 P.2d 1375 (1979); Thomas v. County Court, 198 Colo. 87, 596 P.2d 768 (1979); Hide-A-Way Massage Parlor, Inc. v. Bd. of County Comm'rs, 198 Colo. 175, 597 P.2d 564 (1979); Spiker v. City of Lakewood, 198 Colo. 528, 603 P.2d 130 (1979); Johnson v. City Council, 42 Colo. App. 188, 595 P.2d 701 (1979); Info. Please, Inc. v. Bd. of County Comm'rs, 42 Colo. App. 392, 600 P.2d 86 (1979); Tri-State Generation & Transmission Ass'n v. Bd. of County Comm'rs, 42 Colo. App. 479, 600 P.2d 103 (1979); DuHamel v. People ex rel. City of Arvada, 42 Colo. App. 491, 601 P.2d 639 (1979); Fitz Motors, Inc. v. City of Northglenn, 43 Colo. App. 137, 602 P.2d 890 (1979); Romero v. Rossmiller, 43 Colo. App. 215, 603 P.2d 964 (1979); Einarsen v. City of Wheat Ridge, 43 Colo. App. 232, 604 P.2d 691 (1979); Rainwater v. County Court, 43 Colo. App. 477, 604 P.2d 1195 (1979); People ex rel. Losavio v. Gentry, 199 Colo. 153, 606 P.2d 57 (1980); Bd. of County Comm'rs v. District Court, 199 Colo. 338, 607 P.2d 999 (1980); Barnes v. District Court, 199 Colo. 310, 607 P.2d 1008 (1980); West-Brandt Found., Inc. v. Carper, 199 Colo. 334, 608 P.2d 339 (1980); CF&I Steel Corp. v. Colo. Air Pollution Control Comm'n, 199 Colo. 270, 610 P.2d 85 (1980); Douglass v. Kelton, 199 Colo. 446, 610 P.2d 1067 (1980); Trinen v. Diamond, 44 Colo. App. 325, 616 P.2d 986 (1980); Ambassador Bldg. Corp. v. Bd. of Review, 623 P.2d 79 (Colo. App. 1980); State Pers. Bd. v. District Court, 637 P.2d 333 (Colo. 1981); Bernstein v. Livingston, 633 P.2d 519 (Colo. App. 1981); People v. Clerkin, 638 P.2d 808 (Colo. App. 1981); Franco v. District Court,

641 P.2d 922 (Colo. 1982); Harris v. District Court, 655 P.2d 398 (Colo. 1982); DiManna v. Kalbin, 646 P.2d 403 (Colo. App. 1982); Hallmark Bldrs. & Realty v. City of Gunnison, 650 P.2d 556 (Colo. App. 1982); Homa v. Civil Serv. Comm'n, 650 P.2d 1322 (Colo. App. 1982); Crandall v. Municipal Court ex rel. City of Sterling, 650 P.2d 1324 (Colo. App. 1982); Honeywell Info. Sys. v. Bd. of Assmt. Appeals, 654 P.2d 337 (Colo. App. 1982); Beacom v. Bd. of County Comm'rs, 657 P.2d 440 (Colo. 1983); Hoffer v. Town of Carbondale, 662 P.2d 495 (Colo. App. 1983); Hudspeth v. Bd. of County Comm'rs, 667 P.2d 775 (Colo. App. 1983); Anchorage Joint Venture v. Anchorage Condo. Ass'n, 670 P.2d 1249 (Colo. App. 1983); Lombardi v. Bd. of Adjustment, 675 P.2d 21 (Colo. App. 1983); Sandoval v. Farish, 675 P.2d 300 (Colo. 1984); Lamb v. County Court, 697 P.2d 802 (Colo. App. 1984); Barnes v. City of Westminster, 723 P.2d 164 (Colo. App. 1986); Wilkinson v. Bd. of County Comm'rs, 872 P.2d 1269 (Colo. App. 1993); Droste v. Bd. of County Comm'rs, 85 P.3d 585 (Colo. App. 2003); Buenabenta v. Neet, 160 P.3d 290 (Colo. App. 2007); Dolores Huerta Prep. High v. Colo. State Bd. of Educ., 215 P.3d 1229 (Colo. App. 2009); Expedia, Inc. v. City & County of Denver, 2014 COA 87, __ P.3d __; Moss v. Bd. of County Comm'rs for Boulder County, 2015 COA 35, __ P.3d __.

II. HABEAS CORPUS.

This rule abolishes the special forms previously considered necessary and peculiar to the writ of habeas corpus, and relief may now be obtained either by an action or by a motion under the new practice set up in the Rules of Civil Procedure. Rogers v. Best, 115 Colo. 245, 171 P.2d 769 (1946).

Habeas corpus is a civil action, and the proceedings are governed by the rules of civil procedure. Schauer v. Smeltzer, 175 Colo. 364, 488 P.2d 899 (1971).

The application of this rule is limited to affording relief where any person not being committed or detained for any criminal or supposed criminal matter is illegally confined or restrained of his liberty. Wright v. Tinsley, 148 Colo. 258, 365 P.2d 691 (1961).

Person denied parole can seek judicial review only as provided by section (a)(2) of this rule. In re Question Concerning State Judicial Review, 199 Colo. 463, 610 P.2d 1340 (1980).

Acts of parole board are not reviewable. Administrative acts of the parole board, being definitely a matter of grace, and not a matter of right, are not such a function as is reviewable by the courts by habeas corpus, certiorari, or mandamus. Berry v. State Bd. of Parole, 148 Colo. 547, 367 P.2d 338 (1961), cert. denied, 370 U.S. 927, 82 S. Ct. 1569, 8 L. Ed. 2d 507 (1962).

Decision of state board of parole to grant or deny parole is clearly discretionary since parole is a privilege, and no prisoner is entitled to it as a matter of right. In re Question Concerning State Judicial Review, 199 Colo. 463, 610 P.2d 1340 (1980).

Actions reviewable only when board failed to exercise its statutory duties. It is only when the Colorado state board of parole has failed to exercise its statutory duties that the courts of Colorado have the power to review the board's actions. In re Question Concerning State Judicial Review, 199 Colo. 463, 610 P.2d 1340 (1980).

Certification of sanity unavailable through habeas corpus. For a patient confined in the state penitentiary after being found not guilty of murder by reason of insanity and transferred from the state hospital as a dangerous patient, the remedy available to obtain a judicial determination of a claimed restoration to sanity and present mental condition is formerly prescribed by statute and provided that the superintendent of the state hospital must first certify to the committing court that the defendant is sane. Habeas corpus was an inappropriate form of relief to obtain this certification. Pigg v. Patterson, 370 F.2d 101 (10th Cir. 1966).

III. MANDAMUS.

Annotator's note. Since section (a)(2) of this rule is similar to § 342 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

A. In General.

The substantive aspects of mandamus proceedings are preserved even though this rule "abolishes the special form of pleading", writ and name of the remedy theretofore known as mandamus, and relief of the same nature as was formerly provided in mandamus actions may be granted in accordance with precedents established under the old practice. North Poudre Irrigation Co. v. Hinderlider, 112 Colo. 467, 150 P.2d 304 (1944); Hall v. City & County of Denver, 117 Colo. 508, 190 P.2d 122 (1948); Ahern v. Baker, 148 Colo. 408, 366 P.2d 366 (1961).

Mandamus lies to compel performance of official act. Under section (a)(2) of this rule, when a board or person charged with performing an official duty fails or refuses to act, mandamus will lie to compel performance. Sheeley v. Bd. of County Comm'rs, 137 Colo. 350, 325 P.2d 275 (1958).

Section (a)(2) permits the granting of relief to compel an "inferior tribunal, corporation, board, officer or person" to perform some required duty or act. Vigil v. Indus. Comm'n, 160 Colo. 23, 413 P.2d 904 (1966).

It is not an ordinary action or proceeding available as matter of right, and the courts are invested with a sound discretion as to its issuance. Hall v. City & County of Denver, 117 Colo. 508, 190 P.2d 122 (1948).

Relief is narrowly interpreted. Relief in the nature of mandamus to compel a public official to perform an act is narrowly interpreted. Brown v. Barnes, 28 Colo. App. 593, 476 P.2d 295 (1970).

Three-part test for mandamus. There is a three-part test which must be satisfied by a plaintiff before mandamus will be issued by the court: (1) The plaintiff must have a clear right to the relief sought; (2) the defendant must have a clear duty to perform the act requested; and (3) there must be no other available remedy. Gramiger v. Crowley, 660 P.2d 1279 (Colo. 1983).

Test applied in White v. Rickets, 684 P.2d 239 (Colo. 1984); Mahon v. Harst, 738 P.2d 1190 (Colo. App. 1987); Asphalt Specialties, Co. v. City of Commerce City, 218 P.3d 741 (Colo. App. 2009).

It is maintainable only when there is no other adequate legal remedy. Hall v. City & County of Denver, 117 Colo. 508, 190 P.2d 122 (1948); Julesburg Sch. Dist. No. Re-1 v. Ebke, 193 Colo. 40, 562 P.2d 419 (1977).

In cases where adequate relief may be had by an action for damages, an action under section (a)(2) will not lie as a general rule. Bell v. Thomas, 49 Colo. 76, 111 P. 76 (1910); Hall v. City & County of Denver, 117 Colo. 508, 190 P.2d 122 (1948).

Mandamus will not lie where there is another specific and adequate mode of relief available to the parties. Potter v. Anderson, 155 Colo. 25, 392 P.2d 650 (1964).

Since mandamus is available only when no other adequate remedy is available, in a case where a developer's plan met the requirements of the city zoning ordinance, and the city was acting in a quasi-judicial capacity in approving or denying the developer's plan, the proper remedy available to the developer was certiorari under section (a)(4) and not mandamus under section (a)(2), and the developer was not entitled to damages. Sherman v. Colo. Springs Planning Comm'n, 763 P.2d 292 (Colo. 1988).

Mandamus is not appropriate unless all alternative forms of relief have been exhausted. When administrative remedies are provided by statute or ordinance, the procedure outlined in the statute must be followed if the contested matter is within the jurisdiction of the administrative authority. Egle v. City & County of Denver, 93 P.3d 609 (Colo. App. 2004).

If a plaintiff fails to exhaust administrative remedies or to establish that an exception to the exhaustion requirement excuses the failure to do so, the district court may lack subject matter jurisdiction over the action. Exhaustion is unnecessary when: (1) It is clear beyond a reasonable doubt that further administrative review by the agency would be futile because the agency will not provide the relief requested; or (2) the agency lacks the authority or capacity to determine the matters in controversy. Here, trial court correctly held plaintiffs had complete, adequate, and speedy administrative remedies to challenge zoning department's decision to approve issuance of certificate of occupancy and building department's issuance of that certificate, and the trial court did not err in dismissing complaint. Egle v. City & County of Denver, 93 P.3d 609 (Colo. App. 2004).

Where an action is based on a breach of contract, mandamus is not the exclusive remedy. Julesburg Sch. Dist. No. RE-1 v. Ebke, 193 Colo. 40, 562 P.2d 419 (1977).

In the case of ministerial officers, there is an exception to the general rule, and they may be compelled to exercise their functions according to law, even though the party has another remedy against them. An action will lie, although the party may have also a remedy upon the official bond of the ministerial officer. Bell v. Thomas, 49 Colo. 76, 111 P. 76 (1910).

Mandamus will not lie to enforce duties generally, or to control and regulate a general course of official conduct for a long series of continuous acts to be performed under varying conditions. Ahern v. Baker, 148 Colo. 408, 366 P.2d 366 (1961).

Unless a party has a clear legal right to compel the action sought, he cannot maintain an action. Civil Serv. Comm'n v. People ex rel. Beates, 88 Colo. 319, 295 P. 920 (1931); Hertz Drive-Ur-Self Sys. v. Doak, 94 Colo. 200, 29 P.2d 625 (1934).

No one is entitled to mandamus whose right is not clear and unquestionable. Sturner v. James A. McCandless Inv. Co., 87 Colo. 23, 284 P. 778 (1930); Barghler v. Farmers' Irrigation Co., 87 Colo. 605, 290 P. 288 (1930).

When the right claimed is doubtful, action will not lie. People ex rel. Foley v. Stapleton, 98 Colo. 354, 56 P.2d 931 (1936).

An action lies only where the petitioner has a clear legal right to have the respondent perform a clear legal duty. Heimbecher v. City & County of Denver, 97 Colo. 465, 50 P.2d 785 (1935).

The general rule is that a writ of mandamus will not be issued with respect to the making or enforcement of police regulations except to enforce a clear legal right or to compel the performance of a clear legal duty. Ahern v. Baker, 148 Colo. 408, 366 P.2d 366 (1961).

Mandamus will not issue in doubtful cases. Potter v. Anderson, 155 Colo. 25, 392 P.2d 650 (1964).

Action lies to compel clear legal duty. Where a petition shows that there is neither a clear legal right in the petitioner nor a clear legal duty corresponding thereto, relief is properly denied. Roper v. Indus. Comm'n, 93 Colo. 250, 25 P.2d 725 (1933).

An action lies only when on the one side there is a clear legal right to demand the doing of a certain thing, and on the other side a clear legal duty to do it. Schneider v. People ex rel. Grant, 95 Colo. 300, 35 P.2d 498 (1934).

An action lies to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station. Bd. of Trustees v. Endner, 18 Colo. App. 65, 70 P. 152 (1902); Statton v. People ex rel. Burr, 18 Colo. App. 85, 70 P. 157 (1902); Colo. Pub. Welfare Bd. v. Viles, 105 Colo. 62, 94 P.2d 713 (1939).

Mandamus is only justified when a state agency has failed to perform a statutory duty or to adhere to its statutory responsibility. Peoples Natural Gas Div. v. Pub. Utils. Comm'n, 626 P.2d 159 (Colo. 1981).

The one bringing the action must show a clear legal right to demand the performance of a certain act as well as a clear legal duty on the part of the officer to do the thing demanded. Ahern v. Baker, 148 Colo. 408, 366 P.2d 366 (1961).

An action compelling an officer to act will lie only when that officer fails to perform an official duty. Where there is no duty to act, an action in the nature of mandamus cannot be sustained. People ex rel. Garrison v. Lamm, 622 P.2d 87 (Colo. App. 1980).

Mandamus will not issue to coerce an official to perform acts which it is not his official duty to perform. Potter v. Anderson, 155 Colo. 25, 392 P.2d 650 (1964).

Mandamus is an extraordinary remedy. It may be used to compel the performance by a public officer of a plain legal duty devolving upon him by virtue of his office or which the law enjoins as a duty resulting from the office. Potter v. Anderson, 155 Colo. 25, 392 P.2d 650 (1964).

Relief in the nature of mandamus will be granted only in cases where the act is administrative in nature and a clear legal duty exists under a statute to perform this act. Brown v. Barnes, 28 Colo. App. 593, 476 P.2d 295 (1970).

Mandamus is appropriate if the decision-maker has grossly abused its discretion and if the damage suffered by the petitioner cannot be cured by means of an appeal, while matters relating to the discovery of evidence are usually reviewable only on an appeal. Peoples Natural Gas Div. v. Pub. Utils. Comm'n, 626 P.2d 159 (Colo. 1981).

Action for the performance of a purely ministerial duty involving no discretionary right or the exercise of judgment is proper. Lindsey v. Carlton, 44 Colo. 42, 96 P. 997 (1908); Hall v. City & County of Denver, 117 Colo. 508, 190 P.2d 122 (1948).

Mandamus does not lie to compel the performance of a trust sought which is discretionary or involves the exercise of judgment. Lindsey v. Carlton, 44 Colo. 42, 96 P. 997 (1908).

Mandamus has its function in those cases where the duty of the public officer or board is purely ministerial and not discretionary. Ahern v. Baker, 148 Colo. 408, 366 P.2d 366 (1961).

If the act sought to be compelled is one involving the exercise of discretion on the part of the official, or requiring a choice between alternative courses of action, then relief in the nature of mandamus will be denied. Brown v. Barnes, 28 Colo. App. 593, 476 P.2d 295 (1970).

Mandamus only to compel officer to perform ministerial function. Relief in the nature of mandamus will be granted only in cases where a clear legal duty exists for an administrative officer to perform a ministerial act. Menchetti v. Wilson, 43 Colo. App. 19, 597 P.2d 1054 (1979); Sherman v. City of Colo. Springs Planning Comm'n, 680 P.2d 1302 (Colo. App. 1983); Reynolds v. City Council of Longmont, 680 P.2d 1350 (Colo. App. 1984).

Mandamus is improper if the court must give directions about the manner in which administrative discretion is to be exercised. Peoples Natural Gas Div. v. Pub. Utils. Comm'n, 626 P.2d 159 (Colo. 1981).

Mandamus will not lie to compel a quasi-judicial tribunal to exercise its discretion in a particular way. Peoples Natural Gas Div. v. Pub. Utils. Comm'n, 626 P.2d 159 (Colo. 1981).

Approval of requests for money from county general fund is discretionary function of boards of county commissioners, not a ministerial act. Tisdel v. Bd. of County Comm'rs, 621 P.2d 1357 (Colo. 1980).

Adoption of budgetary items is legislative, not judicial, in character. Tisdel v. Bd. of County Comm'rs, 621 P.2d 1357 (Colo. 1980).

Mandamus will be allowed where a statute prescribes no remedy for the refusal to perform a duty made imperative thereby, or in case of doubt whether there be another effectual remedy. Bell v. Thomas, 49 Colo. 76, 111 P. 76 (1910).

Where there is a conflict between a statute and a rule, the former must govern; rules of court can neither abridge, enlarge, nor modify substantive rights of a litigant. Sherman v. Colo. Springs Planning Comm'n, 729 P.2d 1014 (Colo. App. 1986), aff'd, 763 P.2d 292 (Colo. 1988).

Where rule provides that the "judgment shall include any damages sustained" but a statute makes available the doctrine of sovereign immunity as a defense to such damage award, the statute governs, and damages are not recoverable. Sherman v. Colo. Springs Planning Comm'n, 729 P.2d 1014 (Colo. App. 1986), aff'd, 763 P.2d 292 (Colo. 1988).

Action cannot usurp the functions of an appeal. Lindsey v. Carlton, 44 Colo. 42, 96 P. 997 (1908).

Action will not lie from the district court to compel the county court to enter a judgment in a divorce proceeding different from the judgment which had been rendered, this being an attempt to review, annul, and modify such judgment, and to usurp the functions of an appeal to such judgment, and also an attempt to control the discretion and judgment of the county court. Linsdey v. Carlton, 44 Colo. 42, 96 P. 997 (1908).

Action will not lie against a court unless it be clearly shown that such court has refused to perform some manifest duty. Lindsey v. Carlton, 44 Colo. 42, 96 P. 997 (1908).

Action will not lie when the interests of third parties who are not before the court are involved. Sturner v. James A. McCandless Inv. Co., 87 Colo. 23, 284 P. 778 (1930); Barghler v. Farmers' Irrigation Co., 87 Colo. 605, 290 P. 288 (1930); Hertz Drive-Ur-Self Sys. v. Doak, 94 Colo. 200, 29 P.2d 625 (1934).

Action will not lie to compel the commission on judicial discipline or its executive director to investigate a complaint alleging judicial misconduct or to compel the governor to investigate a complaint of alleged judicial misconduct. The district court lacks subject matter jurisdiction to compel such investigations. Higgins v. Owens, 13 P.3d 837 (Colo. App. 2000).

Failure to join indispensable parties jurisdictional error. Failure to join indispensable parties within 30 days after the final action of a tribunal is a jurisdictional defect requiring dismissal of the entire action. Smith v. County of El Paso, 42 Colo. App. 316, 593 P.2d 979 (1979).

Failure to join all indispensable parties in action under this rule within the 30-day time limit prescribed by the rule is a jurisdictional defect which requires dismissal of the action. Dahman v. City of Lakewood, 44 Colo. App. 261, 610 P.2d 1357 (1980).

Failure to join nonindispensable parties not error. Permissive joinder and permissive intervention can only be effected within 30 days after the final action taken by the tribunal; however, failure to join parties who are not indispensable is not a jurisdictional error, and therefore does not require dismissal of the suit. Smith v. County of El Paso, 42 Colo. App. 316, 593 P.2d 979 (1979).

City council is indispensable party to suit brought seeking review of denial of rezoning petition and failure to join it is a jurisdictional defect requiring dismissal. Dahman v. City of Lakewood, 44 Colo. App. 261, 610 P.2d 1357 (1980).

Naming municipality is not substitute for naming city council in an action seeking review of denial of rezoning petition. Dahman v. City of Lakewood, 44 Colo. App. 261, 610 P.2d 1357 (1980).

Relief inappropriate where board does act. Where a board does act, denying a license, as opposed to failing to act, mandamus is not appropriate. Sheeley v. Bd. of County Comm'rs, 137 Colo. 350, 325 P.2d 275 (1958).

A proceeding cannot be maintained in anticipation of an omission to perform a duty or because the relator fears there will be an omission, but there must be shown an actual failure or refusal to perform the duty before an action can be maintained to compel its performance. Orman v. People, 18 Colo. App. 302, 71 P. 430 (1903).

Proceeding not appropriate to compel a ministerial officer not to act. Judgment in an action may be that a ministerial officer — where there is a clear legal duty — shall perform, or where the duty does not appear, that he need not perform, but never that he shall not perform. If the latter judicial direction is given it must be by a judgment entered in an equitable action for injunction. Brownlow v. Wunch, 102 Colo. 447, 80 P.2d 444 (1938).

Petition insufficient. The use of such words as "compel", and the prayer that the trial court "order" the secretary of state "to perform" in a specified manner in the enforcement of the liquor code "as a duty resulting from his office" in a complaint to bring action under this rule is not sufficient to invoke the issuance of a writ of mandamus. Ahern v. Baker, 148 Colo. 408, 366 P.2d 366 (1961).

