The Colorado Rules Of Criminal Procedure - 2017 - A Reference Guide

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Rule 1. Scope

These Rules govern the procedure in all criminal proceedings in all courts of record with the exceptions stated in Rule 54.

Rule 2. Purpose and Construction

These Rules are intended to provide for the just determination of criminal proceedings. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.

Rule 3. The Felony Complaint

(a) The felony complaint shall be a written statement of the essential facts constituting the offense charged, signed by the prosecutor and filed in the court having jurisdiction over the offense charged.

(b) Repealed.

Rule 4. Warrant or Summons Upon Felony Complaint

(a) Issuance.

(1) Upon the filing of a felony complaint in the county court, the prosecuting attorney shall request the court to order that a warrant shall issue for the arrest of the defendant, or that summons shall issue and be served upon the defendant.

(2) If a warrant is requested, the felony complaint must contain or be accompanied by a sworn statement of facts establishing probable cause to believe that a criminal offense has been committed, and that the offense was committed by the person for whom the warrant is sought. In lieu of such a sworn statement, the felony complaint may be supplemented by sworn testimony of such facts. Such testimony must be transcribed and then signed under oath by the witness giving the testimony.

(3) Except in class 1, class 2, and class 3 felonies, and in unclassified felonies punishable by a maximum penalty of more than ten years, whenever a felony complaint has been filed prior to the arrest of the person named as defendant therein, the court, with the consent of the prosecuting attorney, shall have power to issue a summons commanding the appearance of the defendant in lieu of a warrant for his arrest. The court shall issue a summons instead of an arrest warrant when the prosecuting attorney so requests.

(4) Except in class 1, class 2, and class 3 felonies, the general policy shall favor issuance of a summons instead of a warrant for the arrest of the defendant except where there is reasonable ground to believe that, unless taken into custody, the defendant will flee to avoid prosecution or will fail to respond to a summons. When an application is made to a court for issuance of an arrest warrant or summons, the court may require the applicant to provide such information as reasonably is available concerning the following:

(I) The defendant's residence;

(II) The defendant's employment;

(III) The defendant's family relationships;

(IV) The defendant's past history of response to legal process; and

(V) The defendant's past criminal record.

(5) If any person properly summoned pursuant to this Rule fails to appear as commanded by the summons, the court shall forthwith issue a warrant for his arrest.

(6) When a corporation is charged with the commission of an offense, the court shall issue a summons setting forth the nature of the offense and commanding the corporation to appear before the court at a certain time and place.

(b) Form.

(1) Warrant. The arrest warrant shall be a written order issued by a judge of a court of record directed to any peace officer and shall:

(I) State the defendant's name or if that is unknown, any name or description by which he can be identified with reasonable certainty;

(II) Command that the defendant be arrested and brought without unnecessary delay before the nearest available judge of a county or district court;

(III) Identify the nature of the offense;

(IV) Have endorsed upon it the amount of bail if the offense is bailable; and

(V) Be signed by the issuing county judge.

(2) Summons. If a summons is issued in lieu of a warrant pursuant to this Rule, the summons shall:

(I) Be in writing;

(II) State the name of the person summoned and his address;

(III) Identify the nature of the offense;

(IV) State the date when issued and the county where issued;

(V) Be signed by the judge or clerk of the court with the title of his office; and

(VI) Command the person to appear before the court at a certain time and place.

(c) Execution or Service and Return.

(1) Warrant.

(I) By Whom. The warrant may be executed by any peace officer.

(II) Territorial Limits. The warrant may be executed anywhere within Colorado.

(III) Manner. The warrant shall be executed by arresting the defendant. The officer need not have the warrant in his possession at the time of arrest, but if he has the warrant at that time he shall show it to the defendant immediately upon request. If the officer does not have the warrant in his possession at the time of arrest, he shall then inform the defendant of the offense and of the fact that a warrant has been issued, and upon request he shall show the warrant to the defendant as soon as possible.

(IV) Return. The peace officer executing a warrant shall make return thereof to the issuing court. At the request of the prosecuting attorney any unexecuted warrant shall be returned to the issuing county judge and cancelled by him. At the request of the prosecuting attorney, made while a complaint is pending, a warrant returned unexecuted and not cancelled, or a duplicate thereof, may be delivered by the county judge to any peace officer or other authorized person for execution.

(2) Summons.

(I) By Whom. The summons may be served by any person authorized to effect service in a civil action.

(II) Territorial Limits. The summons may be served anywhere within Colorado.

(III) Manner. A summons issued pursuant to this Rule may be served in the same manner as the summons in a civil action or by mailing it to the defendant’s last known address, not less than 14

days prior to the time the defendant is required to appear, by registered mail with return receipt requested or certified mail with return receipt requested. Service by mail shall be complete upon the return of the receipt signed by the defendant or signed on behalf of the defendant by one authorized by law to do so. The summons for the appearance of a corporation may be served by a peace officer in the manner provided for service of summons upon a corporation in a civil action.

(IV) Return. At least one day prior to the return day, the person to whom a summons has been delivered for service shall make return thereof to the county court before whom the summons is returnable. At the request of the prosecuting attorney, made while a complaint is pending, a summons returned unserved, or a duplicate thereof, may be delivered by the county judge to any peace officer or other authorized person for service.

Rule 4.1. County Court Procedure – Misdemeanor and Petty Offense – Warrant or Summons Upon Complaint

Where the offense charged is a misdemeanor or petty offense, the action may be commenced in the county court as provided below in this Rule. This Rule shall have no application to misdemeanors or petty offenses prosecuted in other courts or to felonies.

(a) Definitions.

(1) "Complaint" means a written statement charging the commission of a crime by an alleged offender filed in the county court.

(2) Repealed.

(3) "Summons" means a written order or notice directing that a person appear before a designated county court at a stated time and place and answer to a charge against him.

(4) "Summons and complaint" means a document combining the functions of both a summons and a complaint.

(b) Initiation of the Prosecution.

(1) Prosecution of a misdemeanor or petty offense may be commenced in the county court by:

(I) The issuance of a summons and complaint;

(II) The issuance of a summons following the filing of a complaint;

(III) The filing of a complaint following an arrest;

(IV) The filing of a summons and complaint following arrest; or

(V) In the event that the offense is a class 2 petty offense, by the issuance of a notice of penalty assessment pursuant to statute.

(c) Summons, Summons and Complaint.

(1) Summons. A summons issued by the county court in a prosecution for a misdemeanor or a class 1 petty offense may be served by giving a copy to the defendant personally, or by leaving a copy at the defendant's usual place of abode with some person over the age of eighteen years residing therein, or by mailing a copy to the defendant's last known address not less than 14 days prior to the time the defendant is required to appear by registered mail with return receipt requested or certified mail with return receipt requested. Service by mail shall be complete upon the return of the receipt signed by the defendant or signed on behalf of the defendant by one authorized by law to do so. Personal service shall be made by a peace officer or any disinterested party over the age of eighteen years.

(2) Repealed.

(3) Summons and Complaint. A summons and complaint may be issued by any peace officer for an offense constituting a misdemeanor or a petty offense:

(I) Committed in his presence; or

(II) If not committed in his presence, which he has probable cause to believe was committed and probable cause to believe was committed by the person charged.Except for penalty assessment notices which shall be handled according to the procedures set forth in section 16-2-201 and subsection (e) of this Rule, a copy of the summons and complaint shall be filed immediately with the county court before which appearance is required and a second copy shall be given to the district attorney or his deputy for such county.

(4) Content of Summons and Complaint. A summons and complaint issued by a peace officer shall contain the name of the defendant, shall identify the offense charged, including a citation of the statute alleged to have been violated, shall contain a brief statement or description of the offense charged, including the date and approximate location thereof, and shall direct the defendant to appear before a specified county court at a stated time and place.