Trial court was justified in drawing a distinction between the writ of mandamus and proceedings under section (a)(4) of this rule. Hall v. City & County of Denver, 117 Colo. 508, 190 P.2d 122 (1948).

POME standard for consideration of motion to dismiss claim for abuse of process based on first amendment right to petition. Trial court should consider whether the petitioning activities on the part of the party being sued for abuse of process were not immunized from liability by the first amendment because: (1) Those activities are devoid of factual support or, if supportable in fact, have no cognizable basis in law; (2) the primary purpose of the petitioning activities is to harass the other party or to effectuate some other improper objective; and (3) those petitioning activities have the capacity to have an adverse effect on a legal interest of the other party. Protect Our Mountain Environment (POME) v. District Court, 677 P.2d 1361 (Colo. 1984) (decided prior to 1981 amendment).

Standard extended to case under section (a)(2) in Concerned Members v. District Court, 713 P.2d 923 (Colo. 1986); Ware v. McCutchen, 784 P.2d 846 (Colo. App. 1989).

Relief in the nature of mandamus may be appropriate when it is alleged that a sheriff or chief of police has refused to accept applications for concealed weapons permits from private investigators who are not current or retired law enforcement officers and the sheriff or police chief has thereby breached a statutory duty to conduct a background check on each applicant. Miller v. Collier, 878 P.2d 141 (Colo. App. 1994).

A request for extraordinary relief in the form of mandamus under this rule is improper to challenge arbitrary action by the department of revenue in revoking a person's driver's license, even though petition was filed on the basis that the department refused to conduct a revocation hearing. The State Administrative Procedure Act provides the proper mechanism for seeking relief based on arbitrary action by an executive agency. Dept. of Rev. v. District Court, 802 P.2d 473 (Colo. 1990).

Money damages are not available in a proceeding under this rule. Accordingly, plaintiffs could not seek such damages in an action brought under rule and did not have a remedy at law. Sundheim v. Bd. of County Comm'rs, 904 P.2d 1337 (Colo. App. 1995), aff'd, 926 P.2d 545 (Colo. 1996); Fortner v. Cousar, 992 P.2d 697 (Colo. App. 1999).

Applied in Local 1 v. Metro Wastewater Reclamation, 876 P.2d 82 (Colo. App. 1994).

B. Illustrative Cases.

Action lies to compel the performance of a single act. People ex rel. City & County of Denver v. District Court, 81 Colo. 163, 255 P. 447 (1927).

Action may also be invoked to require the execution of a series of acts. People ex rel. City & County of Denver v. District Court, 81 Colo. 163, 255 P. 447 (1927).

To compel the issuance of a building permit which has been denied on the ground that the construction of the proposed building would infringe the zoning ordinances of the city would be improper. Hedgcock v. People ex rel. Arden Realty & Inv. Co., 98 Colo. 522, 57 P.2d 891 (1936).

An action in the nature of mandamus is a proper remedy to require a building inspector to issue a building permit. Mahnke v. Coughenour, 170 Colo. 61, 458 P.2d 747 (1969).

To compel ousted officer to deliver papers to appointee. Where an ousted secretary of an irrigation district refused to turn over the books and papers to the regular appointee, an action to compel delivery is proper. Kepley v. People ex rel. Everson, 76 Colo. 233, 230 P. 804 (1924).

To compel justice of peace to issue writ of commitment. Where a justice of the peace tried and convicted a defendant and sentenced him to imprisonment in the county jail, his duty to issue a writ of commitment was mandatory, and upon his refusal to issue such writ when demanded, action would lie to compel him to issue the writ. It was immaterial that time had elapsed since the sentence and before the writ was demanded which exceeded the length of the term of sentence. Mann v. People, 16 Colo. App. 475, 66 P. 452 (1901).

To compel revocation of unlawful order of suspension. An action under section (a)(2) lies to enforce the revocation of an order of suspension unlawfully entered against a police officer who was holding his position under civil service. Bratton v. Dice, 93 Colo. 593, 27 P.2d 1028 (1933).

Mandamus would be proper if an effort were being made to compel the civil service commission to reinstate an aggrieved employee. Turner v. City & County of Denver, 146 Colo. 336, 361 P.2d 631 (1961).

To compel audit for services. An acting public official is entitled to an audit of his claim for services rendered in his official capacity, and an action will lie to compel such audit. McNichols v. People ex rel. Hershey, 92 Colo. 469, 22 P.2d 131 (1933).

Courts will direct an officer to proceed and exercise the discretion vested in him by law. Refusal of a city auditor to approve a demand, because of claimed want of authority, amounts to a refusal to act, and an action will lie to compel action where he is vested with authority. People ex rel. Hershey v. McNichols, 91 Colo. 141, 13 P.2d 266 (1932).

To compel determination of tax. When a tax assessor refuses to perform a purely ministerial function which the law imposes, performance may be enforced by mandamus. Bohen v. Bd. of County Comm'rs, 109 Colo. 283, 124 P.2d 606 (1942).

The statute is mandatory as to the requirement that a gift tax shall be determined upon proper application. The inheritance tax commissioner has no discretion in that ministerial duty and mandamus was the proper course to compel him as a public official to act. Tasher v. Trentaz, 165 Colo. 97, 437 P.2d 529 (1968).

To compel filling of vacancies. Where city charter provides for the appointment of at least two justices of the peace, any vacancy in such offices to be filled by the mayor, mandamus would lie to compel the mayor to fill any vacancy, at least to the number of two, as a mandatory public duty required by the charter. McNichols v. City & County of Denver, 109 Colo. 269, 124 P.2d 601 (1942).

To compel approval of home care application. The plaintiff completed those things required of her under the statute and under the rules, but the affirmative action by the state board of education requiring that it give its approval and make its recommendation was not done. Absent the rule which the board had no authority to promulgate, the plaintiff's application could be processed. The trial court should have directed that the board complete plaintiff's application for home care. Flemming v. Colo. State Bd. of Educ., 157 Colo. 45, 400 P.2d 932 (1965).

To grant prisoner a free transcript. Defendant is caught in a vicious circle — unable to put into a petition the matters and things which are required, and being denied a transcript because he has not asserted any of those grounds. The district court is ordered to grant the prisoner's petition for a free transcript of the proceedings at the time of the court acceptance of his plea of guilty as well as of the trial in which the determination of the degree of the offense was made. Sherbondy v. District Court, 170 Colo. 114, 459 P.2d 133 (1969).

Right of school board to demand performance of school district. Section 27-11-103 clearly requires that the "school district shall provide to the community incorporated board" a sum of money determined by a stated formula; therefore, the clear right of a school board to demand performance, and the clear legal duty on a school district to act, makes this a proper case for disposition by mandamus. Denver Ass'n for Retarded Children v. Sch. Dist. No. 1, 188 Colo. 310, 535 P.2d 200 (1975).

Mandamus was the appropriate remedy, rather than a motion under section (a)(4) of this rule, to address a school district board of education's action in not renewing a probationary teacher's employment contract. Although the school board has broad discretion in determining whether to renew employment contracts for probationary teachers, that discretion is limited by § 22-32-110 (4)(c), which prohibits the board from using as grounds for nonrenewal any actions taken by the probationary teacher in good faith and in compliance with the school district's discipline policy. Since there is no remedy provided if the school board violates this prohibition, the probationary teacher's action in seeking mandamus was appropriate. McIntosh v. Bd. of Educ. of Sch. Dist. No. 1, 999 P.2d 224 (Colo. App. 2000).

Action will not lie to test rule of procedure in workmen's compensation case. This remedy may not be invoked in a workmen's compensation case for the purpose of testing the meaning or validity of a mere rule of procedure when the commission which framed it has seen fit to disregard it. Roper v. Indus. Comm'n, 93 Colo. 250, 25 P.2d 725 (1933).

Nor to compel appointment by civil service commission. A person who stands second on a civil service eligible list for appointment to a clerical position cannot compel his appointment in the absence of a showing that the person standing first had been tendered and refused the appointment or had failed to make demand therefor upon request of relator. Civil Serv. Comm'n v. People ex rel. Beates, 88 Colo. 319, 295 P. 920 (1931).

Nor to control discretion of mayor as to appointments. Under city charter, authorizing mayor to appoint justices of the peace, the discretion of the mayor as to whom he appoints, except as it may be limited by the charter, cannot be controlled by mandamus. McNichols v. City & County of Denver, 109 Colo. 269, 124 P.2d 601 (1942).

Nor to compel appropriations. Action does not lie to compel a city council to make an appropriation for civil service commission expense. Schneider v. People ex rel. Grant, 95 Colo. 300, 35 P.2d 498 (1934).

Nor to compel school board to allow claims. It is the duty of a school board to disallow invalid claims, according to its judgment, and courts cannot control that judgment by proceedings under section (a)(2). Sorensen v. Echternacht, 74 Colo. 91, 218 P. 1046 (1923).

Nor to test title to office. When a person is in actual possession of an office under an election or commission, and exercising its duties under color of right, his title to the office cannot be tried or tested under section (a)(2). Henderson v. Glynn, 2 Colo. App. 303, 30 P. 265 (1892); City Council v. People ex rel. Ferguson, 19 Colo. App. 399, 75 P. 603 (1903).

Nor to compel admission of claimant to occupied office. When an office is already filled by an actual incumbent, exercising the functions of the office de facto, and under color of right, an action will not lie to compel the admission of another claimant. City Council v. People ex rel. Ferguson, 19 Colo. App. 399, 75 P. 603 (1903).

Nor to compel discretionary hearing. The effect of a mandamus to determine the scope of insurance coverage would be to require the commissioner to find that the filing is defective, and that the public interest requires hearings on this matter. These are matters within the discretionary function of the commissioner and therefore cannot be compelled under section (a)(2) of this rule. Brown v. Barnes, 28 Colo. App. 593, 476 P.2d 295 (1970).

Nor to compel hearing where none is provided by statute. The statutes providing for the procedures that must be followed prior to the issuance of a liquor license do not require a hearing, no hearing; after issuance is in any manner provided for in the statutes and, therefore, mandamus may not issue. Potter v. Anderson, 155 Colo. 25, 392 P.2d 650 (1964).

Nor to compel enforcement of police or criminal laws by police officers generally, such as the keeping of places of business open for

the sale of liquors on Sundays or holidays. Ahern v. Baker, 148 Colo. 408, 366 P.2d 366 (1961).

A public officer will not be compelled by mandamus to enforce liquor laws, since it would entail the ordering of a discretionary authority. Ahern v. Baker, 148 Colo. 408, 366 P.2d 366 (1961).

Nor to compel municipal board empowered with discretionary procedures. Where an advisory board is given discretion in preparing recommendations of salaries for certain municipal employees to a city council, section (a)(2) cannot be invoked to compel the board to revise its procedures for preparing those recommendations. Reeve v. Career Serv. Bd., 636 P.2d 1307 (Colo. App. 1981).

Action does not lie to compel the department of corrections to place an inmate in community corrections if the inmate is under a detainer. Rivera-Bottzeck v. Ortiz, 134 P.3d 517 (Colo. App. 2006).

Relief unavailable where certiorari remedy was not utilized. Where there is other adequate relief available to the parties by review of the action of the local licensing authority by certiorari under section (a)(4), providing therein for stay of execution of the issuing of the license pending review, but that remedy was not sought, and the license issued, mandamus will not lie. Potter v. Anderson, 155 Colo. 25, 392 P.2d 650 (1964).

Mandamus is an inappropriate form of relief to obtain certification of sanity for a patient confined in the state penitentiary after being found not guilty of murder by reason of insanity and transferred from the state hospital as a dangerous patient. The remedy available to obtain a judicial determination of a claimed restoration to the superintendent's good faith and discretion in sanity and present mental condition is prescribed by a statute. Pigg v. Patterson, 370 F.2d 101 (10th Cir. 1966).

Allegations sufficient to state a claim of relief. Assertion by petitioner that parole board had acted pursuant to § 16-13-203 when it ordered petitioner transferred to a different facility and that the department of corrections was required to comply with that order alleged both a right and a duty owed to him by the department of corrections. Therefore, petition contained sufficient allegations to state a claim for relief in mandamus under this rule. White v. Rickets, 684 P.2d 239 (Colo. 1984).

Mandamus relief under section (a)(2) is available to challenge the parole board's actions if it has failed to exercise its statutory duties. Although plaintiff did not expressly seek mandamus relief pursuant to section (a)(2), the gravamen of his complaint was that the parole board's failure to consider any events or circumstances prior to plaintiff's incarceration was in direct violation of statutory guidelines for parole. Under these circumstances, the trial court had jurisdiction to address the merits of the complaint. Fraser v. Colo. Bd. of Parole, 931 P.2d 560 (Colo. App. 1996).

Mandamus relief under section (a)(2) is available to compel a school district and the school district board of education to perform a state statutory duty. Denver Classroom Teachers Ass'n v. City & County of Denver Sch. Dist. No. 1, 2015 COA 71, __ P.3d __.

Court applied three-part test to determine whether petitioners have established the elements of their claim for mandamus against the school district and school district board of education. The court considered whether petitioners had a clear right to relief, whether the school district and school district board of education had a clear duty under the statute, and whether the petitioners had another available remedy under the statute. Denver Classroom Teachers Ass'n v. City & County of Denver Sch. Dist. No. 1, 2015 COA 71, __ P.3d __.

IV. QUO WARRANTO.

A. In General.

Law reviews. For article, "The Misuse of Judicial Flexibility in Quo Warranto Cases", see 10 Rocky Mt. L. Rev. 239 (1938).

Annotator's note. Since section (a)(3) of this rule is similar to § 321 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing that section have been included in the annotations to this rule.

Common-law writ. The writ of quo warranto was originally a prerogative writ of the crown against one who usurped any office, franchise, or liberty of the crown and was also used in the case of nonuse or long neglect of a franchise or misuse or abuse thereof. At common law it served the function of testing title to public and corporate offices. Burns v. District Court, 144 Colo. 259, 356 P.2d 245 (1960).

Rule substituted for common law and code. Former provisions of the Code of Civil Procedure were a substitute for the original common-law quo warranto remedy and retained the purpose and scope of that which it supplanted. These code provisions were superseded by this rule. People ex rel. Mijares v. Kniss, 144 Colo. 551, 357 P.2d 352 (1960).

Purpose of relief. Traditionally, quo warranto was directed against one charged with usurping an office, to inquire by what authority he claims to hold such office, in order to adjudge his right thereto. Its purpose was to protect the interest of the public and not to protect or promote private rights. People ex rel. Mijares v. Kniss, 144 Colo. 551, 357 P.2d 352 (1960).

The various procedural changes do not affect the basic purposes for which the writ of quo warranto was originally designed. People ex rel. Mijares v. Kniss, 144 Colo. 551, 357 P.2d 352 (1960).

The traditional concept of quo warranto relief is prevailing under this rule. People ex rel. Mijares v. Kniss, 144 Colo. 551, 357 P.2d 352 (1960).

Section (a)(3) does not enlarge or abridge substantive rights. This section is not a statute and does not, and cannot, have the force and effect of a statute, and cannot enlarge or abridge substantive rights. Enos v. District Court, 124 Colo. 335, 238 P.2d 861 (1951).

If section (a)(3) enlarges the scope of quo warranto by making relief thereunder obtainable by persons who had no access to such accommodation before, the supreme court would bestow jurisdiction upon trial courts which they did not have in the past. This would constitute a legislative act beyond its authority. The supreme court will not so encroach upon the legislative domain. People ex rel. Mijares v. Kniss, 144 Colo. 551, 357 P.2d 352 (1960).

Substantial elements of relief remain the same. While the procedural pattern has been simplified, the substance of what constitutes the basis of quo warranto relief remains the same. In order to prevail, proof of the substantive elements authorizing such relief should be of the same kind, quality, and quantity as would have warranted a favorable judgment under the older forms. People ex rel. Mijares v. Kniss, 144 Colo. 551, 357 P.2d 352 (1960).

The substance of the relief determines the character of the action; the name given an extraordinary writ such as quo warranto is unimportant. Burns v. District Court, 144 Colo. 259, 356 P.2d 245 (1960).

"Any person" in the first sentence is characterized by the following words "such person" and the context thereof. People ex rel. Mijares v. Kniss, 144 Colo. 551, 357 P.2d 352 (1960).

A proceeding under section (a)(3) is the exclusive method by which to try title to public office. People ex rel. Barton v. Londoner, 13 Colo. 303, 22 P. 764, 6 L.R.A. 444 (1889); Bd. of Comm'rs v. Gould, 6 Colo. App. 44, 39 P. 895 (1895); Wason v. Major, 10 Colo. App. 181, 50 P. 741 (1897); State R. R. Comm'n v. People ex rel. Denver & R. G. R. R., 44 Colo. 345, 98 P. 7 (1908); Roberts v. People ex rel. Duncan, 81 Colo. 338, 255 P. 461 (1927); Bd. of Comm'rs v. Wharton, 82 Colo. 466, 261 P. 4 (1927).

It is a general rule that when the statute provides a remedy to test the right to exercise a franchise or office, it is exclusive of all other remedies. Atchison, T. & S. F. R. R. v. People, 5 Colo. 60 (1879).

Thus, title to office cannot be tested by section (a)(2). Where a party is in actual possession of an office under an election or commission, and exercising its duties under color of right, his title to the office cannot be tried or tested by a proceeding under section (a)(2). City Council v. People ex rel. Ferguson, 19 Colo. App. 399, 75 P. 603 (1904).

Title to office cannot be tested in a suit brought to recover a salary. Bd. of Comm'rs v. Wharton, 82 Colo. 466, 261 P. 4 (1927).

Title to an office cannot be tried in a collateral proceeding. Bd. of Comm'rs v. Gould, 6 Colo. App. 44, 39 P. 895 (1895).

Distinction between proceeding under this section and election contest. A proceeding by the people for the purpose of trying the incumbent's title to office, regardless of the claimant's right, is not an "election contest" within the meaning of this phrase as employed in § 12 of art. VII, Colo. Const. Statutes passed by the general assembly in obedience to the constitutional mandate relating to contested elections do not deprive the courts of jurisdiction to inquire into usurpations and unlawful holdings of office or petitioners of a remedy in quo warranto. People ex rel. Barton v. Londoner, 13 Colo. 303, 22 P. 764 (1889).

A proceeding to oust a party from an office cannot be converted into a statutory election contest. People ex rel. Stidger v. Horan, 34 Colo. 304, 86 P. 252 (1905).

The right to the official salary is not to be determined in a proceeding under section (a)(3), but is to be determined in other proceedings. Capp v. People ex rel. Walker, 64 Colo. 58, 170 P. 399 (1918).

General assembly may limit time to challenge recreation district. The general assembly may validly limit the period within which the constitutionally guaranteed remedy of quo warranto is available to challenge the validity of a recreation district, unless the time is so unreasonably short as to destroy the substance of the remedy. Burns v. District Court, 144 Colo. 259, 356 P.2d 245 (1960).

Cause of action limited to parties named and served. Where relators did not bring the quo warranto action as a class action, nor did they name and serve as parties the other numerous school districts in the state, their cause of action must be limited to action against the captioned respondents who were named and served. People ex rel. Cory v. Colo. High Sch. Activities Ass'n, 141 Colo. 382, 349 P.2d 381 (1960).

Corporation, not stockholder, is indispensable party. The requirements of this rule do not set forth the parties who are indispensable to a quo warranto proceeding, but provide a framework under which the state, or a shareholder if the state refuses to act, may review the propriety of a challenged election. While the legality of an issuance of stock could not be adjudicated adversely to the absent holder, yet his right to vote could be passed upon notwithstanding his

absence insofar as was necessary to determine the result of the particular election that was under review. The corporation, however, is an indispensable party. State ex rel. Gentles v. Barnholt, 145 Colo. 259, 358 P.2d 466 (1961).

B. Franchises and Offices.

Law reviews. For comment on People ex rel. Mijares v. Kniss (cited below), see 38 Dicta 361 (1961).

Office defined. An office is an employment on behalf of the government in any station or public trust, not transient, occasional, or incidental. People ex rel. Denver & R. G. R. R. v. Garfield County Court, 59 Colo. 52, 147 P. 329 (1915).

Franchise defined. A franchise is defined as a particular privilege conferred upon individuals by grant from the government. Franchises are usually conferred upon corporations for the purpose of enabling them to do certain things. Franchises are vested in the corporate entity. Londoner v. People ex rel. Barton, 15 Colo. 246, 25 P. 183 (1890); Grant v. Elder, 64 Colo. 104, 170 P. 198 (1918).

Where it is alleged that the purpose of the challenged group is to render services to the public and that its operations are so permeated with the public interest as to be such that everyone may not engage therein as a matter of right, and that the exercise of such authority requires, or may require, a specific grant of privilege from the general assembly, a franchise is involved. People ex rel. Cory v. Colo. High Sch. Activities Ass'n, 141 Colo. 382, 349 P.2d 381 (1960).

A franchise is involved in a situation where public high school districts voluntarily join together to perform jointly a public function through a public or quasi-public body that is operating independently of statutory authority. People ex rel. Cory v. Colo. High Sch. Activities Ass'n, 141 Colo. 382, 349 P.2d 381 (1960).

An "office or franchise" can be deemed to exist where there has been no legislative act or constitutional provision authorizing the creation of one. People ex rel. Mijares v. Kniss, 144 Colo. 551, 357 P.2d 352 (1960).

Unless an existing statute is inconsistent with an amendment to the state constitution, then the statute continues in force subsequent to the adoption and effective date of the amendment. People ex rel. Union Trust Co. v. Superior Court, 175 Colo. 391, 488 P.2d 66 (1971).

The statute which established the superior court was never inconsistent with the constitutional provisions that judicial power shall be vested in a supreme court, district courts, and others. Therefore, the statute was not automatically repealed by enactment of new constitutional provision. People ex rel. Union Trust Co. v. Superior Court, 175 Colo. 391, 488 P.2d 66 (1971) (decided prior to abolition of superior courts).

The right of a county judge to hold office is dependent upon the validity of the proceedings by which he was appointed, but such right cannot be determined in an injunctive proceeding, because the exclusive means of determining whether a person unlawfully holds any office is by a writ in the nature of quo warranto. McCamant v. City & County of Denver, 31 Colo. App. 287, 501 P.2d 142 (1972).

This rule relates to public offices. People ex rel. Mijares v. Kniss, 144 Colo. 551, 357 P.2d 352 (1960).

It does not authorize a contest over private office in a quo warranto action. People ex rel. Mijares v. Kniss, 144 Colo. 551, 357 P.2d 352 (1960).

It was not in contemplation of this remedy that the district attorney, either on his own motion or at the behest of the governor or the request of the individual, should intervene in the governance of an unincorporated society. People ex rel. Mijares v. Kniss, 144 Colo. 551, 357 P.2d 352 (1960).

The provisions of this rule may not be utilized by members of a labor union to dislodge other members from offices which they hold in the organization, the application of the rule and the remedy being limited to public officers. People ex rel. Mijares v. Kniss, 144 Colo. 551, 357 P.2d 352 (1960).

Section (a)(3) was not intended to give private person right to redress his own wrongs. Section (a)(3) was not intended to give a private person the right to question the corporate existence of another, in order to protect his own rights or redress his own wrongs, unless it may be in that class of cases where the title to an office is involved, or some similar question is presented. If the law officer should refuse, the private relator could proceed and institute an action to remedy a public wrong. In the latter case, however, it must appear that the object aimed at is a public one, and is the protection of the interests and the maintenance of the welfare of the people. People ex rel. Union Pac. Ry. v. Colo. E. Ry., 8 Colo. App. 301, 46 P. 219 (1896); State R. R. Comm'n v. People ex rel. Denver & R. G. R. R., 44 Colo. 345, 98 P. 7 (1908); People ex rel. Weisbrod v. Lockhard, 26 Colo. App. 439, 143 P. 273 (1914), aff'd, 65 Colo. 558, 178 P. 565 (1919).

When the action is brought to protect private rights, it should not be maintained. This remedy is for the protection of the interests of the public as contradistinguished from private rights, and when the object of a proceeding is the protection of the latter, the action should not be maintained. State R. R. Comm'n v. People ex rel. Denver & R. G. R. R., 44 Colo. 345, 98 P. 7 (1930).

An action lies to try right of those lawfully elected directors of private corporations. The phrase "any franchise" in section (a)(3) includes the powers and rights conferred upon a private corporation, and an action lies to try the right of those lawfully elected directors of a private corporation and wrongfully prevented from acting. Grant v. Elder, 64 Colo. 104, 170 P. 198 (1918).

An action in quo warranto is authorized with respect to corporations, which are creatures of statute. State ex rel. Gentles v. Barnholt, 145 Colo. 259, 358 P.2d 466 (1961).

An action lies to test the title of the office of a director of an irrigation district. Lockhard v. People ex rel. Hasselbush, 80 Colo. 31, 250 P. 152 (1926).

Action to determine the validity of a high school activities association. In a proper case quo warranto is a suitable method to test the validity of the Colorado high school activities association activities. People ex rel. Cory v. Colo. High Sch. Activities Ass'n, 141 Colo. 382, 349 P.2d 381 (1960).

A club organized in violation of law may be dissolved under section (a)(3). A club organized ostensibly as a social club, but in fact with the sole purpose to dispense intoxicating liquors, in violation of law and local ordinances, may be dissolved by a proceeding under section (a)(3). Canon City Labor Club v. People ex rel. Jamieson, 21 Colo. App. 37, 121 P. 120 (1912).

Action may not be used to test the regularity of the appointment of commissioners to hold an incorporation election for a town, as such commissioners are not public officers. Commissioners appointed under the statute to hold an election upon the question whether a town shall become incorporated are not public officers. People ex rel. Denver & R. G. R. R. v. Garfield County Court, 59 Colo. 52, 147 P. 329 (1915).

However, when the town is declared formed the validity of the proceeding may be tested under section (a)(3). People ex rel. Denver & R. G. R. R. v. Garfield County Court, 59 Colo. 52, 147 P. 329 (1915).

The writ of quo warranto is a proper proceeding to attack the legal existence of a quasi-municipal corporation. Burns v. District Court, 144 Colo. 259, 356 P.2d 245 (1960).

This section provides a proper remedy in cases involving incorporations of towns and cities. Wiltgen v. Berg, 164 Colo. 139, 435 P.2d 378 (1967).

C. Who May Bring Action.

As a general rule, prosecutions for public wrongs must be instituted by the state through properly authorized agents, while the individual can only sue for injuries peculiarly affecting him. People ex rel. Byers v. Grand River Bridge Co., 13 Colo. 11, 21 P. 898 (1889).

If the defendant corporation has violated the law, either by doing some forbidden act or by neglecting to do some act enjoined upon it, it is not every person who may call it to account for such violation. People ex rel. Byers v. Grand River Bridge Co., 13 Colo. 11, 21 P. 898 (1889).

Exception where agent neglects or refuses to bring action. The provision permitting an action to be brought by a purely private party, upon the neglect or refusal of the district attorney to bring such action, must be construed with reference to this general rule. People ex rel. Byers v. Grand River Bridge Co., 13 Colo. 11, 21 P. 898 (1889).

Where by statute authority is given to a particular officer, its exercise by any other officer is forbidden by implication. Atchison, T. & S. F. R. R. v. People, 5 Colo. 60 (1879).

Under § 32-6-107 providing for the election and organization of metropolitan recreation districts, quo warranto is available only to the people on relation of the attorney general. Burns v. District Court, 144 Colo. 259, 356 P.2d 245 (1960).

District attorney is proper officer to determine whether public interest is involved. Under section (a)(3), the district attorney is the proper officer to determine in the first instance whether the public interest is involved, and whether or not a franchise, as contemplated by that provision, is properly an issue. People v. Painless Parker Dentist, 85 Colo. 304, 275 P. 928, cert. denied, 280 U.S. 566, 50 S. Ct. 25, 74 L. Ed. 620 (1929).

Refusal of district attorney to bring action is sufficient to authorize action by private parties. It was alleged and proven that the district attorney upon request made by relators and their attorneys and upon complaint being submitted to him, refused to prosecute the proceedings, and under the circumstances in this case such refusal was sufficient to authorize the court to permit the prosecution upon the relation of such private parties without the aid or sanction of the district attorney. Canon City Labor Club v. People ex rel. Jamieson, 21 Colo. App. 37, 121 P. 120 (1912).

Where there is no allegation in the complaint that the district attorney has declined to institute an action under this rule, nothing in the complaint discloses that the claimant has any special interest separate and apart from that held by the general public, and the complaint fails to allege the violation of any of claimant's rights which the law recognizes and for which a remedy is provided, such an action may not be maintained by a private citizen. McCamant v. City & County of Denver, 31 Colo. App. 287, 501 P.2d 142 (1972).

In order to support an action by the people for redress of a wrong, that wrong must appear to have been done to the people. People ex rel. Union Pac. Ry. v. Colo. E. Ry., 8 Colo. App. 301, 46 P. 219 (1896).

The provisions which give permission to a private party to bring the action and also to have the right of one other than the incumbent adjudicated, do not turn the proceeding from one to protect the public interests into one to safeguard the purely private rights of the relator. State R. R. Comm'n v. People ex rel. Denver & R. G. R. R., 44 Colo. 345, 98 P. 7 (1908).

Person is not disqualified because of having been opposing candidate for office in question. One possessing the qualifications of "freeholder, resident and elector" is not disqualified from acting as plaintiff in the proceedings by reason of having been the opposing candidate for the office in question. People ex rel. Barton v. Londoner, 13 Colo. 303, 22 P. 764 (1889).

A certain degree of interest on the part of plaintiffs in the proceedings is generally deemed requisite; and the officious intermeddling by parties having absolutely no interest, either as taxpayers or voters, is disfavored. People ex rel. Barton v. Londoner, 13 Colo. 303, 22 P. 764 (1889); Canon City Labor Club v. People ex rel. Jamieson, 21 Colo. App. 37, 121 P. 120 (1912).

A plaintiff must have some interest in the matter before he would be entitled to institute such proceedings. People ex rel. Byers v. Grand River Bridge Co., 13 Colo. 11, 21 P. 898 (1899); People ex rel. Weisbrod v. Lockhard, 26 Colo. App. 439, 143 P. 273 (1914), aff'd, 65 Colo. 558, 178 P. 565 (1919).

Any person making a sufficient showing of a special interest in the business of the corporation and its property is a proper party. State ex rel. Gentles v. Barnholt, 145 Colo. 259, 358 P.2d 466 (1961).

Resident electors and taxpayers of a city are competent plaintiffs in such case. Canon City Labor Club v. People ex rel. Jamieson, 21 Colo. App. 37, 121 P. 120 (1912).

A taxpayer may act as relator in quo warranto proceedings against one claiming to exercise a public office. People ex rel. Cory v. Colo. High Sch. Activities Ass'n, 141 Colo. 382, 349 P.2d 381 (1960).

A private citizen and taxpayer is undoubtedly interested in the duties required of public officials authorized to levy taxes or to expend the proceeds of taxation, and has a standing to maintain quo warranto proceedings in a matter of public interest in which he has a special interest by reason of being a contributor to the public funds. People ex rel. Cory v. Colo. High Sch. Activities Ass'n, 141 Colo. 382, 349 P.2d 381 (1960).

Stockholders, officers, and corporations are suitable plaintiffs. In the absence of express provisions, proceedings to determine the title to office and to oust persons who are illegally in possession may be instituted by the corporation, by officers who have the legal title to the office, or by stockholders. State ex rel. Gentles v. Barnholt, 145 Colo. 259, 358 P.2d 466 (1961).

Where the proceedings involve the entire control of the corporation, the grievance alleged is not just that accruing to an individual, but one common to the entire corporate body, and suit may be brought by one or more stockholders affected. State ex rel. Gentles v. Barnholt, 145 Colo. 259, 358 P.2d 466 (1961).

Claim for damages is not sufficient interest to authorize suit to dissolve corporation. The fact that the plaintiff owns land which the defendant corporation has appropriated without compensation does not give him such an interest as enables him to maintain the action to dissolve the corporation. His interest is not one in which the public is concerned, being merely a right to sue for damages. People ex rel. Byers v. Grand River Bridge Co., 13 Colo. 11, 21 P. 898 (1889).

Private persons may maintain proceedings to dissolve corporation organized for illegal purpose. If private persons may institute and maintain proceedings to oust the mayor of a great city, to prohibit the regents of the state university from exercising certain powers claimed by them, there is no good reason why such private persons may not, by like permission of the court, institute and maintain proceedings to dissolve a corporation alleged to have been organized mala fide for the sole purpose of carrying on some business in defiance of the laws of the state and the ordinances of the city, and to the detriment of the public welfare. Canon City Labor Club v. People ex rel. Jamieson, 21 Colo. App. 37, 121 P. 120 (1912).

Action to try the validity of contested corporate elections. Where the validity of a corporate election is in dispute, and it involves nothing but the title to the board of directors, in the absence of a statute created specially for the specific purpose of trying the validity of contested corporate elections, a proceeding under section (a)(3) is an appropriate remedy, and private individuals elected, but wrongfully prevented from acting upon the board by the intruders, may apply to the district attorney, and, if he fails to act, may bring an action themselves in the name of the people to oust the usurpers from exercising the franchises and to install the relators. Grant v. Elder, 64 Colo. 104, 170 P. 198 (1918).

A private person is not entitled to maintain an action to oust a corporation of its franchise. Under license from the city the defendant corporation had, at great expense, constructed a line of telephone occupying with its structures the public streets. Since the city had accepted and was still accepting valuable services from defendant and had taken no step to revoke the license, a private citizen was not entitled to maintain an action to oust defendant of the franchise, especially as the municipality had the power of revocation, and the like power was vested in the inhabitants through the initiative. Mountain States Tel. & Tel. Co. v. People ex rel. Wilson, 68 Colo. 487, 190 P. 513 (1920).

V. CERTIORARI OR PROHIBITION.

A. In General.

Law reviews. For article, "One Year Review of Civil Procedure", see 34 Dicta 69 (1957). For article, "One Year Review of Civil Procedure and Appeals", see 36 Dicta 5 (1959). For note, "Writ of Prohibition as Applied in Colorado", see 33 Rocky Mt. L. Rev. 553 (1961). For note, "One Year Review of Colorado Law — 1964", see 42 Den. L. Ctr. J. 140 (1965). For article, "Land Use Decisionmaking: Legislative or Quasi-judicial Action", see 18 Colo. Law. 241 (1989).

Annotator's note. Since section (a)(4) of this rule is similar to §§ 331 through 341 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant cases construing those sections have been included in the annotations to this rule.

This rule provides for writs in the nature of certiorari or prohibition. Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n, 131 Colo. 172, 280 P.2d 442 (1955); Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958).

The adoption of this rule altered procedural aspects only of the remedy previously known as certiorari. Colo. State Bd. of Exam'rs of Architects v. Marshall, 136 Colo. 200, 315 P.2d 198 (1957).

The substantive aspects remain the same. Colo. State Bd. of Exam'rs of Architects v. Marshall, 136 Colo. 200, 315 P.2d 198 (1957).

Proceedings authorized by section (a)(4) of this rule are extraordinary in nature, and may not be employed as a substitute for prescribed appellate procedures. Kirbens v. Martinez, 742 P.2d 330 (Colo. 1987).

Section (a)(4) does not confer any legally protected interest for purposes of establishing standing. Rather, the rule establishes procedures for seeking review when standing otherwise independently exists. Reeves v. City of Fort Collins, 170 P.3d 850 (Colo. App. 2008).

An order of the district court refusing to issue a citation to show cause directed to the county court is proper under section (a)(4) and does not imply any determination by the court of the merits of the case. Since there is nothing in the record to establish any final judgment in favor of either party, appellate review is unavailable. Milburn v. El Paso County Ct., 859 P.2d 909 (Colo. App. 1993).

Purpose of action is to review the action of an inferior tribunal, board, or officer who, in exercising judicial functions, has exceeded the jurisdictional or grossly abused the discretion which the law reposes in such tribunal or officer, and no review is allowed, nor, in the judgment of the court, any plain, speedy, and adequate remedy. Union Pac. Ry. v. Bowler, 4 Colo. App. 25, 34 P. 940 (1893); Union P. R. R. v. Wolfe, 26 Colo. App. 567, 144 P. 330 (1914); Nisbet v. Frincke, 66 Colo. 1, 179 P. 867 (1919).

The function of a proceeding under this rule is to review the action of an inferior tribunal which has allegedly exceeded its jurisdiction or abused its discretion. Kornfeld v. Perl Mack Liquors, Inc., 193 Colo. 442, 567 P.2d 383 (1977).

The purpose of an action brought under section (a)(4) is to determine if an inferior tribunal, exercising judicial or quasi-judicial functions, has exceeded its jurisdiction or abused its discretion. Garland v. Bd. of County Comm'rs, 660 P.2d 20 (Colo. App. 1982).

Standard for challenging inferior tribunal. A superior court should exercise great caution and circumspection before issuing a rule to show cause to an inferior tribunal, and then only when such court is satisfied that the ordinary remedies provided by law are not applicable or are inadequate. Only in exceptional cases or classes of cases should applications of this character be allowed. Kirbens v. Martinez, 742 P.2d 330 (Colo. 1987).

The purpose of prohibition is to prevent usurpation or unwarranted assumption of jurisdiction on the part of an inferior tribunal. Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958).

A writ of prohibition is a proper method of challenging the jurisdiction of a trial court. County Court v. Ruth, 194 Colo. 352, 575 P.2d 1 (1977); Empiregas, Inc. of Pueblo v. Pueblo County Court, 713 P.2d 937 (Colo. App. 1985).

Relief under section (a)(4) is appropriate to contest a lower court's order of criminal contempt. Jordan v. County Court, 722 P.2d 450 (Colo. App. 1986).

Prohibition defined. Prohibition is commonly defined as a writ to prevent the exercise by a tribunal possessing judicial powers of jurisdiction over matters not within its cognizance, or exceeding its jurisdiction in matters of which it has cognizance. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

Relief in the nature of prohibition is discretionary. There is a wide discretion vested in a district court to which a petition is addressed

seeking relief in the nature of prohibition. Justice Court v. Coleman, 137 Colo. 12, 320 P.2d 336 (1958).

Grant of prohibition should not be reversed except for abuse of discretion. In a proceeding in a district court seeking relief in the nature of prohibition against enforcement of a judgment of a justice of the peace, where the complaint alleges facts sufficient to authorize the court, in the exercise of a sound discretion, to grant the relief sought, the judgment of the district court will not be disturbed in the absence of a showing of an abuse of such discretion. Justice Court v. Coleman, 137 Colo. 12, 320 P.2d 336 (1958).

A writ of certiorari will not issue as a matter of right, but only upon good cause shown, as for an abuse of discretion. People ex rel. Kimball v. Crystal River Corp., 131 Colo. 163, 280 P.2d 429 (1955).

Although an order to show cause is usually granted on an ex parte application for a writ of certiorari to the trial court or judge, it is not allowed as a matter of right or as a matter of course, but is a matter within the discretion of that court. The very right to issue a rule to show cause legally presupposes a judicial discretionary authority. Berry v. State Bd. of Parole, 148 Colo. 547, 367 P.2d 338 (1961), cert. denied, 370 U.S. 927, 82 S. Ct. 1569, 8 L. Ed. 2d 507 (1962).

Certiorari is the continuing of a prior action, a form of appellate review. North Glenn Sub. Co. v. District Court, 187 Colo. 409, 532 P.2d 332 (1975).

Relief available for exceeding jurisdiction or abuse of discretion. This rule limits the issuance of certiorari and prohibition to cases where an inferior tribunal exercising judicial or quasi-judicial functions has exceeded its jurisdiction or abused its discretion, and where there is no plain, speedy, and adequate remedy. Eveready Freight Serv., Inc. v. Pub. Utils. Comm'n, 131 Colo. 172, 280 P.2d 442 (1955); Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958); Turner v. City & County of Denver, 146 Colo. 336, 361 P.2d 631 (1961); People ex rel. Orcutt v. District Court, 167 Colo. 162, 445 P.2d 887 (1968); State Farm v. City of Lakewood, 788 P.2d 808 (Colo. 1990).

The license authority rulings are subject to certiorari review by the courts, and, if its action in refusing a license is found to be arbitrary or capricious, a court has the authority, and the duty, to order the license to issue. Bd. of County Comm'rs v. Salardino, 136 Colo. 421, 318 P.2d 596 (1957); Morris-Schindler, LLC v. City & County of Denver, 251 P.3d 1076 (Colo. App. 2010).

Prohibition lies to prevent an inferior tribunal, whether it has judicial or quasi-judicial powers, from usurping a jurisdiction with which it is not legally vested. Leonhart v. District Court, 138 Colo. 1, 329 P.2d 781 (1958).

Prohibition may issue to prevent a court from proceeding against the express prohibition of a statute or where an adequate and exclusive remedy to obtain certain relief is provided by statute and the inferior court proceeds by another remedy. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

A writ of prohibition is proper, not only in cases where the lower tribunal has no legal authority to act at all, but also in cases wherein such inferior tribunal, although having general jurisdiction over a particular class of cases, has exceeded such jurisdiction in the particular case. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

Whenever the question is whether a public board or commission has exceeded its jurisdiction or abused its discretion, certiorari is the proper remedy to secure a review of its action. Holly Dev., Inc. v. Bd. of County Comm'rs, 140 Colo. 95, 342 P.2d 1032 (1959).

The various licensing authorities have discretionary power in granting or denying licenses and their actions will not be disturbed on review unless arbitrary or capricious. Quedens v. J. S. Dillon Co., 146 Colo. 161, 360 P.2d 984 (1961).

When a trial court exceeds its jurisdiction in a statutory proceeding, a writ of prohibition is the appropriate remedy. Evans v. District Court, 182 Colo. 93, 511 P.2d 471 (1973).

Misinterpretation or misapplication of governing law by an agency is an alternative ground for finding an abuse of discretion under section (a)(4). District properly determined that correctional hearing officer abused discretion by failing to document that inmate had knowingly and voluntarily waived right to remain silent during administrative hearing as required by agency regulation. Gallegos v. Garcia, 155 P.3d 405 (Colo. App. 2006).

Proper remedy under this rule for abuse of discretion by prison hearing officer is to remand the case for a new hearing, rather than to expunge the inmate's disciplinary conviction. Gallegos v. Garcia, 155 P.3d 405 (Colo. App. 2006).

No abuse of discretion. There is no evidence that the department of corrections officer violated any of the department's regulations related to the inmate grievance, and the inmate failed to show how he was prejudiced by any of the actions by the department of corrections officer. Alward v. Golder, 148 P.3d 424 (Colo. App. 2006).

No authority to consider constitutional issues. Procedures afforded by this rule are available to review the decision of a local licensing authority in suspending a license, but does not provide authority for consideration of constitutional issues. Two G's, Inc. v. Kalbin, 666 P.2d 129 (Colo. 1983).

Constitutional challenges are not within scope of review under section (a)(4). Price Haskel v. Denver Dept. of Excise & Licenses, 694 P.2d 364 (Colo. App. 1984).

Stay of proceedings only against inferior tribunals. The provisions of section (a)(4) do not provide for a stay order against any party which is not "an inferior tribunal". PII of Colo., Inc. v. District Court, 197 Colo. 239, 591 P.2d 1316 (1979).

Relief granted only against tribunal. Since a proceeding under this rule is properly brought against the inferior tribunal and the rule to show cause issues only against the tribunal, the relief may be granted, if at all, against the tribunal only. Kornfeld v. Perl Mack Liquors, Inc., 193 Colo. 442, 567 P.2d 383 (1977).