(d) Arrest followed by a Complaint. If a peace officer makes an arrest without a warrant of a person for a misdemeanor or a petty offense, the arrested person shall be taken without unnecessary delay before the nearest available county or district judge. Thereafter, a complaint shall be filed immediately in the county court having jurisdiction of the offense and a copy thereof given to the defendant at or before the time he is arraigned. The provisions of this Rule are subject to the right of the arresting authority to release the arrested person pursuant to section 16-3-105 .

(e) Penalty Assessment Procedure.

(1) When a person is arrested for a class 2 petty offense, the arresting officer may either give the person a penalty assessment notice and release him upon its terms, or take him before a judge of the county court in the county in which the alleged offense occurred. The choice of procedures shall be based upon circumstances which reasonably persuade the officer that the alleged offender is likely or unlikely to comply with the terms of the penalty assessment notice.

(2) The penalty assessment notice shall be a summons and complaint containing identification of the alleged offender, specification of the offense and applicable fine, a requirement that the alleged offender pay the fine or appear to answer the charge at a specified time and place, that payment of the specified fine without an appearance is an acknowledgment of guilt, and that an appearance must be made or the specified fine paid on or before a certain date or a bench warrant will issue for the offender's arrest. In traffic cases, the penalty assessment notice shall also advise the traffic offender of the immediate consequences of payment of the specified fine without an appearance.

(3) In traffic cases, a duplicate copy of the notice shall be sent by the officer to the Colorado department of revenue, motor vehicle division, Denver, Colorado. In all cases, a duplicate copy shall be sent to the clerk of the county court in the county in which the alleged offense occurred.

(4) If the person given a penalty assessment notice chooses to acknowledge his guilt, he may pay the specified fine in person or by mail at the place and within the time specified in the notice. If he chooses not to acknowledge his guilt, he shall appear as required in the notice. Upon trial, if the alleged offender is found guilty, the fine imposed shall be that specified in the notice for the offense of which he was found guilty, but customary court costs may be assessed against him in addition to such fine.

(f) Failure to Appear. If a person upon whom a summons or summons and complaint has been served pursuant to this Rule fails to appear in person or by counsel at the place and time specified therein, a bench warrant may issue for his arrest. In the case of a penalty assessment notice, if the person to whom a penalty assessment notice has been served pursuant to this Rule fails to appear in person or by counsel, or if he fails to pay the specified fine at a specified time and place, a bench warrant may issue for his arrest.

Rule 4.2. Arrest Warrant Without Information

If a warrant for arrest is sought prior to the filing of an information, felony complaint, or complaint, such warrant shall issue only on affidavit sworn to or affirmed before the judge, or a notary public and determined by a judge to relate facts sufficient to establish probable cause that an offense has been committed and probable cause that a particular person committed that offense. A warrant may be obtained by facsimile transmission (FAX) or electronic transmission pursuant to procedures set forth in Rule 41, in which event the procedure in Rule 41 shall be

followed. The court shall issue a warrant for the arrest of such person commanding any peace officer to arrest the person so named and to take the person without unnecessary delay before the nearest judge of a court of record.

Rule 5. Preliminary Proceedings [Effective January 1, 2014]

(a) Felony Proceedings.

(1) Procedure Following Arrest. If a peace officer or any other person makes an arrest, either with or without a warrant, the arrested person shall be taken without unnecessary delay before the nearest available county or district court. Thereafter, a felony complaint, information, or indictment shall be filed, if it has not already been filed, without unnecessary delay in the proper court and a copy thereof given to the defendant.

(2) Appearance Before the Court. At the first appearance of the defendant in court, it is the duty of the court to inform the defendant and make certain that the defendant understands the following:

(I) The defendant need make no statement and any statement made can and may be used against the defendant.

(II) The right to counsel;

(III) If indigent, the defendant has the right to request the appointment of counsel or consult with the public defender before any further proceedings are held;

(IV) Any plea the defendant makes must be voluntary and not the result of undue influence or coercion;

(V) The right to bail, if the offense is bailable, and the amount of bail that has been set by the court;

(VI) The nature of the charges;

(VII) The right to a jury trial;

(VIII) The right to demand and receive a preliminary hearing within a reasonable time to determine whether probable cause exists to believe that the offense charged was committed by the defendant.

(3) Appearance in the Court not Issuing the Warrant. If the defendant is taken before a court which did not issue the arrest warrant, the court shall inform the defendant of the matters set out

in subsection (a)(2) of this Rule and, allowing time for travel, set bail returnable not less than 14 days thereafter before the court which issued the arrest warrant, and shall transmit forthwith all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

(4) Preliminary Hearing — County Court Procedures. Every person accused of a class 1, 2, or 3 felony in a felony complaint has the right to demand and receive a preliminary hearing to determine whether probable cause exists to believe that the offense charged in the felony complaint was committed by the defendant. In addition, only those persons accused of a class 4, 5, or 6 felony by felony complaint which felony requires mandatory sentencing or is a crime of violence as defined in section 18 -1.3-406 or is a sexual offense under part 4 of article 3 of title 18 , C.R.S., shall have the right to demand and receive a preliminary hearing to determine whether probable cause exists to believe that the offense charged in the felony complaint was committed by the defendant. However, any defendant accused of a class 4, 5, or 6 felony who is not otherwise entitled to a preliminary hearing may request a preliminary hearing if the defendant is in custody for the offense for which the preliminary hearing is requested; except that, upon motion of either party, the court shall vacate the preliminary hearing if there is a reasonable showing that the defendant has been released from custody prior to the preliminary hearing. Any person accused of a class 4, 5, or 6 felony who is not entitled to a preliminary hearing shall, unless otherwise waived, participate in a dispositional hearing for the purposes of case evaluation and potential resolution. The following procedures shall govern the holding of a preliminary hearing:

(I) Within 7 days after the defendant is brought before the county court for or following the filing of the felony complaint in that court, either the prosecutor or the defendant may request a preliminary hearing. Upon such request, the court forthwith shall set the hearing. The hearing shall be held within 35 days of the day of setting, unless good cause for continuing the hearing beyond that time is shown to the court. The clerk of the court shall prepare and give notice of the hearing, or any continuance thereof, to all parties and their counsel.

(II) The preliminary hearing shall be held before a judge of the county court in which the felony complaint has been filed. The defendant shall not be called upon to plead. The defendant may cross-examine the prosecutor’s witnesses and may introduce evidence. The prosecutor shall have the burden of establishing probable cause. The judge presiding at the preliminary hearing may temper the rules of evidence in the exercise of sound judicial discretion.

(III) If the county court determines such probable cause exists or if the case is not otherwise resolved pursuant to a dispositional hearing if no preliminary hearing was held, it shall order the defendant bound over to the appropriate court of record for trial. In appropriate cases, the defendant may be admitted to or continued on bail by the county court, but bond shall be made returnable in the trial court and at a day and time certain. All county court records, except the reporter’s transcript notes, or recording, shall be transferred forthwith by the clerk of the county

court to the clerk of the appropriate court of record.

(IV) If from the evidence it appears to the county court that there is not probable cause to believe that any or all of the offenses charged were committed by the defendant, the county court shall dismiss those counts from the complaint and, if all counts are dismissed, discharge the defendant. Upon a finding of no probable cause, the prosecution may appeal pursuant to Rule 5(a)(4)(V), file a direct information pursuant to Rule 5(a)(4)(VI) charging the same offense(s), or submit the matter to a grand jury, but may not file a subsequent felony complaint charging the same offenses.

(V) If the prosecutor believes the court erred in its finding of no probable cause, the prosecutor may appeal the ruling to the district court. The appeal of such final order shall be conducted pursuant to the procedures for interlocutory appeals in Rule 37.1 of these rules. Such error, if any, shall not constitute good cause for refiling.