Discretionary powers of district court. The issuance of a citation to show cause under this rule lies within the district court's broad discretionary powers. The district court may dismiss a complaint filed pursuant to this rule if the complaint is defective on its face or if no relief can be granted. Info. Please, Inc. v. District Court, 194 Colo. 42, 568 P.2d 1162 (1977).

Where district court failed to issue the required citation to show cause to the county court, the court of appeals exceeded its jurisdiction by reaching the issue and ordering that a writ of prohibition issue. County Court v. Ruth, 194 Colo. 352, 575 P.2d 1 (1977).

For purpose of standing for district court review, no relief can be afforded if person suffers injury in fact, but not from violation of a legally protected right. Brown v. Bd. of County Comm'rs, 720 P.2d 579 (Colo. App. 1985).

If there is illegal search and seizure, a defendant has plain, speedy, and adequate remedy by motion to suppress and for return of property, and prohibition will not lie in district court to bar further related proceedings in county court. Seccombe v. District Court, 180 Colo. 420, 506 P.2d 153 (1973).

This rule provides a plain, speedy, and adequate remedy of review of a decision of the conservation board as to the sufficiency of a petition, by virtue of which rule the district court is authorized to determine whether or not the board had jurisdiction or abused its discretion. Friesen v. People ex rel. Fletcher, 118 Colo. 1, 192 P.2d 430 (1948).

Where it is contended that the county court was without or exceeded its jurisdiction, or abused its discretion, section (a)(4) provides a plain, speedy, and adequate remedy. People ex rel. Wilson v. Blake, 128 Colo. 111, 260 P.2d 592 (1953).

Although the Denver city charter does not spell out a procedure for judicial review of the orders of the civil service commission of Denver, a remedy nevertheless exists through the extraordinary writs, provision for which is found in § 9 of art. VI, Colo. Const. Turner v. City & County of Denver, 146 Colo. 336, 361 P.2d 631 (1961).

This rule's relief is not an exclusive remedy, declaratory judgment being available to obtain review of matters not reviewable by certiorari. Corper v. City & County of Denver, 36 Colo. App. 118, 536 P.2d 874 (1975), aff'd, 191 Colo. 252, 552 P.2d 13 (1976).

The validity of zoning ordinances has been challenged by certiorari review under section (a)(4), and declaratory relief under C.R.C.P. 57, and on occasion, these forms of relief have been pursued simultaneously. Snyder v. City of Lakewood, 189 Colo. 421, 542 P.2d 371 (1975).

Declaratory judgment may be proper remedy. As a general rule, judicial review by way of section (a)(4) is the exclusive remedy for one challenging a rezoning determination on a parcel of property. Where persons have not had prior notice of a rezoning hearing and have not participated in it, certiorari review is not always an effective remedy and a hearing de novo under a declaratory judgment is a proper and effective remedy. Norby v. City of Boulder, 195 Colo. 231, 577 P.2d 277 (1978).

The district court may consider a declaratory judgment claim that challenges the constitutionality of a city's zoning ordinance even though judicial review claim is barred for failure to file a timely claim in accordance with section (b). Danielson v. Zoning Bd. of Adjustment, 807 P.2d 541 (Colo. 1991).

But the district court may not exercise jurisdiction where claimant failed to challenge in the district court proceedings the facial constitutionality of a city's zoning ordinance and the district court may not raise the constitutional issue on its own motion. Danielson v. Zoning Bd. of Adjustment, 807 P.2d 541 (Colo. 1991).

Where no hearing was held by the board before it made its decision, section (a)(4) of this rule is clearly not plaintiffs' exclusive remedy. Ebke v. Julesburg Sch. Dist. No. RE-1, 37 Colo. App. 349, 550 P.2d 355 (1976), aff'd on other grounds, 193 Colo. 40, 562 P.2d 419 (1977).

Requirements of C.R.C.P. 65 not applicable. While C.R.C.P. 65 provides that no restraining order or preliminary injunction shall issue except upon giving security by the applicant, that no order or injunction shall issue without notice, except under certain situations, and that an early hearing shall be provided, no such conditions appear in section (a)(4) of this rule. PII of Colo., Inc. v. District Court, 197 Colo. 239, 591 P.2d 1316 (1979).

This rule does not require the submission of an affidavit or verification of the complaint in order to perfect an action for review. U-Tote-M of Colo., Inc. v. City of Greenwood Vill., 39 Colo. App. 28, 563 P.2d 373 (1977).

A complaint neither verified nor accompanied by an affidavit suffices to initiate a proceeding for review, and a citation to show cause need not thereafter issue as such orders presuppose a judicial discretional authority. U-Tote-M of Colo., Inc. v. City of Greenwood Vill., 39 Colo. App. 28, 563 P.2d 373 (1977).

The request for an order to certify the record was not necessary to the perfection of plaintiff's action. U-Tote-M of Colo., Inc. v. City of Greenwood Vill., 39 Colo. App. 28, 563 P.2d 373 (1977).

Orders to certify the record are not issued under section (a)(4) of this rule merely as a matter of course. U-Tote-M of Colo., Inc. v. City of Greenwood Vill., 39 Colo. App. 28, 563 P.2d 373 (1977).

Neither section (a)(4) of this rule nor any other pertinent rule of procedure requires a plaintiff to request certification of the record. U-Tote-M of Colo., Inc. v. City of Greenwood Vill., 39 Colo. App. 28, 563 P.2d 373 (1977).

Plaintiff's failure to request an order certifying the record within 30 days of the city council's decision denying his beverage license application did not require dismissal of the complaint, since plaintiff was only required to "apply for review" within the prescribed 30-day period. U-Tote-M of Colo., Inc. v. City of Greenwood Vill., 39 Colo. App. 28, 563 P.2d 373 (1977).

Distinction between judicial and administrative acts. The test for distinguishing judicial and quasi-judicial acts from administrative acts is to determine whether the function under consideration involves the exercise of discretion and requires notice and hearing. If these elements are present the "finding" is generally a quasi-judicial act; if any of them are absent, it is generally an administrative act. Hoffman v. City of Fort Collins, 30 Colo. App. 123, 489 P.2d 355 (1971); Van Pelt v. State Bd. for Cmty. Colls. & Occupational Educ., 195 Colo. 316, 577 P.2d 765 (1978).

Act of dismissing probationary firefighters is administrative where the only limitation on dismissal is approval by the civil service commission, the civil service commission's approval is not based on preexisting legal standards or policy considerations, and there is no right to appeal dismissal. Chellsen v. Pena, 857 P.2d 472 (Colo. App. 1992).

Quasi-judicial action decides rights and liabilities based upon past or present facts. City & County of Denver v. Eggert, 647 P.2d 216 (Colo. 1982).

The action of an agency will be deemed quasi-judicial for section (a)(4) purposes if: (1) A state or local law requires that the body give adequate notice to the community before acting; (2) a state or local law requires that the body conduct a public hearing pursuant to notice at which time concerned citizens must be given an opportunity to be heard and present evidence; and (3) a state or local law requires the body to make a determination by applying the facts of a specific case to certain criteria established by law. City & County of Denver v. Eggert, 647 P.2d 216 (Colo. 1982).

Quasi-judicial action generally involves a determination of rights, duties, or obligations of specific individuals by applying legal standards or policy considerations to facts developed at a hearing conducted for purpose of resolving interests in question. State Farm v. City of Lakewood, 788 P.2d 808 (Colo. 1990); Carpenter v. Civil Serv. Comm'n, 813 P.2d 773 (Colo. App. 1990).

Quasi-legislative action reflects public policy relating to matters of permanent or general character, is not normally restricted to identifiable persons or groups, and is usually prospective in nature. In addition, such action requires the balancing of questions of judgment and discretion, is of general application, and concerns an area usually governed by legislation. State Farm v. City of Lakewood, 788 P.2d 808 (Colo. 1990).

Absence of notice and public hearing requirement is not determinative of the nature of the action. The nature of the decision and the process by which it is reached is the predominant consideration in determining whether an action is quasi-judicial. Carpenter v. Civil Serv. Comm'n, 813 P.2d 773 (Colo. App. 1990).

Although the board of county commissioners of Boulder county provided notice and public hearings, the board's actions in adopting a rezoning resolution were quasi-legislative in nature based on the prospective nature and broad impact of the resolution. Therefore, landowner is not entitled to relief under section (a)(4). Jafay v. Bd. of County Comm'rs of Boulder County, 848 P.2d 892 (Colo. 1993).

Where city council was acting in a legislative capacity when it approved an ordinance requiring relocation underground of overhead electricity and communications facilities by owners and operators at their own cost, telecommunications provider was not entitled to certiorari review under section (a)(4). US West Commc'ns v. City of Longmont, 924 P.2d 1071 (Colo. App. 1995), aff'd on other grounds, 948 P.2d 509 (Colo. 1997).

The fixing of the time and manner of payment of restitution for all prisoners by the director of the department of corrections pursuant to statute is not a judicial or quasi-judicial action on the part of the department or the correctional facility, therefore, the district court lacked jurisdiction to hear prisoner's complaint and did not err in dismissing the complaint on that basis. Jones v. Colo. Dept. of Corr., 53 P.3d 1187 (Colo. App. 2002).

Test applied in Stuart v. Bd. of County Comm'rs, 699 P.2d 978 (Colo. App. 1985).

Commission's denial of applicant's appeal of disqualification from employment was quasi-judicial action even though regulations did not require a formal hearing on the appeal. Carpenter v. Civil Serv. Comm'n, 813 P.2d 773 (Colo. App. 1990).

Act must be judicial to be reviewable. Where the state board of land commissioners wrongfully canceled a lease of state school lands on the ground that the rent was delinquent, when in fact it was not, and executed a lease thereof to another party, the act was not judicial in its nature and is not subject to review under section (a)(4). State Bd. of Land Comm'rs v. Carpenter, 16 Colo. App. 436, 66 P. 165 (1901).

When the civil service commission of Denver is acting in a quasi-judicial capacity, certiorari is the proper remedy for review of its decision. Turner v. City & County of Denver, 146 Colo. 336, 361 P.2d 631 (1961).

Incorporation proceedings are judicial in nature and the district court could entertain an action enforcing priority of jurisdiction with respect to dual actions involving the same subject matter and substantially the same parties. Wiltgen v. Berg, 164 Colo. 139, 435 P.2d 378 (1967).

Under this rule, certiorari is available only upon exercise of a "judicial or quasi-judicial" function. Hoffman v. City of Fort Collins, 30 Colo. App. 123, 489 P.2d 355 (1971).

Where the charter of a city establishes a civil service commission and provides for hearing and review of dismissals by the manager of safety, these charter provisions clearly place the commission in a quasi-judicial position and bring its decisions within the purview of this rule. Hoffman v. City of Fort Collins, 30 Colo. App. 123, 489 P.2d 355 (1971).

Although the supreme court has repeatedly stated that zoning and rezoning are legislative matters, an ordinance prescribing standards and procedures for obtaining a rezoning establishes a quasi-judicial, rather than a legislative, procedure by: (1) Providing for notice and hearing; and (2) setting forth the criteria to be taken into account by the planning commission in arriving at its decision, and therefore, an alleged abuse of discretion by the commission is reviewable under this rule. Kizer v. Beck, 30 Colo. App. 569, 496 P.2d 1062 (1972).

It cannot be legislative or executive. The court does not review an order, action, or proceeding, unless it be judicial in its nature, and not legislative or merely ministerial. State Bd. of Land Comm'rs v. Carpenter, 16 Colo. App. 436, 66 P. 165 (1901); Colo.-Ute Elec. Ass'n v. Air Pollution Control Comm'n, 41 Colo. App. 393, 591 P.2d 1323 (1978), rev'd on other grounds sub nom. CF&I Steel Corp. v. Colo. Air Pollution Control Comm'n, 199 Colo. 463, 610 P.2d 85 (1980).

Sections (a)(2) and (a)(4) of this rule are inapplicable to challenges of legislative actions. Cherokee Water & Sanitation v. El Paso, 770 P.2d 1339 (Colo. App. 1988).

The fact-finding function of the board of county commissioners' proceeding under the county housing authority act was the exercise of a legislative directive and not a quasi-judicial proceeding reviewable under this rule. The board finds the facts but passes no judgment thereon; it is given no judicial power. Smith v. Waymire, 29 Colo. App. 544, 487 P.2d 599 (1971).

If the act of removal is executive, not judicial or quasi-judicial, it is not reviewable by certiorari. Hoffman v. City of Fort Collins, 30 Colo. App. 123, 489 P.2d 355 (1971).

Where the subject of a declaratory judgment action is the review of an executive or administrative decision, section (a)(4) is neither the appropriate nor the exclusive remedy by which a declaration of rights could be obtained. Bonacci v. City of Aurora, 642 P.2d 4 (Colo. 1982).

If the law makes no provisions for hearing, but gives power to remove and only requires that reasons therefor be stated in writing and filed, and if the officer desires, he may be given an opportunity to explain, the removal act is "executive" so far as the right to review by certiorari is concerned. Hoffman v. City of Fort Collins, 30 Colo. App. 123, 489 P.2d 355 (1971).

From the explicit wording of this rule, certiorari will not apply for review of the propriety of legislative action. Kizer v. Beck, 30 Colo. App. 569, 496 P.2d 1062 (1972).

A challenge to legislation and the governmental legislative conduct is not available in proceedings to review quasi-judicial governmental acts pursuant to section (a)(4). Liquor & Beer Licensing Ad. Bd. v. Cinco, 771 P.2d 482 (Colo. 1989).

City's decision to exterminate prairie dogs in a city park was administrative, not quasi-judicial, and was not subject to judicial review under section (a)(4). Prairie Dog Advocates v. City of Lakewood, 20 P.3d 1203 (Colo. App. 2000).

The career service board's decision to demote an employee because she did not have the level of education required by the city's personnel policy was administrative rather than quasi-judicial in nature. The employee, therefore, was not entitled to judicial review of the board's action under section (a)(4). Bourgeron v. City & County of Denver, 159 P.3d 701 (Colo. App. 2006).

Quasi-legislative action is prospective in nature, is of general application, and requires the balancing of questions of judgment and discretion. City & County of Denver v. Eggert, 647 P.2d 216 (Colo. 1982).

A master plan that established land use policies, was prospective in nature and general in character, and had not been applied against plaintiff's property is legislative in nature. Condiotti v. Bd. of County Comm'rs, 983 P.2d 184 (Colo. App. 1999).

Judicial review of quasi-legislative action is more limited than that of quasi-judicial action; thus, a court may not substitute its opinion for that of a school board. Bruce v. Sch. Dist. No. 60, 687 P.2d 509 (Colo. App. 1984).

It may be maintained if remedy is not plain and adequate. People ex rel. L'Abbe v. District Court, 26 Colo. 386, 58 P. 604 (1899); Union P. R. R. v. Wolfe, 26 Colo. App. 567, 144 P. 330 (1914); State Civil Serv. Comm'n v. Cummings, 83 Colo. 379, 265 P. 687 (1928).

Whenever there is no direct remedy provided for review, the writ of certiorari lies, even though some other remedy can be conceived as possible in the future. Holly Dev., Inc. v. Bd. of County Comm'rs, 140 Colo. 95, 342 P.2d 1032 (1959).

Whether the amendment could operate retrospectively was at least doubtful even to a prudent lawyer making a realistic evaluation of possible remedies. Considering the presence of this dilemma it cannot be said that a plain, speedy, and adequate legal remedy existed. Toland v. Strohl, 147 Colo. 577, 364 P.2d 588 (1961).

If the remedy is inadequate, it is no remedy, and gives to a court of record in a proceeding under this rule the same right, and imposes upon it the same duty, to grant relief as if no right of review existed. Union P. R. R. v. Wolfe, 26 Colo. App. 567, 144 P. 330 (1914).

Expense of trial may not be used as grounds for prohibition. Seccombe v. District Court, 180 Colo. 421, 506 P.2d 153 (1973).

The fact that proceedings may be expensive and may result in ultimate reversal of the trial court for error, affords insufficient basis for resort to proceedings in the nature of prohibition. Leonhart v. District Court, 138 Colo. 1, 329 P.2d 781 (1958).

Delay and expense do not ordinarily render appeal inadequate. The delay and expense of an appeal or other available remedy ordinarily furnish no sufficient reasons for holding that the remedy by appeal is not adequate or speedy, although there are many instances in which the expense and delay of an appeal have, in part at least, impelled the superior court to grant prohibition. Prinster v. District Court, 137 Colo. 393, 325 P.2d 938 (1958).

The court may quash or refuse to quash the proceeding complained of. No rights growing out of such proceeding can be enforced. State Civil Serv. Comm'n v. Cummings, 83 Colo. 379, 265 P. 687 (1928).

It has no power to correct a mistake of fact or erroneous conclusion from the facts, made by the inferior tribunal. State Bd. of Med. Exam'rs v. Spears, 79 Colo. 588, 247 P. 563 (1926).

Court will not restrain mere error. A writ of prohibition never issues to restrain a lower tribunal from committing mere error in deciding a question properly before it. Prinster v. District Court, 137 Colo. 393, 325 P.2d 938 (1958).

Although "good cause" was not specifically alleged as the basis for amending the complaint, the district court did not abuse its discretion when it granted motion to avoid piece-meal litigation. Neighbors For A Better Approach v. Nepa, 770 P.2d 1390 (Colo. App. 1989).

Restraint from final adjudication within court's jurisdiction not appropriate. Prohibition may never be used to restrain a trial court having jurisdiction of the parties and of the subject matter from proceeding to a final conclusion. Prinster v. District Court, 137 Colo. 393, 325 P.2d 938 (1958).

Prohibition of statutory functions of executive department. A district court does not have jurisdiction to prohibit a branch of the executive department from carrying out its statutory functions. Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958); Chonoski v. State Dept. of Rev., 699 P.2d 416 (Colo. App. 1985).

A claim that the statute under which an executive department is proceeding is unconstitutional will not clothe the judiciary with power to interfere with or control such department in advance of its taking final action. Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958); People ex rel. Orcutt v. District Court, 167 Colo. 162, 445 P.2d 887 (1968); Colo. Dept. of Rev. v. District Court, 172 Colo. 144, 470 P.2d 864 (1970).

Power to stay orders is modifiable by statute. While the courts have power to issue stay orders in certiorari proceedings, statutes may modify or abrogate that power. In the annexation statutes it is clear that the general assembly intended to preclude the issuance of a stay order pending appeal of the annexation proceedings. In this respect they were not legislating on procedure but declaring by substantive law a legal status. City of Westminster v. District Court, 167 Colo. 263, 447 P.2d 537 (1968).

Where the general assembly, in the interest of public safety, has provided a reasonable limitation upon the right to secure postponement of the effective date of suspension of a driver's license by the director of revenue, requiring a showing of irreparable injury, the courts have no power to nullify by procedural rule the limitations so imposed, the function of the courts being limited to a review of the acts of the director. Theobald v. District Court, 148 Colo. 466, 366 P.2d 563 (1961).

Review of denial of license does not stay new application. Where a party applied for a liquor license which was denied, a proceeding to review such denial under this rule does not operate to stay the hand of the licensing officer in receiving and acting upon the application of another party for a license to operate at the same location. Cronin v. Ward, 144 Colo. 192, 355 P.2d 655 (1960).

When (1) a statute, rule, or regulation requires that an individual or entity obtain a license to perform a certain activity, (2) the requirement of the license is valid, and (3) there are judicial remedies to challenge an alleged wrongful refusal of that license, the person or entity may not disregard the licensing requirements, but instead must suspend engaging in the activity for which the license is required pending judicial resolution of the alleged wrongful denial. Here, plaintiffs knew that the city council had affirmed the city's denial of their renewal application and, aware that a preliminary injunction had not been granted, chose to continue to operate their business without the proper license. Because the ordinance was valid, plaintiffs cannot assert wrongful denial as a defense to operating their business without a valid license. Fortner v. Cousar, 992 P.2d 697 (Colo. App. 1999).

Determination by trial court that plaintiff's license had been wrongfully denied was not the equivalent of granting plaintiffs a license. Therefore, trial court properly determined that plaintiffs were not licensed for the period between the city council's denial of their license and trial court's reversal in their favor on procedural grounds. Fortner v. Cousar, 992 P.2d 697 (Colo. App. 1999).

Section provides for civil action. Section (a)(4) clearly contemplates the application of C.R.C.P. 2 providing for one form of civil action since it requires a complaint which must be filed and summons issued and served as in other actions. Colo. State Bd. of Exam'rs of Architects v. Marshall, 136 Colo. 200, 315 P.2d 198 (1957).

Other rules of civil procedure, when pertinent, apply to proceedings under this rule. Colo. State Bd. of Exam'rs of Architects v. Marshall, 136 Colo. 200, 315 P.2d 198 (1957).

The time limit for a section (a)(4) action is that specified by applicable statute or, if there is none, then not later than 30 days from the final decision complained of. Norby v. City of Boulder, 195 Colo. 231, 577 P.2d 277 (1978); Sullivan v. Bd. of County Comm'rs, 692 P.2d 1106 (Colo. 1984).

Pleading requirements of section (a)(4) must yield to conflicting statutory procedures codified in § 40-6-115 of the Public Utilities Law. Silver Eagle Servs. v. P.U.C., 768 P.2d 208 (Colo. 1989).

Compliance with time limitation of section (b) required. Any challenge to an agency action under section (a)(4) must be perfected within the 30-day limitation of section (b) of this rule. Civil Serv. Comm'n v. District Court, 186 Colo. 308, 527 P.2d 531 (1974); Bd. of County Comm'rs v. Carter, 193 Colo. 225, 564 P.2d 421 (1977); Smith v. County of El Paso, 42 Colo. App. 316, 593 P.2d 979 (1979); Thorne v. Bd. of County Comm'rs, 638 P.2d 69 (Colo. 1981).

The failure to bring a section (a)(4) proceeding within 30 days of the enactment of the city rezoning ordinance is a jurisdictional defect under section (b). Snyder v. City of Lakewood, 189 Colo. 421, 542 P.2d 371 (1975); Bd. of County Comm'rs v. Carter, 193 Colo. 225, 564 P.2d 421 (1977).

Failure to bring the requisite certiorari action within 30 days as provided by section (b) of this rule is a jurisdictional defect. Lorenz v. City of Littleton, 38 Colo. App. 16, 550 P.2d 884 (1976); Gold Star Sausage Co. v. Kempf, 653 P.2d 397 (Colo. 1982); Sullivan v. Bd. of County Comm'rs, 692 P.2d 1106 (Colo. 1984).

Where the time for perfecting the review of a rezoning decision, pursuant to section (a)(4) had expired at the time indispensable parties were added as parties defendant, the failure of the plaintiffs to perfect their petition for certiorari review within 30 days constituted a fatal defect which required that the complaint be dismissed, since the requirements of section (b) must be construed as a statute of limitation. Westlund v. Carter, 193 Colo. 129, 565 P.2d 920 (1977).

Failure to pursue timely remedies bars declaratory judgment action. Plaintiff's failure to pursue remedies provided in § 24-4-106, judicial review under the administrative procedure act, and section (a)(4) of this rule in a timely manner bars a declaratory judgment action. Greyhound Racing Ass'n v. Colo. Racing Comm'n, 41 Colo. App. 319, 589 P.2d 70 (1978).

Failure to file a claim for judicial review within 30 days is not jurisdictionally fatal when such claim is combined with a declaratory claim. Section (b) does not prevent the district court from considering a declaratory judgment claim that challenges the constitutionality of a city's zoning ordinance even though judicial review is barred for failure to file a timely claim. Danielson v. Zoning Bd. of Adjustment, 807 P.2d 541 (Colo. 1991).

But the district court may not exercise jurisdiction where claimant failed to challenge in the district court proceedings the facial constitutionality of a city's zoning ordinance. The district court may not raise the constitutional issue on its own motion. Danielson v. Zoning Bd. of Adjustment, 807 P.2d 541 (Colo. 1991).

Plaintiff need not cause district court to issue citation in 30 days. Perfection of an appeal under this rule does not require that the

plaintiff cause the district court to issue a citation within the same 30-day period. Info. Please, Inc. v. District Court, 194 Colo. 42, 568 P.2d 1162 (1977).

Necessity for calling attention to lack of jurisdiction. Order in the nature of a writ of prohibition will not be issued to an inferior court unless the attention of the court whose proceedings it is sought to arrest first has been called to the lack of jurisdiction alleged, unless extraordinary circumstances are present. Justice Court of Precinct No. 1 v. People ex rel. Harvey, 109 Colo. 287, 124 P.2d 934 (1942).

Prohibition will not issue where the attention of the inferior tribunal has not been called to its alleged lack of jurisdiction, since one summoned can appear specially in the court or quasi-judicial agency to move that process be quashed as to him. The court in such cases is vested with power to determine whether it has jurisdiction. City of Thornton v. Pub. Utils. Comm'n, 154 Colo. 431, 391 P.2d 374 (1964).

Prohibition will not issue where the attention of the inferior tribunal has not been called to its alleged lack of jurisdiction. Town of Vail v. District Court, 163 Colo. 305, 430 P.2d 477 (1967).

Joinder of all of petitioner's claims in one action required. When an action is timely filed under section (a)(4), public policy requires the joinder of all of the petitioner's claims in one action. Powers v. Bd. of County Comm'rs, 651 P.2d 463 (Colo. App. 1982).

This includes constitutional claims. Bd. of County Comm'rs v. Sundheim, 926 P.2d 545 (Colo. 1996).

Lack of jurisdiction for failure to join parties. This rule provides a 30-day limitation for filing an action for certiorari. Because an appeal must be perfected—as well as commenced—within the time period established, and part of the perfection of an appeal requires the joinder of indispensable parties, an amendment to a complaint seeking to add a party as indispensible to the action, filed after the time limitation for filing, was too late. City & County of Denver v. District Court, 189 Colo. 342, 540 P.2d 1088 (1975).

Standard for determining whether party must be joined. The correct standard for determining whether a party must be joined in a section (a)(4) action is that the appropriate municipal body to be joined is the inferior tribunal which made the decision being contested, and not some other municipal body. Gold Star Sausage Co. v. Kempf, 653 P.2d 397 (Colo. 1982).

Failure to join all indispensable parties in a C.R.C.P. 106 action within the time limit prescribed by the rule is a jurisdictional defect which requires dismissal of the action. Norby v. City of Boulder, 195 Colo. 231, 577 P.2d 277 (1978).

An action brought under section (a)(4) must be "perfected" as well as filed within the 30-day limit. Tri-State Generation & Transmission Co. v. City of Thornton, 647 P.2d 670 (Colo. 1982).

Indispensable parties must be correctly joined. Perfection of a challenge to an agency action includes the correct joinder of indispensable parties as required by C.R.C.P. 19. Bd. of County Comm'rs v. Carter, 193 Colo. 225, 564 P.2d 421 (1977).

Failure to join party in petition for review is not jurisdictionally fatal. Since a section (a)(4) petition may be amended to add parties, where the defendant does not protest or show prejudice, the failure to join a party as a named party defendant in the petition for review is not jurisdictionally fatal. Soon Yee Scott v. City of Englewood, 672 P.2d 225 (Colo. App. 1983).

The person whose rezoning application is challenged is an indispensable party to that proceeding. Bd. of County Comm'rs v. Carter, 193 Colo. 225, 564 P.2d 421 (1977).

Motion for new trial necessary before review. Proceedings under this rule are subject to C.R.C.P. 59 requiring a motion for new trial or an order dispensing therewith and such requirements apply whether the reviewing court acts as a trial court or as an appellate tribunal in reviewing the actions of a quasi-judicial tribunal. Colo. State Bd. of Exam'rs of Architects v. Marshall, 136 Colo. 200, 315 P.2d 198 (1957).

Under this rule it is necessary in actions in the nature of certiorari to move for a new trial. Walter v. Walter, 136 Colo. 405, 318 P.2d 221 (1957).

Lack of adequate appeal must be alleged. Carlton v. Carlton, 44 Colo. 27, 96 P. 995 (1908).

Taxpayers have standing to question scope of board powers. As taxpayers it is clear the relators have standing to question the legality of expenditures of public funds and to enjoin such expenditures if they are proved to be unconstitutional or without legal authority; they also have the right to question other acts of the school district that are alleged to be beyond the scope of its powers. People ex rel. Cory v. Colo. High Sch. Activities Ass'n, 141 Colo. 382, 349 P.2d 381 (1960).

This section makes no distinction between an aggrieved individual and a municipal corporation which seeks review in the interest of the public as a whole. Turner v. City & County of Denver, 146 Colo. 336, 361 P.2d 631 (1961).

Section (a)(4) provides a taxpayer a right of review in a state court from a proceeding in an inferior tribunal. Local 1497, Nat'l Fed'n of Fed. Employees v. City & County of Denver, 301 F. Supp. 1108 (D. Colo. 1969), appeal dismissed, 396 U.S. 273, 90 S. Ct. 561, 24 L. Ed. 2d 464 (1970).

Trial court's dismissal of petition for prohibition or mandamus was affirmed where plaintiffs, who brought the action in their official capacities as members of the board of county commissioners to protest state-ordered reappraisals of properties in the county, have neither standing nor legal authority to maintain this action; taxpayers who are adversely affected may have judicial review. Bd. of County Comm'rs v. Love, 172 Colo. 121, 470 P.2d 861 (1970).

A competitor is not a person substantially aggrieved by the district court action, which would give him a right to seek review under section (a)(4) of this rule. Woda v. City of Colo. Springs, 40 Colo. App. 173, 570 P.2d 1318 (1977).

The certification of the record is an official act of the inferior tribunal and is not necessarily contingent upon certification of the transcript of the proceedings by a certified shorthand reporter. Civil Serv. Comm'n v. Doyle, 174 Colo. 149, 483 P.2d 380 (1971).

In certain circumstances, a court, even in a certiorari proceeding, should order a remand to an administrative agency on clear-cut issues involving documentary evidence. Johnston v. City Council, 177 Colo. 223, 493 P.2d 651 (1972).

Action of municipal legislative body quasi-judicial. In order to support a finding that the action of a municipal legislative body is quasi-judicial and thus subject to review by certiorari, all of the following factors must exist: (1) A state or local law requiring that the body give adequate notice to the community before acting; (2) a state or local law requiring that the body conduct a public hearing, pursuant to notice, at which time concerned citizens must be given an opportunity to be heard and present evidence; and (3) a state or local law requiring the body to make a determination by applying the facts of a specific case to certain criteria established by law. Snyder v. City of Lakewood, 189 Colo. 421, 542 P.2d 371 (1975).

Rezoning quasi-judicial. Enactment of a rezoning ordinance by the legislative body of a city, governed by both state zoning statutes as well as the municipal code, pursuant to statutory criteria, after notice and a public hearing, constitutes a quasi-judicial function subject to certiorari review. Snyder v. City of Lakewood, 189 Colo. 421, 542 P.2d 371 (1975).

Although early decisions viewed the enactment of rezoning ordinances as a legislative function, more recent decisions have held such activity to be a quasi-judicial function and reviewable under section (a)(4). Snyder v. City of Lakewood, 189 Colo. 421, 542 P.2d 371 (1975).

Rezoning procedures are reviewed under section (a)(4) of this rule as quasi-judicial activities. Corper v. City & County of Denver, 36 Colo. App. 118, 536 P.2d 874 (1975), aff'd, 189 Colo. 421, 552 P.2d 13 (1976).

The amendment of a general zoning ordinance is a quasi-judicial act reviewable under this rule. Corper v. City & County of Denver, 191 Colo. 252, 552 P.2d 13 (1976).

Exclusive when entire zoning ordinance not challenged. Section (a)(4) is now an exclusive remedy to challenge a rezoning determination where the entire general zoning ordinance is not challenged and where a review of the record would be an adequate remedy. Snyder v. City of Lakewood, 189 Colo. 421, 542 P.2d 371 (1975); Corper v. City & County of Denver, 191 Colo. 252, 552 P.2d 13 (1976); Higby v. Bd. of County Comm'rs, 689 P.2d 635 (Colo. App. 1984).

Certiorari relief is the exclusive remedy for allegedly invalid rezoning. Gold Run, Ltd. v. Bd. of County Comm'rs, 38 Colo. App. 44, 554 P.2d 317 (1976).

Section (a) of this rule is the exclusive process to challenge a rezoning determination as to specific property. Bd. of County Comm'rs v. Carter, 193 Colo. 225, 564 P.2d 421 (1977).

Section (a)(4) of this rule provides the exclusive remedy for challenging a rezoning determination of specific land. Westlund v. Carter, 193 Colo. 129, 565 P.2d 920 (1977).

This rule provides the exclusive remedy for challenging a rezoning determination and the time limitations for certiorari review. Info. Please, Inc. v. District Court, 194 Colo. 42, 568 P.2d 1162 (1977).

Exclusive where specific amendatory zoning ordinance challenged. Where plaintiff was challenging a specific amendatory ordinance as applied to the property of the defendants and not the general zoning ordinance of the city, his exclusive remedy was to bring an action for certiorari review under section (a)(4), and, thus, his initial complaint seeking a declaratory judgment and injunctive relief was properly dismissed. Lorenz v. City of Littleton, 38 Colo. App. 16, 550 P.2d 884 (1976).

Where denial of variance challenged. Where denial of a variance from a county building code requirement was challenged, then a section (a)(4) proceeding was the exclusive remedy. Van Huysen v. Bd. of Adjustment, 38 Colo. App. 9, 550 P.2d 874 (1976).

Property owners can maintain claim under 42 U.S.C. § 1983 against planning board for violations of federal constitutional rights even though this rule purports to be the exclusive remedy for challenging zoning decisions since the owners are seeking monetary damages under that claim and not declaratory or injunctive relief. Sclavenitis v. Cherry Hills Bd. of Adjustment, 751 P.2d 661 (Colo. App. 1988).

A § 1983 damage claim exists separately from an action for reviewing a quasi-judicial decision made by a government entity and,

accordingly, the § 1983 claim is not required to be filed within the 30-day rule set forth in this rule. Bd. of County Comm'rs v. Sundheim, 926 P.2d 545 (Colo. 1996).

Plaintiff's claim for permanent injunction moot and judgment dismissing action proper when plaintiff failed to seek temporary or preliminary injunctive relief in connection with challenge to zoning ordinance which authorized construction of facility, coupled with actual completion of facility during pending litigation. Zoning Bd. of Adjustment v. DeVilbiss, 729 P.2d 353 (Colo. 1986).

City and zoning administrators are proper parties to bring decision of board of adjustment before district court and ultimately appeal to court of appeals. City & County of Denver v. Bd. of Adjustment, 31 Colo. App. 324, 505 P.2d 44 (1972).

Judicial review of denial of rezoning of land is properly limited to review of record of proceedings before county planning commission and county commissioners. Famularo v. Bd. of County Comm'rs, 180 Colo. 333, 505 P.2d 958 (1973).

Where the zoning body has established requirements governing a particular use and the developer has met those requirements, the zoning body exceeded its jurisdiction when, using its discretion, it rejected the developer's plan. Sherman v. City of Colo. Springs Planning Comm'n, 680 P.2d 1302 (Colo. App. 1983); Sherman v. Colo. Springs Planning Comm'n, 763 P.2d 292 (Colo. 1988).

And where developer's plan met the requirements of the city zoning ordinance, and the city's action in approving or denying the developer's plan was quasi-judicial in nature, the proper remedy available to the developer was certiorari under section (a)(4) and not mandamus under section (a)(2), and the developer was not entitled to damages. Sherman v. Colo. Springs Planning Comm'n, 763 P.2d 292 (Colo. 1988).

The weighing of evidence and the determination of fact are functions of the rezoning board and are not matters for consideration upon appellate review. Coleman v. Gormley, 748 P.2d 361 (Colo. App. 1987).

Approval by city council of initial petition for formation of special district within boundaries of city was legislative in nature and action not reviewable pursuant to this rule. State Farm v. City of Lakewood, 788 P.2d 808 (Colo. 1990).

Zoning board's approval of rezoning application was final only when board executed and approved development plan and filing deadline commenced on that date. Luck v. Bd. of County Comm'rs, 789 P.2d 475 (Colo. App. 1990).

A zoning ordinance amendment is not subject to review pursuant to this rule where the amendment is of general application, may be enacted by initiative, and is subject to referendum. Russell v. City of Central, 892 P. 2d 432 (Colo. App. 1995).

Board exceeded its jurisdiction and acted arbitrarily and capriciously where it approved a special review land use that was dependent on the validity of an ordinance. Russell v. City of Central, 892 P.2d 432 (Colo. App. 1995).

Whatever form a final decision may take in any given context, a party whose property interests are adversely affected by it may not, in the absence of timely notice of the decision, be deprived of review for failing to seek it in a timely manner. Citizens for Resp. Growth v. RCI Dev. Ptr., 252 P.3d 1104 (Colo. 2011).

The loss of a right to judicial review for failure to timely file in the absence of adequate notice would clearly violate due process of law. By including the disposition of two related applications in the written resolution it was required to formally adopt to approve land developer's 1041 application, the board of county commissioners made clear its intent to supersede, or finalize, the earlier oral adoption of all three applications. Where the ripeness of neither the planned unit development application nor the preliminary subdivision plat application was disputed, the complaint seeking judicial review of both was timely filed. Citizens for Resp. Growth v. RCI Dev. Ptr., 252 P.3d 1104 (Colo. 2011).

Section (a)(4) held improperly applied in wrongful discharge, outrageous conduct, and civil rights action against town. Wilson v. Town of Avon, 749 P.2d 990 (Colo. App. 1987).

District court does not have jurisdiction under this rule to review an interlocutory order of a state administrative agency, absent a showing of irreparable harm from such order. T & S Leasing v. District Court, 728 P.2d 729 (Colo. 1986).

Since municipal court rules became effective on April 1, 1970, the argument that there is no established procedure in the municipal courts is therefore moot. Municipal Court v. Brown, 175 Colo. 433, 488 P.2d 61 (1971).

Motion for new trial not required. A motion for new trial to secure appellate review of a district court's judgment in a proceeding under this rule is not required where the hearing in the district court did not involve controverted issues of fact. Cline v. City of Boulder, 35 Colo. App. 349, 532 P.2d 770 (1975).

The administrative and judicial review provisions of the Workmen's Compensation Act of Colorado are complete, definitive, and organic, without the need of supplementation from other legislative acts or the procedural relief afforded by C.R.C.P. 16. Gardner v. Friend, 849 P.2d 817 (Colo. App. 1992).

Denial of a non-conforming use application and denial of a variation application were final decisions for purposes of this rule and judicial review was the exclusive remedy for review of such decisions. A petition for review was, therefore, subject to the 30-day filing deadline. Buck v. Park, 839 P.2d 498 (Colo. App. 1992).

But, where the decision of the commission was merely a recommendation to the city council and the city council had responsibility for the final decision, the decision of the commission was not final agency action and was not appealable. Buck v. Park, 839 P.2d 498 (Colo. App. 1992).

A temporary civil protection order issued by a county under § 13-14-104.5 (1)(a) is not a final decision for purposes of review under section (a)(4) of this rule. Martin v. Arapahoe County Court, 2016 COA 154, __ P.3d __.

Absent a showing of prejudice, the premature filing of an appeal does not preclude the court from addressing the case on its merits. Save Park County v. Bd. of County Comm'rs, 969 P.2d 711 (Colo. App. 1998), aff'd on other grounds, 990 P.2d 35 (Colo. 1999).

Certiorari review is not appropriate to review the decision of a sheriff or a chief of police denying an application for a concealed weapons permit. Miller v. Collier, 878 P.2d 141 (Colo. App. 1994).

The scope of this rule includes prison disciplinary proceedings. Mariani v. Colo. Dept. of Corr., 956 P.2d 625 (Colo. App. 1997).

Applied in Shearer v. Bd. of Trustees of Firemen's Pension Fund, 121 Colo. 592, 218 P.2d 753 (1950); Rothwell v. Coffin, 122 Colo. 140, 220 P.2d 1063 (1950); Bacon v. Steigman, 123 Colo. 62, 225 P.2d 1046 (1950); Berger v. People, 123 Colo. 403, 231 P.2d 799, cert. denied, 342 U.S. 837, 72 S. Ct. 62, 96 L. Ed. 633 (1951); Mardi, Inc. v. City & County of Denver, 151 Colo. 28, 375 P.2d 682 (1962); Fort Collins-Loveland Water Dist. v. City of Fort Collins, 174 Colo. 79, 482 P.2d 986 (1971); North Kiowa-Bijou Mgt. Dist. v. Ground Water Comm'n, 180 Colo. 313, 505 P.2d 377 (1973); City of Lakewood v. District Court, 181 Colo. 69, 506 P.2d 1228 (1973); Ross v. Fire & Police Pension Ass'n, 713 P.2d 1304 (Colo. 1986); Gallagher v. County Court, 759 P.2d 859 (Colo. App. 1988).

B. Extent of Review.

Scope of review strictly limited. The scope of review granted to the district court in a proceeding under section (a)(4) of this rule is strictly limited. City of Colo. Springs v. District Court, 184 Colo. 177, 519 P.2d 325 (1974).

It is beyond the scope of this rule to challenge administrative regulations on the grounds that such rules are vague and overbroad. Mariani v. Colo. Dept. of Corr., 956 P.2d 625 (Colo. App. 1997).

In an appeal from a judgment entered in a proceeding under this rule, the court of appeals is in the same position as the district court concerning the review of the county court proceeding. Empiregas, Inc. of Pueblo v. County Court, 713 P.2d 937 (Colo. App. 1985).

In reviewing a local board of adjustment's decision pursuant to section (a)(4) of this rule, the court of appeals calls into question the decision of the board itself, not the district court's determination on review. The review is based solely on the record that was before the board, and the decision must be affirmed unless there is no competent evidence in the record to support it such that it was arbitrary or capricious. The court considers whether the board abused its discretion or exceeded its jurisdiction, as well as whether it applied an erroneous legal standard. City & County of Denver v. Bd. of Adjustment, 55 P.3d 252 (Colo. App. 2002); Lieb v. Trimble, 183 P.3d 702 (Colo. App. 2008).

This rule limits the issuance of orders in the nature of prohibition to cases where an inferior tribunal has exceeded its jurisdiction or abused its discretion in exercising judicial or quasi-judicial functions, and where there is no plain, speedy, or adequate remedy. Banking Bd. v. District Court, 177 Colo. 77, 492 P.2d 837 (1972).

In other words the scope of review is limited to the inquiry as to whether jurisdiction has been exceeded, discretion abused, or authority regularly pursued. City Council v. Hanley, 19 Colo. App. 390, 75 P. 600 (1904); Graeb v. State Bd. of Med. Exam'rs, 55 Colo. 523, 139 P. 1099 (1913); Chenoweth v. State Bd. of Med. Exam'rs, 57 Colo. 74, 141 P. 132 (1914); Thompson v. State Bd. of Med. Exam'rs, 59 Colo. 549, 151 P. 436 (1915); State Bd. of Med. Exam'rs v. Noble, 65 Colo. 410, 177 P. 141 (1918); State Bd. of Med. Exam'rs v. Boulls, 69 Colo. 361, 195 P. 325 (1920); State Bd. of Med. Exam'rs v. Brown, 70 Colo. 116, 198 P. 274 (1921); White v. Andrew, 70 Colo. 50, 197 P. 564 (1921); Dilliard v. State Bd. of Med. Exam'rs, 69 Colo. 575, 196 P. 866 (1921); Doran v. State Bd. of Med. Exam'rs, 78 Colo. 153, 240 P. 335 (1925); State Bd. of Med. Exam'rs v. Spears, 79 Colo. 588, 247 P. 563 (1926); Bd. of Comm'rs v. Dunlap, 83 Colo. 360, 265 P. 94 (1928); Pub. Utils. Comm'n v. City of Loveland, 87 Colo. 556, 289 P. 1090 (1930); State Bd. of Dental Exam'rs v. Savelle, 90 Colo. 177, 8 P.2d 693 (1932); Pub. Utils. Comm'n v. Erie, 92 Colo. 151, 18 P.2d 906 (1933); City & County of Denver v. People ex rel. Pub. Utils. Comm'n, 129 Colo. 41, 266 P.2d 1105 (1954).