(VI) Upon a finding of no probable cause as to any one or more of the offenses charged in a felony complaint, the prosecution may file a direct information in the district court pursuant to Rule 7(c)(2) charging the same offense(s). If the prosecutor states an intention to proceed in this manner, the bond executed by the defendant shall be continued and returnable in the district court at a day and time certain. If a bond has not been continued, the defendant shall be summoned into court without the necessity of making a new bond.

(VII) If a felony complaint is dismissed prior to a preliminary hearing being held when one is required or, in other cases, prior to being bound over, the prosecution may thereafter file a direct information in the district court pursuant to Rule 7(c)(4) charging the same offense(s), file a felony complaint in the county court charging the same offense(s), or submit the matter to a grand jury. If the prosecution files a subsequent felony complaint charging the defendant with the same offense(s), the felony complaint shall be accompanied by a written statement from the prosecutor providing good cause for dismissing and refiling the charges. Within 21 days of defendant's first appearance following the filing of the new felony complaint the defendant may request an evidentiary hearing at which the prosecutor shall establish the existence of such good cause.

(VIII) If the county court has bound over the defendant to the district court and the case is thereafter dismissed in the district court before jeopardy has attached, the prosecution may file a direct information in the district court pursuant to Rule 7(c)(5) charging the same offense(s), file a felony complaint in county court charging the same offense(s), or submit the matter to a grand jury, and the case shall then proceed as if the previous case had never been filed. The prosecution shall also file with the felony complaint or the direct information a statement showing good cause for dismissing and then refiling the case. Within 21 days of defendant's first appearance following the filing of the new felony complaint or the direct filing of the new information the defendant may request an evidentiary hearing at which the prosecutor shall establish the existence of such good cause.

(4.5) A dispositional hearing is an opportunity for the parties to report to the court on the status of discussions toward disposition, including presenting any resolution pursuant to C.R.S. 16-7-302 . The court shall set the dispositional hearing at a time that will afford the parties an opportunity for case evaluation and potential resolution.

(5) Procedure Upon Failure to Request Preliminary Hearing. If the defendant or prosecutor fails to request a preliminary hearing within 7 days after the defendant has come before the court, the county court shall forthwith order the defendant bound over to the appropriate court of record for trial. In no case shall the defendant be bound over for trial to another court until the preliminary hearing has been held, the 7-day period for requesting a preliminary hearing has expired, or the parties have waived their rights to a preliminary hearing. In appropriate cases, the defendant may be admitted to, or continued upon bail by the county court, but bond shall be made returnable in the trial court at a day and time certain. All court records in the case, except the reporter's transcript, notes, or recording shall be transferred forthwith by the clerk to the appropriate court of record.

(b) Bail in Absence of a County Judge. If no county judge is immediately available to set bond in the case of a person in custody for the commission of a bailable felony, any available district judge may set bond, or such person may be admitted to bail pursuant to Rule 46.

(c) Misdemeanor and Petty Offense Proceedings.

(1) Procedure Following Arrest. If a peace officer or any other person makes an arrest, either with or without a warrant, the arrested person shall be taken without unnecessary delay before the nearest available county court. Thereafter a complaint or summons and complaint shall be filed, if it has not already been filed, immediately in the proper court and a copy thereof given to the defendant at or before arraignment. Trial may be held forthwith if the court calendar permits, immediate trial appears proper, and the parties do not request a continuance for good cause. Otherwise the case shall be set for trial as soon as possible.

(2) Appearance Before the Court. At the first appearance in the county court the defendant shall be advised in accordance with the provisions set forth in subparagraphs (a) (2) (I) through (VII) of this Rule.

(3) Appearance in the County Court not Issuing the Warrant. If the defendant is taken before a county court which did not issue the arrest warrant, the court shall inform the defendant of the matters set out in subsection (a)(2)(I through VII) of this Rule and, allowing time for travel, set bail returnable not less than 14 days thereafter before the court which issued the arrest warrant, and shall transmit forthwith a transcript of the proceedings and all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

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Rule 6. Grand Jury Rules

(a) The chief judge of the district court in each county or a judge designated by him may order a grand jury summoned where authorized by law or required by the public interest.

(b) The grand jury shall hear witnesses as may be determined by the grand jury and may find an indictment on the sworn testimony of one witness only, except in cases of perjury, when at least two witnesses to the same fact shall be necessary. An indictment may also be found upon the information of two of their own body.

(c) The foreman of the grand jury may swear or affirm all witnesses who may come before the grand jury.

Rule 6.1. Subpoenas – Issuance and Time Limits

Subpoenas and subpoenas duces tecum shall be issued in accordance with the rules of criminal procedure and these rules and shall be served at least forty-eight hours before any appearance is required before the grand jury, unless waived by the witness. The court, for good cause, may shorten the time limit imposed by this rule.

Rule 6.2. Secrecy of Proceedings – Witness Privacy – Representation by Counsel

(a) All persons associated with a grand jury and its investigations or functions should at all times be aware that a grand jury is an investigative body, the proceedings of which shall be secret. Witnesses or persons under investigation should be dealt with privately to insure fairness. The oath of secrecy shall continue until such time as an indictment is made public, if an indictment is returned, or until a grand jury report dealing with the investigation is issued and made public as provided by law. Nothing in this rule shall prevent a disclosure of the general purpose of the grand jury's investigation by the prosecutor.

(b) Any witness subpoenaed to appear and testify before a grand jury or to produce books, papers, documents, or other objects before such grand jury shall be entitled to assistance of counsel during any time that such witness is being questioned in the presence of said grand jury. If the witness desires legal assistance during his testimony, counsel must be present in the grand jury room with his client during such questioning. However, counsel for the witness shall be permitted only to counsel with the witness and shall not make objections, arguments, or address the grand jury. Such counsel may be retained by the witness or may, for any person financially unable to obtain adequate assistance, be appointed in the same manner as if that person were eligible for appointed counsel. An attorney present in the grand jury room shall take an oath of secrecy. If the court, at an in camera hearing, determines that counsel was disruptive, then the court may order counsel to remain outside the courtroom when advising his client. No attorney shall be permitted to provide counsel in the grand jury room to more than one witness in the

same criminal investigation, except with the permission of the grand jury.

Rule 6.3. Oath of Witnesses

The following oath shall be administered to each witness testifying before the grand jury:

DO YOU SWEAR (AFFIRM), UNDER PENALTY OF PERJURY, THAT THE TESTIMONY YOU ARE TO GIVE IS THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH, AND THAT YOU WILL KEEP YOUR TESTIMONY SECRET, EXCEPT TO DISCUSS IT WITH YOUR ATTORNEY, OR THE PROSECUTOR, UNTIL AND UNLESS AN INDICTMENT OR REPORT IS ISSUED?

Rule 6.4. Reporting of Proceedings

A certified or authorized reporter shall be present at all grand jury sessions. All grand jury proceedings and testimony from commencement to adjournment shall be reported. The reporter's notes and any transcripts which may be prepared shall be preserved, sealed, and filed with the court. No release or destruction of the notes or transcripts shall occur without prior court approval.

Rule 6.5. Investigator

(a) Appointment. Upon the written motion of the grand jury, the court shall appoint an investigator or investigators to assist the grand jury in its investigative functions. Said investigator may be an existing investigating law enforcement officer who is presently investigating the subject matter before the grand jury.

(b) Presence. Upon written motion of the grand jury, approved by the prosecutor, the court, for good cause, may allow a grand jury investigator to be present during testimony to advise the prosecutor. No grand jury investigator shall question any witness before the grand jury. A grand jury investigator shall not comment to the grand jury by word or gesture on the evidence or concerning the credibility of any witness but may testify under oath the same as other witnesses.

Rule 6.6. Indictment – Presentation – Sealing

(a) Presentation of an indictment in open court by a grand jury may be accomplished by the foreman of the grand jury, the full grand jury, or by the prosecutor acting under instructions of the grand jury.