The court can review the action of the state board of medical examiners only upon the ques-

tion of jurisdiction or great abuse of discretion. White v. Andrew, 70 Colo. 50, 197 P. 564 (1921).

The remedy is restricted in its inquiry to jurisdictional questions and to a manifest abuse of discretion. State Civil Serv. Comm'n v. Cummings, 83 Colo. 379, 265 P. 687 (1928).

Under section (a)(4) the court is limited to a determination of questions of jurisdiction and abuse of discretion. Hawkins v. Hunt, 113 Colo. 468, 160 P.2d 357 (1945); Shupe v. Boulder County, 230 P.3d 1269 (Colo. App. 2010).

A review of the action of the state board of health in revoking a license for the operation of a chiropractic sanitarium was held to be limited to the inquiry as to whether jurisdiction has been exceeded, discretion abused, or authority regularly pursued. Spears Free Clinic & Hosp. for Poor Children v. State Bd. of Health, 122 Colo. 147, 220 P.2d 872 (1950).

The sole matter before a trial court under the record is governed by this rule and limits the inquiry to a determination of whether the licensing authority has exceeded its jurisdiction or abused its discretion. Bacher v. Bd. of County Comm'rs, 136 Colo. 67, 314 P.2d 607 (1957).

Under this rule the function of the district court is to determine whether the respondent authorities have exceeded their jurisdiction or abused their discretion. La Junta Easy Shops, Inc. v. Hendren, 164 Colo. 55, 432 P.2d 754 (1967).

The breadth of the district court's review does not extend further than to determine whether the inferior tribunal has exceeded its jurisdiction or abused its discretion. City of Colo. Springs v. District Court, 184 Colo. 177, 519 P.2d 325 (1974).

An appellate court's review under section (a)(4) is limited to a determination of whether the governmental body or officer has exceeded its jurisdiction or abused its discretion, based on the evidence in the record before the defendant body or officer. Since the question is whether there is adequate support for the decision reached by the administrative tribunal, the appellate court is in the same position as the district court in reviewing an administrative decision under section (a)(4). Ad Two, Inc. v. City & County of Denver, 9 P.3d 373 (Colo. 2000); Covered Bridge, Inc. v. Town of Vail, 197 P.3d 281 (Colo. App. 2008).

Review of a prison disciplinary decision is limited to whether the prison officials exceeded their jurisdiction or abused their discretion. Under this standard, the decision of the prison officials must be upheld if there is "some evidence" to support it. Washington v. Atherton, 6 P.3d 346 (Colo. App. 2000).

Consideration of evidence relevant to jurisdiction proper. In determining whether the board had exceeded its jurisdiction or abused its discretion, the trial court properly gave consideration to evidence of material facts which could not escape notice, and did not substitute the decision of the board. Bd. of Adjustment v. Abe Perlmutter Constr. Co., 131 Colo. 230, 280 P.2d 1107 (1955).

The merits of the case are not involved. On proceedings to review an order of an administrative body the only questions presented are: Did the board exceed its jurisdiction, or abuse its discretion? The merits of the controversy are not involved. State Bd. of Med. Exam'rs v. Noble, 65 Colo. 410, 177 P. 141 (1918).

It brings up no issue of law or fact not involved in the question of jurisdiction. Under no circumstances can the review be extended to the merits. Upon every question except the mere question of power, the action of the inferior tribunal is final and conclusive. State Bd. of Med. Exam'rs v. Brown, 70 Colo. 116, 198 P. 274 (1921).

Whether a decision on the merits is right or wrong is not within the issue. State Bd. of Med. Exam'rs v. Brown, 70 Colo. 116, 198 P. 274 (1921); State Bd. of Med. Exam'rs v. Spears, 79 Colo. 588, 247 P. 563, 54 A.L.R. 1498 (1926).

It does not settle disputed facts. The object of the proceeding is not to settle or determine disputed facts, but to investigate and correct errors of law of a jurisdictional nature, and abuses of discretion. Doran v. State Bd. of Med. Exam'rs, 78 Colo. 153, 240 P. 335 (1925).

A district court could not, in proceedings to determine whether a justice of the peace exceeded his jurisdiction, determine disputed questions of fact. Toland v. Strohl, 147 Colo. 577, 364 P.2d 588 (1961).

Mere irregularities are not reviewable. Phillips County Court v. People ex rel. Chicago, B. & Q. R. R., 55 Colo. 258, 133 P. 752 (1913).

Mere disagreement with a ruling is not sufficient showing of abuse of discretion to require issuance of a writ of prohibition. Bristol v. County Court, 143 Colo. 306, 352 P.2d 785 (1960).

Judgment of lower court will not be rejudged on merits. While power is vested in the courts to review the proceedings of all inferior jurisdictions to correct jurisdictional errors, they will not rejudge their judgments on the merits. The correctional power extends no further than to keep them within the limits of their jurisdiction, and to compel them to exercise it with regularity. Bd. of Aldermen v. Darrow, 13 Colo. 460, 22 P. 784 (1889); State Bd. of Land Comm'rs v. Carpenter, 16 Colo. App. 436, 66 P. 165 (1901).

The district court has no jurisdiction to review the action of a city council in a matter of contest of election of its members, and to determine whether the action of the council in such contested election was justified by the evidence.

City Council v. Hanley, 19 Colo. App. 390, 75 P. 600 (1904).

Section (a)(4) not substitute for available statutory review. A party cannot substitute proceedings seeking declaratory and injunctive relief under section (a)(4) for an available avenue of plain, speedy and adequate review prescribed by the general assembly. Claskey v. Klapper, 636 P.2d 682 (Colo. 1981).

Review pursuant to C.R.C.P. 57 is appropriate where section (a)(4) relief is unavailable because the challenged action is legislative or because review of the record is an insufficient remedy. Grant v. District Court, 635 P.2d 201 (Colo. 1981).

The court acted within its discretion in dismissing a claim for declaratory relief under C.R.C.P. 57, because the review provided under this rule had already considered all the issues in that claim. Denver Center for Performing Arts v. Briggs, 696 P.2d 299 (Colo. 1985).

Section (a)(4) cannot be substituted for an appeal. When a county court overruled defendant's motion to vacate the judgment, it had jurisdiction over the subject matter and over the person of the defendant and exercised that jurisdiction regularly. It may be that it ought to have vacated the judgment and that it committed error in not doing so, but this is a matter to be determined by appeal and not by a proceeding under section (a)(4). Pierce v. Hamilton, 55 Colo. 448, 135 P. 796 (1913).

The words "abuse of discretion" in section (a)(4) do not mean such an abuse of discretion as may be committed by a court in overruling a motion to vacate a judgment when the action of the court may be reviewed on appeal, for otherwise an action would lie to review the action of a county court in refusing to set aside a default and vacate a judgment taken thereon in almost any case. Pierce v. Hamilton, 55 Colo. 448, 135 P. 796 (1913).

"Abuse of discretion" does not entail only acts in excess of jurisdiction, and this section is not therefore limited solely to a determination of whether the inferior tribunal exceeded its jurisdiction. Ragsdale v. County Court, 39 Colo. App. 341, 567 P.2d 817 (1977).

Thus, claim of unconstitutionality is not considered. The question of constitutionality of a statute under which the executive department is proceeding is a matter to be raised on appeal after the executive has performed its function. Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958); People ex rel. Orcutt v. District Court, 167 Colo. 162, 445 P.2d 887 (1968); Colo. Dept. of Rev. v. District Court ex rel. County of Adams, 172 Colo. 144, 470 P.2d 864 (1970).

Where the only question before the Colorado courts was the validity of an ordinance, and plaintiff could obtain relief only if the ordinance were held to be invalid, and where his allegations were adequate for this purpose, and that was the issue upon which the case was tried and decided, this rule was not applicable. Heron v. City of Denver, 251 F.2d 119 (10th Cir. 1958).

Contentions of unconstitutionality under this rule provide no basis for jurisdiction in the district court under this rule. People ex rel. Orcutt v. District Court, 167 Colo. 162, 445 P.2d 887 (1968).

De novo review was impermissible under this rule. Hessling v. City of Broomfield, 193 Colo. 124, 563 P.2d 12 (1977).

A trial de novo of the issues in a municipal court cannot be had under the certiorari provisions of this rule. Serra v. Cameron, 133 Colo. 115, 292 P.2d 340 (1956).

In a certiorari proceeding, the reviewing court is to ascertain from the record of the lower tribunal alone whether the inferior tribunal regularly pursued its authority, and thereupon pronounce judgment accordingly. Johnston v. City Council, 177 Colo. 223, 493 P.2d 651 (1972).

In the absence of some showing of facts, either in the petition for review or in the supporting affidavits, which would tend to indicate that the city council's action was arbitrary or an abuse of discretion, the district court's review under section (a)(4) of this rule is limited to the record before it. City of Colo. Springs v. District Court, 184 Colo. 177, 519 P.2d 325 (1974).

Reviewing court on certiorari review of an administrative body's decision is limited to what appeared of record. Ford Leasing Dev. Co. v. Bd. of County Comm'rs, 186 Colo. 418, 528 P.2d 237 (1974).

District court review under this rule proceeding is limited to the record. Cline v. City of Boulder, 35 Colo. App. 349, 532 P.2d 770 (1975).

In a certiorari proceeding pursuant to section (a)(4), the district court's review is limited to a review of the record before it and introduction of new testimony is not appropriate. Hazelwood v. Saul, 619 P.2d 499 (Colo. 1980).

In reviewing a decision pursuant to this rule, an appellate court must review the decision of the agency rather than the decision of the district court; review of an agency's findings of fact is limited to whether the agency had competent evidence on which to base its decision. Save Park County v. Bd. of County Comm'rs, 969 P.2d 711 (Colo. App. 1998), aff'd on other grounds, 990 P.2d 35 (Colo. 1999).

The reviewing court must also determine whether an agency misconstrued or misapplied the law; the agency's interpretation of its own regulations must be reviewed to ensure that it does not amend its regulations in the guise of interpreting them. Save Park County v. Bd. of County Comm'rs, 969 P.2d 711 (Colo. App. 1998), aff'd on other grounds, 990 P.2d 35 (Colo. 1999).

Taking testimony is unnecessary for review. In the course of hearing under a writ of certiorari, this section sets up the correct procedure. Essentially it is a review proceeding of an inferior tribunal and thus testimony is not in order. Toland v. Strohl, 147 Colo. 577, 364 P.2d 588 (1961).

District court on its own motion may not order a remand to supplement the record where the evidence had been presented on all issues necessary for a determination of the validity of the action taken and the record is complete. Cline v. City of Boulder, 35 Colo. App. 349, 532 P.2d 770 (1975); Garland v. Bd. of County Comm'rs, 660 P.2d 20 (Colo. App. 1982).

Court cannot interfere with commission's findings if supported by competent evidence. The scope of review in certiorari proceedings, and the authority of courts to interfere with the findings of tribunals vested with exclusive jurisdiction to determine particular issues has been judicially defined. The reviewing court cannot consider whether the commission's findings are right or wrong, substitute its judgment for that of the commission, or interfere in any manner with the commission's findings if there is any competent evidence to support the same. State Civil Serv. Comm'n v. Hazlett, 119 Colo. 173, 201 P.2d 616 (1948).

The lawful determination of a properly constituted authority will not be interfered with when the record discloses competent evidence on which it is based, and the action of the inferior tribunal appears to be neither arbitrary nor capricious. Marker v. City of Colo. Springs, 138 Colo. 485, 336 P.2d 305 (1959).

Where civil service commission, acting in a quasi-judicial capacity, reviews record of proceedings before city manager of safety for purpose of determining whether police officers were properly discharged, and the evidence before the manager substantiated the charge and supported his findings and conclusions, the commission is bound by the manager's supported findings and may not adopt different conclusions to hold a de novo trial without expressly determining that the findings are not supported by the evidence, or that errors of law have occurred. Turner v. City & County of Denver, 146 Colo. 336, 361 P.2d 631 (1961).

The authority of the court and the scope of its review in certiorari proceedings is limited to a determination of whether there is any competent evidence to support the decision of the inferior tribunal. Civil Serv. Comm'n v. Doyle, 162 Colo. 1, 424 P.2d 368 (1967); Cooper v. Civil Serv. Comm'n, 43 Colo. App. 258, 604 P.2d 1186 (1979); Carney v. Civil Serv. Comm'n, 30 P.3d 861 (Colo. App. 2001).

While the reviewing court can determine that a portion of the test established by the civil service commission was arbitrary and capricious, the court cannot determine the remedy. Determination of a remedy is left to the commission. Carney v. Civil Serv. Comm'n, 30 P.3d 861 (Colo. App. 2001).

The proper function of a district court under this rule is to affirm a city council where there is "any competent evidence" to support the council's decision. Bauer v. City of Wheat Ridge, 182 Colo. 324, 513 P.2d 203 (1973).

A court subjecting a rezoning decision of a city zoning authority to this rule review must uphold the decision unless there is no competent evidence to support it. Corper v. City & County of Denver, 191 Colo. 252, 552 P.2d 13 (1976); Pub. Emp. Ret. Ass'n v. Stermole, 874 P.2d 444 (Colo. App. 1993); City of Colo. Springs v. Givan, 897 P.2d 753 (Colo. 1995); IBC Denver II, LLC v. City of Wheat Ridge, 183 P.3d 714 (Colo. App. 2008).

An administrative finding of fact must be upheld on review under section (a)(4) where competent evidence supports it in the record. Denver Ctr. for Performing Arts v. Briggs, 696 P.2d 299 (Colo. 1985); Elec. Power Res. v. City & County of Denver, 737 P.2d 822 (Colo. 1987); Fedder v. McCurdy, 768 P.2d 711 (Colo. App. 1989); Neighbors For A Better Approach v. Nepa, 770 P.2d 1390 (Colo. 1989).

Record must clearly show abuse of discretion. To authorize a court finding that a municipal zoning board has grossly abused its discretion in failing to restrict an owner in the use of his property, the record should clearly show such abuse when the complaint is made by those who seek a benefit to their own properties by the imposition of restrictions on others. Bd. of Adjustment v. Handley, 105 Colo. 180, 95 P.2d 823 (1939).

In a proper case for the issuance of the writ, the extent of the review by the district court should have been to ascertain from the record whether the county court regularly pursued its authority. Morefield v. Koehn, 53 Colo. 367, 127 P. 234 (1912).

The determination of whether there is competent evidence to support a lower tribunal's decision is made upon examination of the record of administrative proceedings, including a transcript of the testimony and other evidence before the inferior tribunal. Civil Serv. Comm'n v. Doyle, 162 Colo. 1, 424 P.2d 368 (1967).

Abuse of discretion means there is no competent evidence to support the decision. Ross v. Fire & Police Pension Ass'n, 713 P.2d 1304 (Colo. 1986); Bentley v. Valco, Inc., 741 P.2d 1266 (Colo. App. 1987).

A petition for certiorari showing on its face that no relief could be granted, was properly dismissed without further inquiry. Berry v. State Bd. of Parole, 148 Colo. 547, 367 P.2d 338 (1961), cert. denied, 370 U.S. 927, 82 S. Ct. 1569, 8 L. Ed. 2d 507 (1962).

In order for a court to set aside a decision of an administrative body on certiorari review, there must be no competent evidence to support the decision. Ford Leasing Dev. Co. v. Bd. of County Comm'rs, 186 Colo. 418, 528 P.2d 237 (1974).

Court review of agency decision under this rule limited to matters contained within the record of the proceeding before the agency. Fedder v. McCurdy, 768 P.2d 711 (Colo. App. 1989).

Burden of providing record on petitioner. In appealing an administrative decision to the district court, the burden of providing an adequate record is upon the administrative agency on the order to show cause from the district court. Civil Serv. Comm'n v. Doyle, 174 Colo. 149, 483 P.2d 380 (1971).

Burden of proof on petitioner. A party seeking to invoke prohibition to restrain county court from proceeding in a pending action has the burden of establishing facts justifying its application. Bristol v. County Court, 143 Colo. 306, 352 P.2d 785 (1960).

A zoning ordinance is presumed to be valid, and one assailing it bears the burden of overcoming that presumption, and the courts must indulge every intendment in favor of its validity. Huneke v. Glaspy, 155 Colo. 593, 396 P.2d 453 (1964).

One claiming the invalidity of a rezoning ordinance has the burden of establishing its invalidity beyond a reasonable doubt. Corper v. City & County of Denver, 191 Colo. 252, 552 P.2d 13 (1976).

Before relief can be granted under section (a)(4), the plaintiff must prove that the inferior tribunal lacked jurisdiction or abused its discretion. Clary v. County Court, 651 P.2d 908 (Colo. App. 1982).

Threshold showing required to avoid strict application of rule requiring record review only. The burden is on the person seeking review to show that either there are imperfections in the record as well as resulting prejudice or that members of the board improperly considered evidence not before the board or that members engaged in improper conduct affecting the result of the board. Whelden v. Bd. of County Comm'rs, 782 P.2d 853 (Colo. App. 1989).

Incomplete record leaving nothing to review requires reversal. Imperfection of a determination of an administrative board which leaves no avenue for a court to take in reviewing the matter, and which furnishes no basis upon which to resolve whether the board may or may not be sustained, requires reversal. Bd. of County Comm'rs v. Salardino, 136 Colo. 421, 318 P.2d 596 (1957).

In absence of record, taking testimony on jurisdiction not improper. A district court could hardly determine whether a justice of the peace exceeded his jurisdiction when it has no record before it. In the circumstances, the court's action in hearing testimony bearing on the issue of jurisdiction alone was not improper. Toland v. Strohl, 147 Colo. 577, 364 P.2d 588 (1961).

Civil service commission disciplinary decision upheld unless gross abuse of discretion. The discipline imposed by a civil service commission is a matter peculiarly within its area of expertise, and will not be interfered with by the courts in the absence of a gross abuse of discretion. Ramirez v. Civil Serv. Comm'n, 42 Colo. App. 383, 594 P.2d 1067 (1979).

Review of quasi-judicial action. Decision of a hearing officer for the Denver career service board is sustained when it is shown that the findings are supported by "any competent evidence". Jimerson v. Prendergast, 697 P.2d 804 (Colo. App. 1985); Mayerle v. Civil Serv. Comm'n, 738 P.2d 1198 (Colo. App. 1987); Getsch v. Hawker, 748 P.2d 1304 (Colo. App. 1987).

Role of a district court on review of a rezoning application is to affirm the findings of fact of a city council if there is "any competent evidence" in the record to support the findings. Dillon Cos. v. City of Boulder, 183 Colo. 117, 515 P.2d 627 (1973).

Ex parte exchanges may not arbitrarily be screened from appellate scrutiny. Ex parte exchanges between an advocate and an adjudicatory tribunal may not arbitrarily be screened from appellate scrutiny. Peoples Natural Gas Div. v. Pub. Utils. Comm'n, 626 P.2d 159 (Colo. 1981).

Appellate court is in same position as district court when reviewing an administrative decision under this rule. The appropriate consideration for an appellate court is whether there is adequate evidentiary support for the decision reached by the administrative tribunal, not whether there is adequate evidentiary support for the lower court's decision on reviewing the record. City of Colo. Springs v. Givan, 897 P.2d 753 (Colo. 1995).

An administrative body's decision may be reversed only if there is no competent evidence to support the decision. McCann v. Lettig, 928 P.2d 816 (Colo. App. 1996).

"No competent evidence" means that there is an absence of evidence in the record to support the ultimate decision of the administrative body, and hence, the decision can only be explained as an arbitrary and capricious exercise of authority. McCann v. Lettig, 928 P.2d 816 (Colo. App. 1996).

"No competent evidence" means that the ultimate decision of the administrative body is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority. Cruzen v. Career Serv. Bd. of City & County of Denver, 899 P.2d 373 (Colo. App. 1995); Bd. of County Comm'rs of

Routt County v. O'Dell, 920 P.2d 48 (Colo. 1996); Carney v. Civil Serv. Comm'n, 30 P.3d 861 (Colo. App. 2001).

Court of appeals should not have reweighed the evidence in section (a)(4) action merely because the evidence considered by the board was documentary in nature. The competent evidence standard of review should have governed. Bd. of Comm'rs of Routt County v. O'Dell, 920 P.2d 48 (Colo. 1996).

A complete written transcript of the evidentiary phase of a proceeding before an agency is not required in order for the court to conduct a meaningful review of that agency's actions. Whether a review of an agency's actions is meaningful depends on whether the record contains sufficient competent evidence to support its decision. Martinez v. Bd. of Comm'rs, 992 P.2d 692 (Colo. App. 1999).

Meaningful review requires that there be a record that accurately and fully reflects the evidence relied upon and the findings of fact and conclusions of law from the agency's proceedings, so that a reviewing court is able to determine, upon the state of the record before it, whether the agency's actions were arbitrary and capricious. Martinez v. Bd. of Comm'rs, 992 P.2d 692 (Colo. App. 1999).

It is not unduly burdensome to require the plaintiff to produce an affidavit containing sufficient allegations and evidence to raise questions concerning whether competent evidence had been presented in support of an agency's decision. Martinez v. Bd. of Comm'rs, 992 P.2d 692 (Colo. App. 1999).