(b) Upon motion by the prosecutor, the court shall order the indictment to be sealed and no person may disclose the existence of the indictment until the defendant is in custody or has been admitted to bail, except when necessary for the issuance of a warrant or summons.

Rule 6.7. Reports

A grand jury report may be prepared and released as permitted by § 16-5-205.5 , C.R.S.

Rule 6.8. Indictment – Amendment

(a) Matters of Form, Time, Place, Names. At any time before or during trial, the court may, upon application of the people and with notice to the defendant and opportunity for the defendant to be heard, order the amendment of an indictment with respect to defects, errors, or variances from the proof relating to matters of form, time, place, and names of persons when such amendment does not change the substance of the charge, and does not prejudice the defendant on the merits. Upon ordering an amendment, the court, for good cause, may grant a continuance to accord the defendant adequate opportunity to prepare his defense.

(b) Prohibition as to Substance. No indictment may be amended as to the substance of the offense charged.

Rule 6.9. Testimony

(a) Release to Prosecutor. Upon application by the prosecutor, the court, for good cause, may enter an order to furnish to the prosecutor transcripts of grand jury testimony, minutes, reports, or exhibits relating to them.

(b) Release to Witness. Upon application by the prosecutor, or by any witness after notice to the prosecutor, the court, for good cause, may enter an order to furnish to that witness a transcript of his own grand jury testimony, or minutes, reports, or exhibits relating to them.

(c) Limitations on Release. An order to furnish transcripts of grand jury testimony, minutes, reports, or exhibits under this rule shall specify the person or persons who may be granted access to such material upon its release. Such order shall also specify any limitations which the court finds should be imposed on the use to be made of such material by any person or persons, after giving due consideration to the provisions of Rule 6.3. Such order shall also provide that release of such material shall not be made by the clerk of the court until the filing of an oath of affirmation of acceptance by the person receiving such material of the restrictions and limitations which are specified by the court under this paragraph.

(d) Indicted Defendant’s Discovery Rights. Nothing herein shall limit the right of an indicted defendant to discovery under the rules of criminal procedure.

Rule 7. The Indictment and the Information

(a) The Indictment.

(1) An indictment shall be a written statement presented in open court by a grand jury to the district court which charges the commission of any crime by an alleged offender.

(2) Requisites of the Indictment. Every indictment of the grand jury shall state the crime charged and essential facts which constitute the offense. It also should state:

(I) That it is presented by a grand jury;

(II) That the defendant is identified therein, either by name or by the defendant's patterned chemical structure of genetic information, or described as a person whose name is unknown to the grand jury;

(III) That the offense was committed within the jurisdiction of the court, or is triable therein;

(IV) That it is signed by the foreman of the grand jury, and the prosecutor.

(b) The Information.

(1) An information shall be a written statement, signed by the prosecutor and filed in the court having jurisdiction over the offense charged, alleging that a person committed the criminal offense described therein.

(2) Requisites of the Information. The information shall be deemed technically sufficient and correct if it can be understood therefrom:

(I) That it is presented by the person authorized by law to prosecute the offense;

(II) That the defendant is identified therein, either by name or by the defendant's patterned chemical structure of genetic information, or described as a person whose name is unknown to the informant;

(III) That the offense was committed within the jurisdiction of the court, or is triable therein;

(IV) That the offense charged is set forth with such degree of certainty that the court may pronounce judgment upon a conviction.

(3) Information After Preliminary Hearing Waiver or Dispositional Hearing. An information may be filed, without consent of the trial court having jurisdiction, for any offense against anyone who has either:

(I) Failed to request a preliminary hearing in the county pursuant to Rule 5 ;

(II) Had a preliminary hearing or dispositional hearing and has been bound over by the county court to appear in the court having trial jurisdiction.

(4) When a defendant has been bound over to the trial court pursuant to Rule 5 (a)(4)(III), the felony complaint when transferred to the trial court shall be deemed to be an information if it contains the requirements of an information.

(c) Direct Information. The prosecutor may file a direct information if:

(1) The prosecutor obtains the consent of the court having trial jurisdiction and no complaint was filed against the accused person in the county court pursuant to Rule 5 ; or

(2) A preliminary hearing was held either in the county court or in the district court and the court found probable cause did not exist as to one or more counts. If the prosecutor states an intention to proceed in this manner, the bond executed by the defendant shall be continued and returnable in the district court at a day and time certain. If a bond has not been continued, the defendant shall be summoned into court without the necessity of making a new bond. The information shall be accompanied by a written statement from the prosecutor alleging facts which establish that evidence exists which for good cause was not presented by the prosecutor at the preliminary hearing. Within 21 days of defendant's first appearance following the direct filing the defendant may request an evidentiary hearing at which the prosecutor shall establish the existence of such good cause; or

(3) The prosecutor obtains the consent of the court having trial jurisdiction and the complaint upon which the preliminary hearing was held and the other records in the case have not been delivered to the clerk of the proper trial court.

(4) The case was dismissed before a preliminary hearing was held in the county court or in the district court, when one is required, or, in other cases, before the defendant was bound over to the trial court or otherwise set for arraignment or trial. The information shall be accompanied by a written statement from the prosecutor stating good cause for dismissing and then refiling the case. Within 21 days after defendant's first appearance following the direct filing the defendant may request a hearing at which the prosecutor shall establish the existence of such good cause. The prosecution may also submit the matter to a grand jury.

(5) The case was dismissed after the district or county court found probable cause at the preliminary hearing if one was required or, in other cases, after the defendant was bound over to the trial court or otherwise set for arraignment or trial, and before jeopardy has attached. If such case was originally filed by direct information in the district court, the prosecution may not file the same offense(s) by a felony complaint in the county court, but the prosecution may charge the same offense(s) by filing a direct information in the district court or may submit the matter to a grand jury, and the case shall then proceed as if the previous case had never been filed. The prosecution shall also file with the direct information or with the felony complaint a statement

showing good cause for dismissing and then refiling the case. Within 21 days of defendant's first appearance following the filing of the new felony complaint or the direct filing of the new information the defendant may request an evidentiary hearing at which the prosecutor shall establish the existence of such good cause.

(d) Repealed.

(e) Amendment of Information. The court may permit an information to be amended as to form or substance at any time prior to trial; the court may permit it to be amended as to form at any time before the verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.

(f) Surplusage. The court, on motion of the defendant or the prosecutor, may strike surplusage from the information or indictment.

(g) Bill of Particulars. The court may direct the filing of a bill of particulars. A motion for a bill of particulars may be made only within 14 days after arraignment or at such other time before or after arraignment as may be prescribed by rule or order. A bill of particulars may be amended at any time subject to such conditions as justice requires.

(h) Preliminary Hearing – District Court Procedures.

(1) In cases in which a direct information was filed pursuant to Rule 7(c), charging a class 1, 2, or 3 felony or a class 4, 5, or 6 felony if such felony requires mandatory sentencing or is a crime of violence as defined in section 18 -1.3-406 or is a sexual offense under part 4 of article 3 of title 18 , C.R.S. either the defendant or the prosecutor may request a preliminary hearing to determine whether probable cause exists to believe that the offense charged in the information has been committed by the defendant. However, any defendant accused of a class 4, 5, or 6 felony who is not otherwise entitled to a preliminary hearing may request a preliminary hearing if the defendant is in custody for the offense for which the preliminary hearing is requested; except that, upon motion of either party, the court shall vacate the preliminary hearing if there is a reasonable showing that the defendant has been released from custody prior to the preliminary hearing. Any person accused of a class 4, 5, or 6 felony who may not request a preliminary hearing shall participate in a dispositional hearing unless otherwise waived for the purposes of case evaluation and potential resolution. Except upon a finding of good cause, the request for a preliminary hearing must be made within 7 days after the defendant is brought before the court for or following the filing of the information in that court and prior to a plea. No request for a preliminary hearing may be filed in a case which is to be tried upon indictment.

(2) Upon the making of such a request, or if a dispositional hearing is required, the district court shall set the hearing which shall be held within 35 days of the day of the setting, unless good cause for continuing the hearing beyond that period is shown to the court. The clerk of the court shall prepare and give notice of the hearing, or any continuance thereof, to all parties and their

counsel.

(3) The defendant shall not be called upon to plead at the preliminary hearing. The defendant may cross-examine the prosecutor's witnesses and may introduce evidence. The prosecutor shall have the burden of establishing probable cause. The presiding judge at the preliminary hearing may temper the rules of evidence in the exercise of sound judicial discretion.

(4) If, from the evidence, it appears to the district court that no probable cause exists to believe that any or all of the offenses charged were committed by the defendant, the court shall dismiss those counts from the information and, if the court dismisses all counts, discharge the defendant; otherwise, or subsequent to a dispositional hearing, it shall set the case for arraignment or trial. If the prosecutor believes the court erred in its finding of no probable cause, this ruling may be appealed pursuant to Colorado Appellate Rules. Such a ruling shall not constitute good cause for refiling.

(4.5) A dispositional hearing is an opportunity for the parties to report to the court on the status of discussions toward disposition, including presenting any resolution pursuant to C.R.S. 16-7-302 . The court shall set the dispositional hearing at a time that will afford the parties an opportunity for case evaluation and potential resolution.

(5) If a request for preliminary hearing has not been filed within the time limitations of subsection (h)(1) of this Rule, such a request shall not thereafter be heard by the court, nor shall the court entertain successive requests for preliminary hearing. The order denying a dismissal of any or all of the counts in the information after a preliminary hearing shall be final and not subject to review on appeal. The granting of such a dismissal or any or all of the counts in an information shall not be a bar to further prosecution of the accused person for the same offenses. Upon a finding of no probable cause, the prosecution may appeal pursuant to Rule 7(h)(4), may file another direct information in the district court pursuant to Rule 7(c)(2) charging the same offense(s) or may submit the matter to a grand jury, but in such cases originally filed by direct information in the district court, the prosecution may not refile the same offense(s) by a felony complaint in the county court.

(i) Motion for Reverse-Transfer Hearing Upon Indictment. In cases commenced by indictment, any motion under section 19-2-517(3)(a), C.R.S., to transfer the case to juvenile court must be filed within 7 days after the defendant is brought before the court for or following the filing of the indictment in that court and prior to a plea, except upon a showing of good cause.

Rule 8. Joinder of Offenses and of Defendants

(a) Joinder of Offenses.

(1) Mandatory Joinder. If several offenses are actually known to the prosecuting attorney at the time of commencing the prosecution and were committed within his judicial district, all such offenses upon which the prosecuting attorney elects to proceed must be prosecuted by separate counts in a single prosecution if they are based on the same act or series of acts arising from the same criminal episode. Any such offense not thus joined by separate count cannot thereafter be the basis of a subsequent prosecution; except that, if at the time jeopardy attaches with respect to the first prosecution against the defendant, the defendant or counsel for the defendant actually knows of additional pending prosecutions that this subsection (a)(1) requires the prosecuting attorney to charge and the defendant or counsel for the defendant fails to object to the prosecution's failure to join the charges, the defendant waives any claim pursuant to this subsection (a)(1) that a subsequent prosecution is prohibited.

(2) Permissive Joinder. Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Joinder of Defendants. Two or more defendants may be charged in the same indictment, information, or felony complaint if they are alleged to have participated in the same act or series of acts arising from the same criminal episode. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

Rule 9. Warrant or Summons Upon Indictment or Information

(a) Issuance.

(1) When Issued. Upon the return of an indictment by a grand jury, or the filing of an information, the prosecuting attorney shall request the court to order that a warrant shall issue for the arrest of the defendant, or that a summons shall issue and be served upon the defendant.

(2) Affidavits or Sworn Testimony. If a warrant is requested upon an information, the information must contain or be accompanied by a sworn written statement of facts establishing probable cause to believe that a criminal offense has been committed and that the offense was committed by the person for whom the warrant is sought. In lieu of such sworn statement, the information may be supplemented by sworn testimony of such facts. Such testimony must be transcribed and then signed under oath or affirmation by the witness giving the testimony.

(3) Summons in Lieu of Warrant. Except in class 1, class 2, and class 3 felonies, and in unclassified felonies punishable by a maximum penalty of more than ten years whenever an indictment is returned or an information has been filed prior to the arrest of the person named as defendant therein, the court, with the consent of the prosecuting attorney, shall have power to issue a summons commanding the appearance of the defendant in lieu of a warrant for his arrest.

(4) Standards Relating to Issuance of Summons. The court shall issue a summons instead of an arrest warrant when the prosecuting attorney so requests. When an application is made to a court for issuance of an arrest warrant or summons, the court may require the applicant to provide such information as reasonably is available concerning the following:

(I) The defendant's residence;

(II) The defendant's employment;

(III) The defendant's family relationships;

(IV) The defendant's past history of response to legal process; and

(V) The defendant's past criminal record.

(b) Form.

(1) Warrant. The form of the warrant shall be as provided in Rule 4(b)(1), except that it shall be signed by the clerk, it shall identify the nature of the offense charged in the indictment or information, and it shall command that the defendant be arrested and brought before the court unless he shall be admitted to bail as otherwise provided in these Rules.

(2) Summons. The summons shall be in the same form as provided in Rule 4(b)(2).

(c) Execution or Service and Return.

(1) Execution or Service. The warrant shall be executed or the summons served as provided in Rule 4(c). The officer executing the warrant shall bring the arrested person before the court without unnecessary delay, or for the purposes of admission to bail, before the clerk of the court, the sheriff of the county where the arrest occurs, or any other officer authorized to admit to bail.

(2) Return. The peace officer executing a warrant shall make a return thereof to the court. At the request of the prosecuting attorney, any unexecuted warrant shall be returned and cancelled. At least one day prior to the return day, the person to whom a summons was delivered for service shall make return thereof. At the request of the prosecuting attorney made at any time while the indictment or information is pending, a warrant returned unexecuted and not cancelled or a summons returned unserved, or a duplicate thereof may be delivered by the clerk to any peace officer or other authorized person for execution or service.

Rule 10. Arraignment

Following preliminary proceedings pursuant to the provisions of Rules 5, 7, and 12, the arraignment shall be conducted in open court, informing the defendant of the offense with which he is charged, and requiring him to enter a plea to the charge. The defendant shall be arraigned in the court having trial jurisdiction in which the indictment, information, or complaint is filed, unless before arraignment the cause has been removed to another court, in which case he shall be arraigned in that court.

(a) If the offense charged is a felony or a class 1 misdemeanor, or if the maximum penalty for the offense charged is more than one year's imprisonment, the defendant must be personally present for arraignment, except that the court for good cause shown may accept a plea of not guilty made by an attorney representing the defendant without requiring the defendant to be personally present.

(b) In all other cases the court may permit arraignment without the presence of the defendant. If a plea of guilty or nolo contendere is entered by counsel in the absence of the defendant, the court may command the appearance of the defendant in person for the imposition of sentence.

(c) Upon arraignment, the defendant or his counsel shall be furnished with a copy of the indictment or information, complaint, or summons and complaint if one has not been previously served.

(d) A record shall be made of the proceedings at every arraignment.

(e) If the defendant appears without counsel at an arraignment, the information, indictment, or complaint shall be read to him by the court or the clerk thereof. If the defendant appears with counsel, the information or indictment need not be read and no waiver of said reading is necessary.

(f) As soon as the jury panel is drawn which will try the case, a list of the names and addresses of the jurors on the panel shall be made available by the clerk of the court to defendant's counsel, and if the defendant has no counsel, the list shall be served on him personally or by certified mail. It shall not be necessary to serve a list of jurors upon the defendant at the time of arraignment.