Scope of review on appeal is limited to determining whether the tribunal exceeded its jurisdiction or abused its discretion. Coates v. City of Cripple Creek, 865 P.2d 924 (Colo. App. 1993); Abbott v. Bd. of County Comm'rs of Weld County, 895 P.2d 1165 (Colo. App. 1995); McCann v. Lettig, 928 P.2d 816 (Colo. App. 1996).

Review of the decision of an administrative law judge is limited to a determination of whether the ALJ exceeded his or her jurisdiction or abused his or her authority. City & County of Denver v. Fey Concert Co., 960 P.2d 657 (Colo. 1998).

Section (a)(4)(I) does not provide the judicial standards of review of a decision of the public utilities commission; the controlling standards of a district court's review of a public utilities commission decision are provided in § 40-6-115. Ace West Trucking v. P.U.C., 788 P.2d 755 (Colo. 1990).

Inappropriate application of section (a)(4)(I) not reversible error. District court's use of incorrect standard of review of a decision of the public utilities commission did not constitute reversible error where record as a whole demonstrated that the court could not have otherwise resolved the issues applying the correct standard of review. Ace West Trucking v. Pub. Utils. Comm'n, 788 P.2d 755 (Colo. 1990).

The proceedings authorized by section (a)(4) cannot be substituted for regular appellate procedures and this rule may not be used to review pretrial evidentiary rulings. People v. Adams County Court, 793 P.2d 655 (Colo. App. 1990).

The trial court's scope of review in proceeding under this rule was strictly limited to determining whether the board for the fire and police pension association, in conducting a hearing under the Board's rules, exceeded its jurisdiction or abused its discretion. Pueblo v. Fire & Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

In reviewing action of administrative agency, court may consider whether agency's hearing officer misconstrued or misapplied law in making a determination as to abuse of discretion. Stamm v. City & County of Denver, 856 P.2d 54 (Colo. App. 1993).

When interpreting an ordinance, a court may review its other provisions in order to construe the disputed section in context. Humana, Inc. v. Bd. of Adjustment, 537 P.2d 741 (Colo. 1975); Abbott v. Bd. of County Comm'rs of Weld County, 895 P.2d 1165 (Colo. App. 1995).

The construction of an ordinance by administrative officials charged with its enforcement should be given deference by the courts and if there is a reasonable basis for the administrative agency's application of the law, the decision may not be set aside on review. Abbott v. Bd. of County Comm'rs of Weld County, 895 P.2d 1165 (Colo. App. 1995); Covered Bridge, Inc. v. Town of Vail, 197 P.3d 281 (Colo. App. 2008).

The court may not set aside an administrative board's interpretation of the law if it is supported by a reasonable basis. Lieb v. Trimble, 183 P.3d 702 (Colo. App. 2008); Covered Bridge, Inc. v. Town of Vail, 197 P.3d 281 (Colo. App. 2008).

Appeals involving sufficiency of the evidence determinations are generally discouraged. People v. Holder, 658 P.2d 870 (Colo. 1983); Abbott v. County Ct. in & for County of Grand, 886 P.2d 730 (Colo. 1994).

Judicial review of prison disciplinary proceedings must take into account the correctional setting of the proceeding and state's interest in safe and efficient operation of its prison system. Review of a prison disciplinary decision is limited to whether the prison officials exceeded their jurisdiction or abused their discretion. A reviewing court must uphold the decision of the prison officials if the decision is supported by some evidence in the record. The scope of judicial review in this type of case is very limited. Thomas v. Colo. Dept. of Corr., 117 P.3d 7 (Colo. App. 2004).

C. Illustrative Cases.

Challenge must await exercise of statutory duties. In an action by package liquor licensees to compel the secretary of state to prohibit other licensees from making deliveries to customers, there was nothing upon which certiorari can operate where there are no proceedings before the secretary of state for the court to review, where there is no complaint of excess of jurisdiction, and the secretary of state not having acted at all, cannot be said to have abused his discretion. Ahern v. Baker, 148 Colo. 408, 366 P.2d 366 (1961).

After the agriculture commissioner has determined the amount of the assessment and called for collection, if payment is not forthcoming, then the commissioner may file a claim for collection of the assessment. It is at such time that the corporate respondents have a full and complete opportunity to challenge the assessment. Until the commissioner makes a determination of the amount of the assessment, the judiciary has no jurisdiction to interfere where the commissioner is merely exercising his statutory duties. People ex rel. Orcutt v. District Court, 167 Colo. 162, 445 P.2d 887 (1968).

Restricted statutory review was not adequate remedy at law. Where by the terms of the ordinance there could be no dispute but that the Denver board of adjustment, having resort solely to the terms of the ordinance, would be bound to find that the building permit was in error, and in any further "appeal" under the ordinance prescribed certiorari procedure, the court would be confined to a review of the record upon that same restricted issue under section (a) of this rule, and likewise could only affirm that the permit did not comply with the ordinance terms, plaintiff did not have an "adequate remedy at law" by an ordinance-appeal since the board was powerless, because of its restricted jurisdiction to reverse the revocation of the permit on the grounds of equitable estoppel due to advanced construction or to do anything other than affirm that the permit did not comply with the requirements of the ordinance. City & County of Denver v. Stackhouse, 135 Colo. 289, 310 P.2d 296 (1957).

Failure to exhaust statutory review bars remedy under rule. A claimant who fails to seek a review of an industrial commission order in the district court within the 20-day period specified by § 8-53-107 is thereafter barred from asking judicial review and cannot obtain what amounts to similar relief by asserting a right under section (a)(2) and section (4). Vigil v. Indus. Comm'n, 160 Colo. 23, 413 P.2d 904 (1966).

Not applicable where breach of contract alleged. Section (a)(4) of this rule, review in the nature of certiorari, is applicable where a party is attacking an action taken by a board. However, that rule is directed to an action against the board for exceeding its jurisdiction or abusing its discretion, but permits relief only where there is no "plain, speedy, and adequate remedy", and thus does not apply where the plaintiffs allege a breach of a preexisting contract. Ebke v. Julesburg Sch. Dist. No. RE-1, 37 Colo. App. 349, 50 P.2d 355 (1976), aff'd on other grounds, 193 Colo. 40, 562 P.2d 419 (1977).

Neither district court nor court of appeals can properly review county court's finding of probable cause in a proceeding under this rule. Zaharia v. County Court ex rel. County of Jefferson, 673 P.2d 378 (Colo. App. 1983).

District court may not review a county court's finding that no probable cause exists. Gallagher v. Arapahoe County Court, 772 P.2d 665 (Colo. App. 1989), cert. denied, 778 P.2d 1370 (Colo. 1989).

District court review of county court judge's denial of motion to recuse is proper under section (a)(4). Kane v. County Court Jefferson County, 192 P.3d 443 (Colo. App. 2008).

Action does not lie to the collector of taxes, either to review his action, or any prior action upon which his own is based, and it would be an anomalous practice to convert an action brought against a county treasurer to restrain the collection of a void tax into an action against the board of county commissioners to review its proceedings in levying the tax, even though, in a proper case, this remedy is appropriate. Insurance Co. of N. Am. v. Bonner, 24 Colo. 220, 49 P. 366 (1897).

No action to compel warrants for moral obligation. Where a city charter forbade the auditor to disburse city funds except in payment of legal obligations, an action could not be maintained to compel him to issue warrants as directed by the city council for the payment of a mere moral obligation. Cross v. McNichols, 118 Colo. 442, 195 P.2d 975 (1948).

District court has jurisdiction to enjoin city from requiring railroads to pay for viaduct construction. Where a city manager is directed to recommend a bill for an ordinance requiring the construction of a viaduct and apportioning the cost as he deems proper and reasonable among the railroads, although relief under this rule is inappropriate insofar as the manager may make changes in his plan for the viaduct or in his apportionment of costs, the district court has jurisdiction to declare that the city is proceeding without authority and to enjoin it from proceeding to require the railroads to pay for construction of the viaduct. Denver & R. G. W. R. R. v. City & County of Denver, 673 P.2d 354 (Colo. 1983).

District court could not entertain city's action under this rule as the city was required to file appeal of county court's dismissal of traffic prosecution pursuant to municipal court rule rather than seek review in district court. City &

County of Denver v. Harrell, 759 P.2d 847 (Colo. App. 1988).

Jurisdiction to restrain county judge under disqualification. Where motions were filed in county court to set aside judgments rendered by a former county judge before a presiding county judge who had acted as counsel for the judgment debtors, the presiding judge was disqualified to act on such motions, and it was his duty to certify the matter to the district court, and refusing to do so the district court had jurisdiction by writs of prohibition and certiorari to restrain the county judge from setting aside said judgments and to order him to certify the proceedings to the district court. People ex rel. Brown v. District Court, 26 Colo. 226, 56 P. 1115 (1899).

Judgments of justices of the peace may be reviewed by a proceeding under section (a)(4) from the county court where no appeal is provided by statute. Loloff v. Heath, 31 Colo. 172, 71 P. 1113 (1903).

Review of decision of state board of health. An action under § 13-45-113, providing for a review in the district court of a decision of the state board of health, is a statutory action and not controlled by this rule. Grimm v. State Bd. of Health, 121 Colo. 269, 215 P.2d 324 (1950).

Certiorari lies to state board of public welfare. The appropriate proceeding to review a determination of the state board of public welfare directing payment of benefits to a resident of a federal military reservation is certiorari. Bd. of County Comm'rs v. Donoho, 144 Colo. 321, 356 P.2d 267 (1960).

Interlocutory orders in eminent domain reviewable. In eminent domain proceedings, where an order for temporary possession was clearly interlocutory, and an appeal would not lie to review the same, complainants had no plain, speedy or adequate remedy at law, and certiorari will lie. Swift v. Smith, 119 Colo. 126, 201 P.2d 609 (1948); Potashnik v. Pub. Serv. Co., 126 Colo. 98, 247 P.2d 137 (1952).

The proper proceeding for relief from an interlocutory order in eminent domain actions is by certiorari, when directed to an endangered fundamentally substantive and substantial right. Town of Glendale v. City & County of Denver, 137 Colo. 188, 322 P.2d 1053 (1958).

Prison board proceedings reviewable. This section is an authorization to test the legality of the prison board proceedings in the state courts whereby good time credits were forfeited by the prison board following the return of the appellant to prison after an escape. Henry v. Patterson, 363 F.2d 443 (10th Cir. 1966).

Discretionary release of dangerous patient from state penitentiary reviewable. For a patient confined in the state penitentiary after being found not guilty of murder by reason of insanity and transferred from the state hospital as a dangerous patient, petitioner is entitled to attack the superintendent's good faith and discretion in failing to initiate the statutory proceedings to certify the patient sane by resort to the procedures outlined in Parker v. People (108 Colo. 362, 117 P.2d 316 (1941)) or in section (a)(4) of this rule. Pigg v. Patterson, 370 F.2d 101 (10th Cir. 1966).

Administrative acts of parole board not reviewable. The action of a parole board is type of administrative decision not reviewable by certiorari. Berry v. State Bd. of Parole, 148 Colo. 547, 367 P.2d 338 (1961), cert. denied, 370 U.S. 927, 82 S. Ct. 1569, 8 L. Ed. 2d 507 (1962).

The referral of an inmate for placement in a community corrections program is not reviewable under section (a)(4). Rivera-Bottzeck v. Ortiz, 134 P.3d 517 (Colo. App. 2006).

The dismissal of personnel under home rule charter not reviewable. Where the city charter of a home rule city does not provide for a civil service system, the charter places authority in the city manager for hiring and firing police department personnel, and there are no provisions in the charter for hearing or review of dismissals ordered by the city manager, the district court has no jurisdiction to review the city manager's action in dismissing a police officer on certiorari. Hoffman v. City of Fort Collins, 30 Colo. App. 123, 489 P.2d 355 (1971).

Whether county court abused its discretion in failing to allow a plaintiff to recall witnesses at a preliminary hearing is properly before district court. Zaharia v. County Court ex rel. County of Jefferson, 673 P.2d 378 (Colo. App. 1983).

Quasi-judicial acts of city council are properly reviewable. When deciding upon the proper form of judicial review, acts of a city council which had the earmarks of quasi-judicial proceedings, i.e., notice to individual landowners, hearings, and decision-making by the application of facts to specified criteria established by law, were properly reviewed under section (a)(4). Margolis v. District Court, 638 P.2d 297 (Colo. 1981).

Ordering cessation of waste disposal at landfill is quasi-judicial. In ordering the cessation of hazardous waste and sewage sludge disposal at a landfill, the county commissioners were adjudicating the rights and obligations of only the parties involved, which is quasi-judicial action. City & County of Denver v. Eggert, 647 P.2d 216 (Colo. 1982).

Sale of real estate by city council not a judicial or quasi-judicial action subject to review because there is no state or local law requiring city council to apply certain criteria before selecting a buyer. Walsenburg Sand & Gravel Co. v. City Council of Walsenburg, 160 P.3d 297 (Colo. App. 2007).

Individual or public may exercise remedy from civil service orders. Certiorari from an order of the civil service commission of Denver is available on behalf of an aggrieved employee, and the public, the city and county of Denver, acting through its proper officers in the public interest, may exercise the remedy extended to individuals even though specific provision is not made therefor in the charter. The rules of civil procedure are broad enough to cover this condition. Turner v. City & County of Denver, 146 Colo. 336, 361 P.2d 631 (1961).

Plaintiffs' complaint for breach of contract should not have been dismissed based on exclusivity of review under this section because the board of county commissioners, who denied the plaintiffs' claim was not acting as a quasi-judicial body. Montez v. Bd. of County Comm'rs, 674 P.2d 973 (Colo. App. 1983).

It is the nature of the decision rendered by the governmental body and the process by which that decision was reached that is the predominant consideration in determining whether the body has exercised a quasi-judicial function, and not the existence of a legislative scheme mandating notice and a hearing. Cherry Hills Resort Dev. Co. v. City of Cherry Hills Vill., 757 P.2d 622 (Colo. 1988); Widder v. Durango Sch. Dist. No. 9-R, 85 P.3d 518 (Colo. 2004).

If the governmental decision is likely to adversely affect the protected interests of specific individuals, and if a decision is to be reached through the application of preexisting legal standards or policy considerations to present or past facts, then the governmental body appears to be acting in a quasi-judicial capacity. Cherry Hills Resort Dev. Co. v. City of Cherry Hills Vill., 757 P.2d 622 (Colo. 1988); Widder v. Durango Sch. Dist. No. 9-R, 85 P.3d 518 (Colo. 2004).

A school district's decision about whether to terminate an employee who claims that he acted in good faith and in compliance with a conduct and discipline code involves a determination of the rights, duties, or obligations of specific individuals on the basis of presently existing standards to past or present facts. Widder v. Durango Sch. Dist. No. 9-R, 85 P.3d 518 (Colo. 2004).

Dual incorporation subject to jurisdiction. The county court was acting improperly in allowing both incorporations to proceed simultaneously, and it was proper for the district court to entertain an action to enforce this priority of jurisdiction, and to enter its order staying proceedings. Wiltgen v. Berg, 164 Colo. 139, 435 P.2d 378 (1967).

Court cannot prohibit duties where statute provides for review. Where the state board of medical examiners is proceeding pursuant to its statutory authority, a trial court has no authority to issue an absolute writ prohibiting the board from performing the duties imposed upon it by law, where a statute provides for reconsideration by the board of any orders issued by it and court review of any action taken in revoking a physician's license. Colo. State Bd. of Med. Exam'rs v. District Court, 138 Colo. 227, 331 P.2d 502 (1958).

Court lacks jurisdiction to compel stay in violation of statute. No discretion is afforded the annexing municipality. Section 31-8-118 (1), providing that judicial review shall not stay the application of annexation ordinances, is mandatory and therefore, absent a finding of inapplicability or unconstitutionality, the district court lacks jurisdiction to order the city to disobey the clear mandate of the statute. City of Westminster v. District Court, 167 Colo. 263, 447 P.2d 537 (1968).

No abuse of discretion where commissioner had not yet acted. There could be no abuse of discretion by the agriculture commissioner in conducting a hearing, for he had not yet acted when the order in the nature of prohibition was issued by the district court. The only basis which would support the district court's action would be that the commissioner lacked jurisdiction to proceed, and it is clear that there could be no such finding for the reason that the commissioner did and does have jurisdiction — sole and exclusive original jurisdiction. People ex rel. Orcutt v. District Court, 167 Colo. 162, 445 P.2d 887 (1968).

By holding a suspension hearing upon being advised that gambling activities had occurred on the licensed premises in violation of statute and departmental rule and regulation, the director of revenue was proceeding within his power, authority, and jurisdiction. The director had not yet acted in any manner whatsoever to the prejudice of the rights of the licensees. The trial court's rule prohibiting the director from proceeding with the hearing presumed that respondents' constitutional rights might be violated because a criminal proceeding had been previously commenced. No court can presume public officers will, in the performance of their duties, conduct their offices in an unlawful manner so as to deprive affected persons of their constitutional rights. The writ of prohibition was prematurely invoked in the trial court by respondents. People ex rel. Heckers v. District Court, 170 Colo. 533, 463 P.2d 310 (1970).

Eminent domain order was not abuse of discretion. In a proceeding in the nature of prohibition brought pursuant to this rule, the trial court was held not to have exceeded its jurisdiction or abused its discretion in denying motion to dismiss condemnation proceedings and in finding that the parties to the condemnation proceedings had failed to reach an agreement as to the purchase price of the land thereby giving the trial court jurisdiction over such proceedings. Old Timers Baseball Ass'n v.

Housing Auth., 122 Colo. 597, 224 P.2d 219 (1950).

Denial of pension not supported by evidence. The firemen's pension fund board of trustees did not exceed its jurisdiction nor abuse its discretion in denying the application for retirement and pension where the findings were based on conflicting evidence. Hubbard v. Pueblo Firemen's Pension Fund, 150 Colo. 495, 374 P.2d 492 (1962).

Decision of zoning authority not beyond its jurisdiction. The district court correctly determined that the board of adjustment did not exceed its jurisdiction or abuse its discretion when it allowed homeowner to repair stock car in his garage. A reviewing court should not lightly find an abuse of discretion where a zoning authority refuses to restrict an owner's use of his property upon the complaint of persons seeking to benefit their own property by imposing restrictions on another's use of his property. Shumate v. Zimmerman, 166 Colo. 488, 444 P.2d 872 (1968).

The director of the building department lawfully issued the permit in conformance with the practice and ordinances in effect at the time of the application; that the director's letter attempting to limit the height of the contemplated structure, and thus give effect to the height limitations of the "mountain view ordinance" adopted after the permit was issued, was based upon a strained and unrealistic interpretation of the nature of the permit. The permittee justifiably changed his position in reliance on the permit to his detriment, thus, in ordering the director to recognize the construction permit as a general building permit, not foundation permit, the board of appeals was acting within its delegated jurisdiction, and in so doing it did not abuse its discretion. Crawford v. McLaughlin, 172 Colo. 366, 473 P.2d 725 (1970).

The record shows that proper notice was given, that full public hearings were held, and that all of the procedural aspects required by ordinance and due process of law were followed meticulously by the city. The hearings did not produce any unanimity of opinion as to the desirability of the rezoning, but there was more than ample support in the evidence to warrant the council's conclusion that the intent and aims of the ordinance were well met by the proposed plan of the church. Plaintiffs, on the other hand, fell far short of showing that they had been deprived of any reasonable use of their property by operation of the zoning ordinance. As a matter of law the city council did not act unreasonably, arbitrarily, or abuse its discretion. Moore v. City of Boulder, 29 Colo. App. 248, 484 P.2d 134 (1971).

Sufficient standards in county zoning resolution for denial of special use. Where a county zoning resolution sets out general standards for granting or denying a special use, which include the requirements that the proposed use: (1) Will be in harmony and compatible with the character of the surrounding areas and neighborhood; (2) will be consistent with the county comprehensive plan; (3) will not result in an over-intensive use of land; (4) will not have a material adverse effect on community capital improvement programs; (5) will not require a level of community facilities and services greater than that which is available; (6) will not result in undue traffic congestion or traffic hazards; (7) will not cause significant air, water, or noise pollution; (8) will be adequately landscaped, buffered, and screened; and (9) will not otherwise be detrimental to the health, safety, or welfare of the present or future inhabitants of the county; and also provides that if a special use is granted, the commissioners may impose such conditions and safeguards as are necessary to insure compliance with these standards, these provisions provide sufficient standards for the denial of a special use. C & M Sand & Gravel v. Bd. of County Comm'rs, 673 P.2d 1013 (Colo. App. 1983).

Rezoning decision. The determination of whether a council reasonably applied statutory criteria in exercising its statutory power to rezone involves a consideration of whether the council abused its discretion or exceeded the bounds of its jurisdiction and is properly resolved in a certiorari proceeding under section (a)(4). Snyder v. City of Lakewood, 189 Colo. 421, 542 P.2d 371 (1975).

Landowner with land adjacent to or in vicinity of rezoned land may proceed under this rule. A landowner has standing to challenge a rezoning and then to seek review of the zoning authority's action under section (a)(4) if his land is adjacent to or in the vicinity of the land being rezoned, even though he may not live within the territory of the zoning authority. City of Thornton v. Bd. of County Comm'rs, 42 Colo. App. 102, 595 P.2d 264 (1979), aff'd, 629 P.2d 605 (Colo. 1981).

Plain language of zoning code authorizes zoning authorities of municipality, including planning commission, to review and deny the development plan of a permitted use. Because zoning code can and does grant such authority to the planning commission, the commission was authorized to deny a permitted use by means of the review criteria and, in doing so, did not abuse its discretion or exceed its jurisdiction. City of Colo. Springs v. Securcare Self Storage, Inc., 10 P.3d 1244 (Colo. 2000).