Rule 11. Pleas

(a) Generally. A defendant personally or by counsel may plead guilty, not guilty, not guilty by reason of insanity (in which event a not guilty plea may also be entered), or with the consent of the court, nolo contendere.

(b) Pleas of Guilty and Nolo Contendere. The court shall not accept a plea of guilty or a plea of nolo contendere without first determining that the defendant has been advised of all the rights set forth in Rule 5(a)(2) and also determining:

(1) That the defendant understands the nature of the charge and the elements of the offense to which he is pleading and the effect of his plea;

(2) That the plea is voluntary on defendant's part and is not the result of undue influence or coercion on the part of anyone;

(3) That he understands the right to trial by jury and that he waives his right to trial by jury on all issues;

(4) That he understands the possible penalty or penalties;

(5) That the defendant understands that the court will not be bound by any representations made to the defendant by anyone concerning the penalty to be imposed or the granting or the denial of probation, unless such representations are included in a formal plea agreement approved by the court and supported by the findings of the presentence report, if any;

(6) That there is a factual basis for the plea. If the plea is entered as a result of a plea agreement, the court shall explain to the defendant, and satisfy itself that the defendant understands, the basis for the plea agreement, and the defendant may then waive the establishment of a factual basis for the particular charge to which he pleads;

(7) That in class 1 felonies, or where the plea of guilty is to a lesser included offense, a written consent shall have been filed with the court by the district attorney.

(c) Misdemeanor Cases. In all misdemeanor cases except class 1, the court may accept, in the absence of the defendant, any plea entered in writing by the defendant or orally made by his counsel.

(d) Failure or Refusal to Plead. If a defendant refuses to plead, or if the court refuses to accept a plea of guilty, or a plea of nolo contendere, or if a corporation fails to appear, the court shall enter a plea of not guilty. If for any reason the arraignment here provided for has not been had, the case shall for all purposes be considered as one in which a plea of not guilty has been entered.

(e) Defense of Insanity.

(1) The defense of insanity must be pleaded at the time of arraignment, except that the court for good cause shown may permit such plea to be entered at any time before trial. It must be pleaded orally, either by the defendant or by his counsel, in the form, "not guilty by reason of insanity". A defendant who does not thus plead not guilty by reason of insanity shall not be permitted to rely on insanity as a defense as to any accusation of any crime; provided, however, that evidence of mental condition may be offered in a proper case as bearing upon the capacity of the accused to form specific intent essential to the commission of a crime. The plea of not guilty by reason of insanity includes the plea of not guilty.

(2) If counsel for the defendant believes that a plea of not guilty by reason of insanity should be entered on behalf of the defendant, but the defendant refuses to permit the entry of such plea, counsel may so inform the court. The court shall then conduct such investigation as it deems proper, which may include the appointment of psychiatrists or psychologists to assist a psychiatrist to examine the defendant and advise the court. After its investigation the court shall conduct a hearing to determine whether the plea should be entered. If the court finds that the entry of a plea of not guilty by reason of insanity is necessary for a just determination of the charge against the defendant, it shall enter such plea on behalf of the defendant, and the plea so entered shall have the same effect as though it had been voluntarily entered by the defendant himself.

(3) If there has been no grand jury indictment or preliminary hearing prior to the entry of the plea of not guilty by reason of insanity, the court shall hold a preliminary hearing prior to the trial of the insanity issue. If probable cause is not established the case shall be dismissed, but the court may order the district attorney to institute civil commitment proceedings if it appears that the protection of the public or the accused requires it.

(f) Plea Discussions and Plea Agreements.

(1) Where it appears that the effective administration of criminal justice will thereby be served, the district attorney may engage in plea discussions for the purpose of reaching a plea agreement. He should engage in plea discussions or reach plea agreements with the defendant only through or in the presence of defense counsel except where the defendant is not eligible for or refuses appointment of counsel and has not retained counsel.

(2) The district attorney may agree to one of the following depending upon the circumstances of the individual case:

(I) To make or not to oppose favorable recommendations concerning the sentence to be imposed if the defendant enters a plea of guilty or nolo contendere;

(II) To seek or not to oppose the dismissal of an offense charged if the defendant enters a plea of guilty or nolo contendere to another offense reasonably related to the defendant's conduct;

(III) To seek or not to oppose the dismissal of other charges or not to prosecute other potential charges against the defendant if the defendant enters a plea of guilty or nolo contendere.

(3) Defendants whose situations are similar should be afforded similar opportunities for plea agreement.

(4) The trial judge shall not participate in plea discussions.

(5) Notwithstanding the reaching of a plea agreement between the district attorney and defense counsel or defendant, the judge in every case should exercise an independent judgment in deciding whether to grant charge and sentence concessions.

(6) Except as to proceedings resulting from a plea of guilty or nolo contendere which is not withdrawn, the fact that the defendant or his defense counsel and the district attorney engaged in plea discussions or made a plea agreement shall not be received in evidence against or in favor of the defendant in any criminal or civil action or administrative proceeding.

Rule 12. Pleadings, Motions Before Trial, Defenses, and Objections

(a) Pleadings and Motions. Pleadings shall consist of the indictment or information or complaint, or summons and complaint, and the pleas of guilty, not guilty, not guilty by reason of insanity, and nolo contendere. All other pleas, demurrers, and motions to quash are abolished and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, as provided in these Rules.

(b) The Motion Raising Defenses and Objections.

(1) Defenses and Objections Which May Be Raised. Any defense or objection which is capable of determination without the trial of the general issue may be raised by motion.

(2) Defenses and Objections Which Must Be Raised. Defenses and objections based on defects in the institution of the prosecution or in the indictment or information or complaint, or summons and complaint, other than that it fails to show jurisdiction in the court or to charge an offense, may be raised only by motion. The motion shall include all such defenses and objections then available to the defendant. Failure to present any such defense or objection constitutes a waiver of it, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the indictment or information to charge an offense shall be noticed by the court at any time during the proceeding. When a motion challenging the constitutionality of the statute upon which the charge is based or asserting lack of jurisdiction is made after the commencement of the trial, the court shall reserve its ruling on that motion until the conclusion of the trial.

(3) Time of Making Motion. The motion shall be made within 21 days following arraignment.

(4) Hearing on Motion. A motion before trial raising defenses or objections shall be determined before the trial unless the court orders that it be deferred for determination at the trial of the general issue except as provided in Rule 41. An issue of fact shall be tried by a jury if a jury trial is required by the Constitution or by statute. All other issues of fact shall be determined by the court with or without a jury or on affidavits or in such other manner as the court may direct.

(5) Effect of Determination. If a motion is determined adversely to the defendant, he shall be

permitted to plead if he has not previously pleaded. A plea previously entered shall stand.

Rule 12.1. Notice of Alibi

Repealed March 15, 1985, effective July 1, 1985.

Rule 13. Trial Together of Indictments, Informations, Complaints, Summons and Complaints

Subject to the provisions of Rule 14, the court may order two or more indictments, informations, complaints, or summons and complaints to be tried together if the offenses, and the defendants, if there are more than one, could have been joined in a single indictment, information, complaint, or summons and complaint. The procedure shall be the same as if the prosecution were under such single indictment, information, complaint, or summons and complaint.

Rule 14. Relief from Prejudicial Joinder

If it appears that a defendant or the prosecution is prejudiced by a joinder of offenses or of defendants in any indictment or information, or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants, or provide whatever other relief justice requires. However, upon motion any defendant shall be granted a separate trial as of right if the court finds that the prosecution probably will present against a joint defendant evidence, other than reputation or character testimony, which would not be admissible in a separate trial of the moving defendant, and that such evidence would be prejudicial to those against whom it is not admissible. In ruling on a motion by a defendant for severance, the court may order the prosecuting attorney to deliver to the court for inspection in camera any statements or confessions made by the defendants which the prosecution intends to introduce in evidence at the trial.

Rule 15. Depositions

(a) Motion and Order. The prosecutor or the defendant may file a motion supported by an affidavit any time after an indictment, information, complaint, or summons and complaint is filed requesting that the deposition of a prospective witness be taken before the court. The court may order that a deposition be taken before the court if a prospective witness may be unable to attend a trial or hearing and it is necessary to take that person’s deposition to prevent injustice. The court shall identify the witness and fix the date and time for the deposition in the order and shall give every party reasonable notice of the time and place for taking the deposition. For good cause shown, the court may reschedule the date and time for the deposition.

(a.5) Deposition by Stipulation Permitted. The prosecution and defense may take a deposition before a judge by stipulation.

(b) Subpoena of Witness. Upon entering an order for the taking of a deposition, the court shall

direct that a subpoena issue for each person named in the order and may require that any designated books, papers, documents, photographs, or other tangible objects, not privileged, be produced at the deposition. If it appears, however, that the witness will disregard a subpoena, the court may direct the sheriff to produce the prospective witness in court where the witness may be released upon personal recognizance or upon reasonable bail conditioned upon the witness's appearance at the time and place fixed for the taking of deposition. If the witness fails to give bail, the court shall remand him to custody until the deposition can be taken but in no event for longer than forty-eight hours. If the deposition be not taken within forty-eight hours, the witness shall be discharged.

(c) Presence of Defendant. The defendant shall be present at the deposition unless the defendant voluntarily fails to appear after receiving notice of the date, time, and place of the deposition.

(d) Taking and Preserving Depositions. Depositions shall be taken and transcribed as the court may direct and upon completion shall be lodged with the clerk of the court.

(e) Use. At the trial, or at any hearing, a part or all of a deposition may be used, so far as otherwise allowed by law or by stipulation.

(f) Copies of Deposition to Defendant. If the deposition is taken at the instance of the prosecution, a transcribed copy of it shall be furnished without cost to the defendant promptly upon the defendant's request.

Rule 16. Discovery and Procedure Before Trial

Definitions.

(1) "Defense", as used in this rule, means an attorney for the defendant, or a defendant if pro se.Part I. Disclosure to the Defense

(a) Prosecutor's Obligations.

(1) The prosecuting attorney shall make available to the defense the following material and information which is within the possession or control of the prosecuting attorney, and shall provide duplicates upon request, and concerning the pending case:

(I) Police, arrest and crime or offense reports, including statements of all witnesses;

(II) With consent of the judge supervising the grand jury, all transcripts of grand jury testimony and all tangible evidence presented to the grand jury in connection with the case;

(III) Any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons;

(IV) Any books, papers, documents, photographs or tangible objects held as evidence in connection with the case;

(V) Any record of prior criminal convictions of the accused, any codefendant or any person the prosecuting attorney intends to call as a witness in the case;

(VI) All tapes and transcripts of any electronic surveillance (including wiretaps) of conversations involving the accused, any codefendant or witness in the case;

(VII) A written list of the names and addresses of the witnesses then known to the district attorney whom he or she intends to call at trial;

(VIII) Any written or recorded statements of the accused or of a codefendant, and the substance of any oral statements made to the police or prosecution by the accused or by a codefendant, if the trial is to be a joint one.

(2) The prosecuting attorney shall disclose to the defense any material or information within his or her possession or control which tends to negate the guilt of the accused as to the offense charged or would tend to reduce the punishment therefor.

(3) The prosecuting attorney's obligations under this section (a) extend to material and information in the possession or control of members of his or her staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to his or her office.

(b) Prosecutor's Performance of Obligations.

(1) The prosecuting attorney shall perform his or her obligations under subsections (a)(1)(I), (IV), (VII), and with regard to written or recorded statements of the accused or a codefendant under (VIII) as soon as practicable but not later than 21 days after the defendant's first appearance at the time of or following the filing of charges, except that portions of such reports claimed to be nondiscoverable may be withheld pending a determination and ruling of the court under Part III but the defense must be notified in writing that information has not been disclosed.

(2) The prosecuting attorney shall request court consent and provide the defense with all grand jury transcripts made in connection with the case as soon as practicable but not later than 35 days after indictment.

(3) The prosecuting attorney shall perform all other obligations under subsection (a)(1) as soon as practicable but not later than 35 days before trial.

(4) The prosecuting attorney shall ensure that a flow of information is maintained between the various investigative personnel and his or her office sufficient to place within his or her

possession or control all material and information relevant to the accused and the offense charged.

(c) Material Held by Other Governmental Personnel.

(1) Upon the defense's request and designation of material or information which would be discoverable if in the possession or control of the prosecuting attorney and which is in the possession or control of other governmental personnel, the prosecuting attorney shall use diligent good faith efforts to cause such material to be made available to the defense.

(2) The court shall issue suitable subpoenas or orders to cause such material to be made available to the defense, if the prosecuting attorney's efforts are unsuccessful and such material or other governmental personnel are subject to the jurisdiction of the court.

(d) Discretionary Disclosures.

(1) The court in its discretion may, upon motion, require disclosure to the defense of relevant material and information not covered by Parts I (a), (b), and (c), upon a showing by the defense that the request is reasonable.

(2) The court may deny disclosure authorized by this section if it finds that there is substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment, resulting from such disclosure, which outweighs any usefulness of the disclosure to the defense.

(3) Where the interests of justice would be served, the court may order the prosecution to disclose the underlying facts or data supporting the opinion in that particular case of an expert endorsed as a witness. If a report has not been prepared by that expert to aid in compliance with other discovery obligations of this rule, the court may order the party calling that expert to provide a written summary of the testimony describing the witness's opinions and the bases and reasons therefor, including results of physical or mental examination and of scientific tests, experiments, or comparisons. The intent of this section is to allow the defense sufficient meaningful information to conduct effective cross- examination under CRE 705.

(e) Matters not Subject to Disclosure.

(1) Work Product. Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the prosecuting attorney or members of his legal staff.

(2) Informants. Disclosure shall not be required of an informant's identity where his or her identity is a prosecution secret and a failure to disclose will not infringe the constitutional rights of the accused. Disclosure shall not be denied hereunder of the identity of witnesses to be

produced at a hearing or trial.Part II. Disclosure to Prosecution

(a) The Person of the Accused.

(1) Notwithstanding the initiation of judicial proceedings, and subject to constitutional limitations, upon request of the prosecuting attorney, the court may require the accused to give any nontestimonial identification as provided in Rule 41.1(h)(2).

(2) Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given by the prosecuting attorney to the accused and his or her counsel. Provision may be made for appearance for such purposes in an order admitting the accused to bail or providing for his or her release.

(b) Medical and Scientific Reports.

(1) Subject to constitutional limitations, the trial court may require that the prosecuting attorney be informed of and permitted to inspect and copy or photograph any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

(2) Subject to constitutional limitations, and where the interests of justice would be served, the court may order the defense to disclose the underlying facts or data supporting the opinion in that particular case of an expert endorsed as a witness. If a report has not been prepared by that expert to aid in compliance with other discovery obligations of this rule, the court may order the party calling that expert to provide a written summary of the testimony describing the witness's opinions and the bases and reasons therefor, including results of physical or mental examinations and of scientific tests, experiments, or comparisons. The intent of this section is to allow the prosecution sufficient meaningful information to conduct effective cross-examination under CRE 705.

(c) Nature of Defense. Subject to constitutional limitations, the defense shall disclose to the prosecution the nature of any defense, other than alibi, which the defense intends to use at trial. The defense shall also disclose the names and addresses of persons whom the defense intends to call as witnesses at trial. At the entry of the not guilty plea, the court shall set a deadline for such disclosure. In no case shall such disclosure be less than 35 days before trial for a felony trial, or 7 days before trial for a non-felony trial, except for good cause shown. Upon receipt of the information required by this subsection (c), the prosecuting attorney shall notify the defense of any additional witnesses which the prosecution intends to call to rebut such defense within a reasonable time after their identity becomes known.