City properly denied property owner's subdivision application, and district court properly rejected property owner's challenge to denial under section (a)(4). "Geologic condition" or "natural hazard", as used in the city's zoning code, includes threats of flooding and mud flows from a diverted natural waterway. Evidence in the record supports city's conclusion that the subject parcel was threatened by flooding and mud flow, which required mitigation. City rightly concluded that relevant provision of the code allows subdivision approval to be conditioned on mitigation of public safety risks. This flooding risk potentially endangers public health, safety, and welfare. The risk remains intertwined with both the geologic feature of the area and natural events, although water would overflow from a diversionary structure built by the city. City properly denied application because flooding risk from diverted creek required mitigation of the geologic conditions and natural hazards threatening the subject property for which the application did not provide. Alpenhof, LLC v. City of Ouray, 2013 COA 9, 297 P.3d 1052.

In connection with section (a)(4) proceeding, trial court abused its discretion when it failed to adopt reasonable interpretation by county board of adjustment (BOA) of county land use code (code) and when it ordered a remand to the BOA for additional findings based on court's own interpretation of those provisions. BOA did not abuse its discretion when it ruled that a lapse provision in the code did not apply to a special use permit because the permit had been issued before the provision's enactment. The BOA had adopted the construction of the code provided by the director of the county's land use department, which is a reasonable construction of the code provisions especially in light of the record. Sierra Club v. Billingsley, 166 P.3d 309 (Colo. App. 2007).

Even assuming withholding by county land use official of copy of e-mail was in violation of Colorado Open Records Act (CORA), neither CORA nor section (a)(4) contains any provision that would authorize remand for reconsideration of determination by BOA that lapse provision contained in county land use code did not apply to special use permit in light of withholding copy of e-mail. Moreover, inclusion of withheld e-mail in administrative record of BOA was irrelevant to court's determination under section (a)(4). Even if the appropriate remedy were to remand for inclusion of e-mail in BOA's administrative record, document would not affect conclusion that BOA did not abuse its discretion when it ruled lapse provision did not apply to permit. Because BOA determined lapse provision did not apply, e-mail's assertion that special use had lapsed was irrelevant. Sierra Club v. Billingsley, 166 P.3d 309 (Colo. App. 2007).

Standing to challenge annexation lacking under this rule. Standing to challenge zoning and standing to challenge annexation are quite different matters; proceedings of the former may be, and proceedings of the latter may not be, attacked under this rule. City of Thornton v. Bd. of County Comm'rs, 42 Colo. App. 102, 595 P.2d 264 (1979), aff'd, 629 P.2d 605 (Colo. 1981).

Finding of temporary disability unsupported by evidence is arbitrary. There is credible evidence in the record showing a permanent disability status; there is no evidence whatsoever to support the pension board's supplemental finding of a temporary disability status. The board in making its award on a temporary disability basis rather than on a permanent disability basis exercised its discretion arbitrarily and capriciously. Putnam v. Trustees of Police Pension Bd., 170 Colo. 278, 460 P.2d 778 (1969).

Refusal to hear jurisdiction question was abuse. In an action against nonresident defendants who are served with process by service upon an alleged agent, where one defendant moves to quash the service and the other defendant moves to dismiss the action, granting a motion to strike the motion to quash and the motion to dismiss is an abuse of discretion under this rule, since it denies such defendants a right to be fully heard on the question of the court's jurisdiction of the person. Bardahl Mfg. Corp. v. District Court, 134 Colo. 112, 300 P.2d 524 (1956).

To favor one applicant over another is discriminatory and suggests the exercise of an unwarranted and uncontrolled discretion on the part of the licensing authority. Thus, the issuance of a license to another person in an area shortly after applicant's application was rejected on the ground that the needs of the neighborhood were satisfied is arbitrary. Geer v. Presto, 135 Colo. 536, 313 P.2d 980 (1957).

Prohibition issues where accused is charged with offense outside court's jurisdiction. The general rule is that the writ of prohibition may not be used to test the sufficiency of an information; but this is subject to qualification, recognized in almost every jurisdiction, that where the accusation is not merely defective or technically insufficient, nor merely demurrable or subject to a motion to quash or set aside, but is elementary and fundamentally defective in substance, so that it charges a crime in no manner or form, an accused is entitled to have a writ of prohibition issue, or where it appears that the information charges an offense not within the jurisdiction of a trial court. Bustamante v. District Court, 138 Colo. 97, 329 P.2d 1013 (1958).

Regulations by county commissioners designed to depress property values with a view to future acquisition thereof may form the basis of a cause of action for compensation on the theory of inverse condemnation against the public entity initiating the regulation. Hermanson v. Bd. of County Comm'rs, 42 Colo. App. 154, 595 P.2d 694 (1979).

Where a decision of a county board of adjustment is challenged, that board is the

"inferior tribunal" that is the subject of a section (a)(4) proceeding. Benes v. Jefferson County Bd. of Adjustment, 36 Colo. App. 131, 537 P.2d 753 (1975).

In an action challenging the legality of a special assessment by a city council, judicial review is obtained and is limited to certiorari under this rule. City & County of Denver v. District Court, 189 Colo. 342, 540 P.2d 1088 (1975).

Where city code of home-rule city did not specify nature of review from special assessment, it is appropriate that review be had under section (a)(4), which is specifically authorized where there is no available plain, speedy, or adequate remedy. Orchard Court Dev. Co. v. City of Boulder, 182 Colo. 361, 513 P.2d 199 (1973).

Section (a)(4), is a proper vehicle for judicial review of special assessments levied under Boulder's home-rule powers. Cline v. City of Boulder, 35 Colo. App. 349, 532 P.2d 770 (1975).

Attacks on application of historical preservation ordinance. An allegation that the vagueness of an historical preservation ordinance is indicated by the fact that it does not show which design the historical commission will approve is not a facial constitutional attack, but rather a challenge upon the application of the ordinance, which must be brought under this rule. South of Second Assocs. v. Georgetown, 196 Colo. 89, 580 P.2d 807 (1978).

Refusal of city to issue multiple licenses under state law was ultra vires. Where the state fermented malt beverages act permits a licensee to hold multiple licenses, the city of Denver may not prohibit the issuance of more than one license. When a city is vested with authority to administer a statute and adopt regulations to enforce it, regulation must be within the perimeter of the statute. In prohibiting what it could only regulate, the city acted ultra vires. Big Top, Inc. v. Schooley, 149 Colo. 116, 368 P.2d 201 (1962).

Residents of neighborhood affected by liquor licensing decision may seek judicial review. Residents of a neighborhood affected by the granting of a liquor license, by virtue of that fact alone, have a strong interest in insuring that the liquor licensing procedure is fairly and properly administered, and are persons who may seek judicial review of liquor licensing decisions under this rule. Norris v. Grimsley, 41 Colo. App. 231, 585 P.2d 925 (1978).

Operator of competing liquor store lacks standing to appeal liquor licensing decision of a local authority, either under § 12-47-101 or as a person "substantially aggrieved" by the disposition of the case in the lower court pursuant to this rule, since economic injury from lawful competition does not confer standing to question the legality of a competitor's operations. Norris v. Grimsley, 41 Colo. App. 231, 585 P.2d 925 (1978).

Default judgment exceeded court's discretion and authority. The grant of a default judgment for failure of the civil service commission to timely request an extension of time for filing the record on review exceeded its discretion and authority when at the time of the hearing in the lower court on the motion for default, the record had been lodged and the merits of the case had been put in issue. Civil Serv. Comm'n v. Doyle, 162 Colo. 1, 424 P.2d 368 (1967).

Grant of discovery was abuse of discretion. Where no facts were presented which tended to indicate that the city council's zoning decision was irregular, invalid, arbitrary, and capricious or the result of an abuse of discretion, the district court abused its discretion under section (a)(4) of this rule by granting discovery. City of Colo. Springs v. District Court, 184 Colo. 177, 519 P.2d 325 (1974).

Civil service commission order justified relief. Refusal by the civil service commission to restore a former policeman to his previous position on the police force of Denver after his honorable discharge from the armed forces of the United States because he volunteered when he was in no immediate danger of being drafted was an abuse of discretion as contemplated by this rule and hence the district court had jurisdiction to reinstate him. Hanebuth v. Patton, 115 Colo. 166, 170 P.2d 526 (1946).

Where civil service commission specifically upheld findings of police chief that police officer was guilty under disciplinary charges that demonstrated a direct disregard for the public good and purposes of the police department, the commission's decision to suspend the officer rather than to discharge him as police chief had ordered was an invasion of authority delegated to police chief by city charter and constituted an abuse of discretion. Thomas v. City & County of Denver, 29 Colo. App. 442, 487 P.2d 591 (1971).

Because the civil service commission failed to tell the applicant why she was disqualified from employment, the applicant could not submit reasons and documentation in support of her appeal. The commission's denial of her appeal was, therefore, an abuse of discretion. Carpenter v. Civil Serv. Comm'n, 813 P.2d 773 (Colo. App. 1990).

Civil service commission decision not arbitrary, capricious, or without justification where commission deemed an assault committed by the plaintiff involved the use of force, was a misdemeanor crime of violence barring possession of a firearm under federal law, and plaintiff was thus subject to disqualification from employment as a police officer. Even though the municipal assault statute was broad enough to be violated without the use of physical force, it is appropriate to look at the charging documents as a whole to determine the precise crime of which the defendant was convicted. Ward v. Tomsick, 30 P.3d 824 (Colo. App. 2001).

Where zoning ordinance authorizes continuance, in separate provisions of both nonconforming uses and nonconforming structures and allows for change of nonconforming use to another nonconforming use but contains no provision relating to change of nonconforming structure to another nonconforming structure, any use change is required to be effected within existing structures or not at all, and board of adjustment has no authority to grant permit to allow razing of nonconforming greenhouse and construction on the site of four apartment buildings as more restrictive nonconforming structures. City & County of Denver v. Bd. of Adjustment, 31 Colo. App. 324, 505 P.2d 44 (1972).

Setting of salaries is a legislative function, and the establishment of prevailing rates as an incident to fixing salaries is a quasi-legislative rather than a judicial or quasi-judicial function. Denver Police Protective Ass'n v. City & County of Denver, 665 P.2d 150 (Colo. App. 1983).

Vacating a roadway is a legislative act, and is not subject to review under this rule. Sutphin v. Mourning, 642 P.2d 34 (Colo. App. 1981).

Review of water ratemaking proceeding. Because a water ratemaking proceeding is a legislative action, section (a)(4) is not the proper vehicle for review of a ratemaking order of the county commissioners. Talbott Farms, Inc. v. Bd. of County Comm'rs, 43 Colo. App. 131, 602 P.2d 886 (1979).

Decisions by college or its president not subject to review under section (a)(4). Van Pelt v. State Bd. for Cmty. Colls. & Occupational Educ., 195 Colo. 316, 577 P.2d 765 (1978).

Private hospital board not inferior tribunal. A private hospital board is not a public agency and, therefore, not an "inferior tribunal" within the scope of section (a)(4). Even v. Longmont United Hosp. Ass'n, 629 P.2d 1100 (Colo. App. 1981); Green v. Lutheran Med. Ctr. Bd. of Dirs., 739 P.2d 872 (Colo. App. 1987).

Actions of municipal advisory board not reviewable. Actions by an advisory board reporting to a city council in an effort to set salaries of certain municipal employees are not subject to review under section (a)(4). Reeve v. Career Serv. Bd., 636 P.2d 1307 (Colo. App. 1981).

County board of commissioners' actions were quasi-legislative and not quasi-judicial and therefore not subject to judicial review under the arbitrary and capricious standard of section (a)(4). Dill v. Bd. of County Comm'rs of Lincoln County, 928 P.2d 809 (Colo. App. 1996).

Defense attorney's conduct in contesting court's refusal to allow withdrawal of guilty plea based on sentencing not contemplated in plea agreement was zealous representation of the client and did not constitute contempt because it did not create an obstruction which hindered the performance of the court's judicial duty. Jordan v. County Court, 722 P.2d 450 (Colo. App. 1986).

Trial court applied proper standard of review. In considering decision of board of adjustment, the trial court found competent evidence in the record to support the board's decision and that there was a reasonable basis for the agency's application of the law. Platte River Environ'l Conservation Org. v. Nat'l Hog Farms, Inc., 804 P.2d 290 (Colo. App. 1990).

Trial court did not err in reviewing PERA board's decision under section (a)(4) where it was held that PERA trustees' fiduciary duties did not prevent them from performing quasi-judicial functions in determining member's eligibility for disability benefits, and thereby did not exceed its jurisdiction nor were certain board rules ultra vires. Tepley v. Pub. Emp. Retirement Ass'n, 955 P.2d 573 (Colo. App. 1997).

District court does not have jurisdiction to review a county court's finding of probable cause pursuant to this section. Defendant may seek extraordinary relief under C.A.R. 21. Abbott v. County Ct. in & for County of Grand, 886 P.2d 730 (Colo. 1994).

Review pursuant to this rule is available for nonfactual procedural matters in preliminary hearing. Abbott v. County Ct. in & for County of Grand, 886 P.2d 730 (Colo. 1994).

Action for review for an abuse of discretion under section (a)(4) of this rule was not appropriate where the statute limited the school district board of education's discretion in determining whether to renew a probationary teacher's employment contract. Section 22-32-110 (4)(c), prohibits the board from using as grounds for nonrenewal any actions taken by the probationary teacher in good faith and in compliance with the school district's discipline policy. Since there is no remedy provided if the school board violates this prohibition, the probationary teacher's action in seeking mandamus, rather than review of an abuse of discretion, was appropriate. McIntosh v. Bd. of Educ. of Sch. Dist. No. 1, 999 P.2d 224 (Colo. App. 2000).

District court has the authority to review an action of a board of education for an abuse of discretion under this rule and § 22-33-108. Nichols ex rel. Nichols v. DeStefano, 70 P.3d 505 (Colo. App. 2002), aff'd by operation of law, 84 P.3d 496 (Colo. 2004).

Applied in Protect Our Mountain v. District Court, 677 P.2d 1361 (Colo. 1984); Montoya v. Career Serv. Bd., 708 P.2d 478 (Colo. App.

1985); Fisher v. County Court, 718 P.2d 549 (Colo. App. 1986); Krupp v. Breckenridge Sanitation Dist., 1 P.3d 178 (Colo. App. 1999).

VI. OTHER WRITS.

Law reviews. For article, "One Year Review of Contracts", see 34 Dicta 85 (1957).

Annotator's note. Since section (a)(5) of this rule is similar to §§ 255 through 260 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, relevant case construction of those sections have been included in the annotations to this rule.

Remedy is exclusive. The method provided by section (a)(5), whereby partners not served in an action against a partnership may be made individually liable on the judgment rendered therein against the partnership, is exclusive. Blythe v. Cordingly, 20 Colo. App. 508, 80 P. 495 (1905).

Section (a)(5) does not provide an "alternate, cumulative remedy" to § 13-50-105 that a party may elect in lieu of naming a defendant during the pendency of an action where a corporate respondent was a member of the partnership whose identity was known by plaintiff but not named in the original action based upon a friendship with plaintiff's counsel. Gutrich v. LaPlante, 942 P.2d 1266 (Colo. App. 1996), aff'd sub nom. Gutrich v. Cogswell & Wehrle, 961 P.2d 1115 (Colo. 1998).

Section (a)(5) may provide relief in the context of partnership law when: (1) The plaintiff could not have determined the existence or status of individual partners despite reasonable attempts to ascertain their identities; (2) the plaintiff could not bring about personal jurisdiction in the original action; or (3) some other reason beyond the plaintiff's control prevented the plaintiff from naming and serving the individual partners. Gutrich v. Cogswell & Wehrle, 961 P.2d 1115 (Colo. 1998).

Show cause rule remedies nondisclosure of partnership interest. Although application to add an additional party was not made at the time of the trial when the facts appeared, no injury could obtain by requiring the wife to show cause why she is not liable to answer under this judgment. Had she and her husband properly demeaned themselves concerning the matter of revealing to the public by proper affidavit the status of their partnership business interests, she would no doubt have been made a party defendant in the original action. The judgment creditor had a right to rely upon the record at the time of filing his action. To now deny plaintiff the right to discover the true interest entering into the judgment would be to reward people for misrepresentation and nondisclosure to the injury and detriment upon a relying public. Womack v. Grandbush, 134 Colo. 1, 298 P.2d 735 (1956).

Creditor entitled to rule against active partner not of record. Where a husband and wife were active partners in an enterprise, but the public records did not disclose that the wife had an interest therein, a creditor who obtains a judgment against the husband on a partnership obligation in an action to which the wife was not made a party is entitled to a rule on the wife under section (a)(5) to show cause why she should not be held to answer for the judgment. Womack v. Grandbush, 134 Colo. 1, 298 P.2d 735 (1956).

When judgment may be rendered. The only judgment which can be rendered against a copartnership on a firm debt or obligation is one against the copartnership jointly, and the partners summoned or appearing, whether the summons is served upon all or one or more of the defendants. Blythe v. Cordingly, 20 Colo. App. 508, 80 P. 495 (1905).

Partnership interest of nonparty subject to judgment lien. A judgment against one partner is not effective against another partner not made a party to the action, nor against the partnership where the partnership was not sued, except that the partnership interest of the partner sued is subject to the judgment lien to the extent of such interest and such partner's interest therein may be sold on execution. Womack v. Grandbush, 134 Colo. 1, 298 P.2d 735 (1956).

Section (a)(5) permits a trial court to issue a show-cause order, analogous to a writ of scire facias, to partners who were neither named nor served originally in an action against the partnership. Federal Deposit Ins. Corp. v. Wells Plaza Ltd. P'ship, 826 P.2d 427 (Colo. App. 1992).

Section (a)(5) was designed to provide relief, previously available under the writ of scire facias, as a post-judgment remedy permitting a creditor to collect on an existing yet unsatisfied judgment. It is not a substitute for maintaining an action where remedies are available to a person under statutory provisions. Gutrich v. Cogswell & Wehrle, 961 P.2d 1115 (Colo. 1998).

Because the fire and police pension association is not an agency of state government, the standard of review of a decision of the association is not whether there is "substantial evidence" under § 24-4-106 (7), of the State Administrative Procedure Act, but rather, whether there is "no competent evidence" under section (a)(4) to support the decision. Pueblo v. Fire & Police Pension Ass'n, 827 P.2d 597 (Colo. App. 1992).

This rule merely abolished the form and not the substance of remedial writs such as the writ of ne exeat. A district court still possesses the authority to issue a writ in the nature of ne exeat, which is designed to prevent a person from leaving the court's jurisdiction. In re People ex rel. B.C., 981 P.2d 145 (Colo. 1999).

Rule 106.5. Correctional Facility Quasi-Judicial Hearing Review

(a) Scope. This rule applies to every action brought by an inmate to review a decision resulting from a quasi-judicial hearing of any facility of the Colorado Department of Corrections ("CDOC") or any private facility in Colorado involving a CDOC inmate for events that occurred at the facility. To the extent this rule does not cover procedures in such cases, the parties shall follow C.R.C.P. 106(a)(4). All other provisions of C.R.C.P. 106(a)(4) shall apply except where modified by this Rule 106.5. The provisions of C.R.C.P. 106(b) and C.R.C.P. 5 shall govern all cases brought under this Rule 106.5.

(b) Designation of Defendant. Only the Executive Director of the CDOC and the Warden of the facility shall be named as Defendants and shall be listed as such. The District Court shall dismiss any other Defendant.

(c) Venue. All actions under this rule shall be filed in the district court in the county in which the quasi-judicial agency action occurred, even if the inmate is no longer assigned to that facility at the time the complaint is filed.

(d) Service of Process.

(1) If the inmate does not qualify for *in forma pauperis* status, the rules relating to service of process set forth in C.R.C.P. 4(e)(10) shall apply, but only the Warden, the Executive Director of the Department of Corrections, and the Attorney General shall be served.

(2) If the inmate files a motion to proceed *in forma pauperis* status and that motion is granted, service of process shall be accomplished in the following manner: The clerk of the District Court shall scan the complaint and serve it by electronic means on the Attorney General, the Executive Director of the Department of Corrections, and the Warden of the Facility (or the designee of each of these officials), along with a notice indicating the fact of the inmate's filing and the date received by the Court. Each person notified shall send an acknowledgment by electronic means indicating that the specified official has received the electronic notice and the scanned copy of the complaint.

(e) Response of Defendant. Within 21 days after the date on which the Attorney General sends acknowledgment that it has received the notice and complaint from the Clerk of the District Court, the Defendants shall file either (1) an answer to the complaint and a certified copy of the record as explained below, or (2) a motion in response to the complaint.

(f) Notice to Submit Record. The facility shall file the certified record and affidavit of certification directly to the Court no later than the deadline to file an answer or motion as indicated above. This obligation to submit the record shall not apply if the Attorney General notifies the Warden within 14 days of the electronic service that a motion to dismiss the complaint for lack of subject matter jurisdiction has been filed, in which event the filing of the record shall be suspended pending disposition of the motion.

(g) Contents of the Record. The certified record submitted by the Warden to the District Court shall contain all material related to the proceeding at the facility to permit the Court to address the issues raised in the complaint. The record shall include the Notice of Charges, the Disposition of Charges, the Offender Appeal Form, all exhibits offered at the hearing, and the current applicable version of the Code of Penal Discipline. If any part of the proceeding was recorded, a copy of the recording shall be provided.

(h) Cost of the Record. The cost of preparation of the record shall initially be paid by the Warden but, upon the filing of the certified record with the Court, the Warden shall immediately deduct the cost of preparation of the record, including the recording, from the inmate's account. If there are insufficient funds in that account, the Warden shall apply a charge to that account. In no event shall the filing of the record be delayed because the inmate has no assets and no means by which to pay the cost of certification of the record.

(i) Briefs.

(1) If counsel for the Defendants files a motion to dismiss, the inmate shall have 14 days after service of the motion to file a brief in response, and the defense counsel shall have 14 days after service of the response to file a reply.