(d) Notice of Alibi. The defense, if it intends to introduce evidence that the defendant was at a place other than the location of the offense, shall serve upon the prosecuting attorney as soon as practicable but not later than 35 days before trial a statement in writing specifying the place

where he or she claims to have been and the names and addresses of the witnesses he or she will call to support the defense of alibi. Upon receiving this statement, the prosecuting attorney shall advise the defense of the names and addresses of any additional witnesses who may be called to refute such alibi as soon as practicable after their names become known. Neither the prosecuting attorney nor the defense shall be permitted at the trial to introduce evidence inconsistent with the specification, unless the court for good cause and upon just terms permits the specification to be amended. If the defense fails to make the specification required by this section, the court shall exclude evidence in his behalf that he or she was at a place other than that specified by the prosecuting attorney unless the court is satisfied upon good cause shown that such evidence should be admitted.

Part III. Regulation of Discovery

(a) Investigation Not to be Impeded. Subject to the provisions of Parts I (d) and III (d), neither the prosecuting attorney, the defense counsel, the defendant nor other prosecution or defense personnel shall advise persons having relevant material or information (except the defendant) to refrain from discussing the case or with showing any relevant material to any party, counsel or their agent, nor shall they otherwise impede counsel's investigation of the case. The court shall determine that the parties are aware of the provision.

(b) Continuing Duty to Disclose. If, subsequent to compliance with these standards or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, including the names and addresses of any additional witnesses who have become known or the materiality of whose testimony has become known to the district attorney after making available the written list required in part I (a)(1)(VII), he or she shall promptly notify the other party or his or her counsel of the existence of such additional material, and if the additional material or information is discovered during trial, the court shall also be notified.

(c) Custody of Materials. Materials furnished in discovery pursuant to this rule may only be used for purposes of preparation and trial of the case and may only be provided to others and used by them for purposes of preparation and trial of the case, and shall be subject to such other terms, conditions or restrictions as the court, statutes or rules may provide. Defense counsel is not required to provide actual copies of discovery to his or her client if defense counsel reasonably believes that it would not be in the client's interest, and other methods of having the client review discovery are available. An attorney may also use materials he or she receives in discovery for the purposes of educational presentations if all identifying information is first removed.

(d) Protective Orders.With regard to all matters of discovery under this rule, upon a showing of cause, the court may at any time order that specified disclosures be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled must be disclosed in time to permit the party to make beneficial use thereof.

(e) Excision.

(1) When some parts of certain material are discoverable under the provisions of these court rules, and other parts are not discoverable, the nondiscoverable material may be excised and the remainder made available in accordance with the applicable provisions of these rules.

(2) Material excised pursuant to judicial order shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(f) In Camera Proceedings. Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosures, or portion of such showing, to be made in camera. A record shall be made of such proceedings. If the court enters an order granting relief following a showing in camera, the entire record of such showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

(g) Failure to Comply; Sanctions. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed or enter such other order as it deems just under the circumstances.

Part IV. Procedure

(a) General Procedural Requirements.

(1) In all criminal cases, in procedures prior to trial, there may be a need for one or more of the following three stages:

(I) An exploratory stage, initiated by the parties and conducted without court supervision to implement discovery required or authorized under this rule;

(II) An omnibus stage, when ordered by the court, supervised by the trial court and court appearance required when necessary;

(III) A trial planning stage, requiring pretrial conferences when necessary.

(2) These stages shall be adapted to the needs of the particular case and may be modified or eliminated as appropriate.

(b) Setting of Omnibus Hearing.

(1) If a plea of not guilty or not guilty by reason of insanity is entered at the time the accused is arraigned, the court may set a time for and hold an omnibus hearing in all felony and

misdemeanor cases.

(2) In determining the date for the omnibus hearing, the court shall allow counsel sufficient time:

(I) To initiate and complete discovery required or authorized under this rule;

(II) To conduct further investigation necessary to the defendant's case;

(III) To continue plea discussion.

(3) The hearing shall be no later than 35 days after arraignment.

(c) Omnibus Hearing.

(1) If an omnibus hearing is held, the court on its own initiative, utilizing an appropriate checklist form, should:

(I) Ensure that there has been compliance with the rule regarding obligations of the parties;

(II) Ascertain whether the parties have completed the discovery required in Part I (a), and if not, make orders appropriate to expedite completion;

(III) Ascertain whether there are requests for additional disclosures under Part I (d);

(IV) Make rulings on any motions or other requests then pending, and ascertain whether any additional motions or requests will be made at the hearing or continued portions thereof;

(V) Ascertain whether there are any procedural or constitutional issues which should be considered; and

(VI) Upon agreement of the parties, or upon a finding that the trial is likely to be protracted or otherwise unusually complicated, set a time for a pretrial conference.

(2) Unless the court otherwise directs, all motions and other requests prior to trial should be reserved for and presented orally or in writing at the omnibus hearing. All issues presented at the omnibus hearing may be raised without prior notice by either party or by the court. If discovery, investigation, preparation, and evidentiary hearing, or a formal presentation is necessary for a fair determination of any issue, the omnibus hearing should be continued until all matters are properly disposed of.

(3) Any pretrial motion, request, or issue which is not raised at the omnibus hearing shall be deemed waived, unless the party concerned did not have the information necessary to make the motion or request or raise the issue.

(4) Stipulations by any party or his or her counsel should be binding upon the parties at trial unless set aside or modified by the court in the interests of justice.

(5) A verbatim record of the omnibus hearing shall be made. This record shall include the disclosures made, all rulings and orders of the court, stipulations of the parties, and an identification of other matter determined or pending.

(d) Omnibus Hearing Forms.

(1) The forms set out in the Appendix to Chapter 29 shall be utilized by the court in conducting the omnibus hearing. These forms shall be made available to the parties at the time of the defendant's first appearance.

(2) Nothing in the forms shall be construed to make substantive changes of these rules.

(e) Pretrial Conference.

(1) Whenever a trial is likely to be protracted or otherwise unusually complicated, or upon request by agreement of the parties, the trial court may (in addition to the omnibus hearing) hold one or more pretrial conferences, with trial counsel present, to consider such matters as will promote a fair and expeditious trial. Matters which might be considered include:

(I) Making stipulations as to facts about which there can be no dispute;

(II) Marking for identification various documents and other exhibits of the parties;

(III) Excerpting or highlighting exhibits;

(IV) Waivers of foundation as to such documents;

(V) Issues relating to codefendant statements;

(VI) Severance of defendants or offenses for trial;

(VII) Seating arrangements for defendants and counsel;

(VIII) Conduct of jury examination, including any issues relating to confidentiality of juror locating information;

(IX) Number and use of peremptory challenges;

(X) Procedure on objections where there are multiple counsel or defendants;

(XI) Order of presentation of evidence and arguments when there are multiple counsel or defendants;

(XII) Order of cross-examination where there are multiple defendants;

(XIII) Temporary absence of defense counsel during trial;

(XIV) Resolution of any motions or evidentiary issues in a manner least likely to inconvenience jurors to the extent possible; and

(XV) Submission of items to be included in a juror notebook.

(2) At the conclusion of the pretrial conference, a memorandum of the matters agreed upon should be signed by the parties, approved by the court, and filed. Such memorandum shall be binding upon the parties at trial, on appeal and in postconviction proceedings unless set aside or modified by the court in the interests of justice. However, admissions of fact by an accused if present should bind the accused only if included in the pretrial order and signed by the accused as well as his or her attorney.

(f) Juror Notebooks. Juror notebooks shall be available during all felony trials and deliberations to aid jurors in the performance of their duties. The parties shall confer about the items to be included in juror notebooks and, by the pre-trial conference or other date set by the court, shall make a joint submission to the court of items to be included in a juror notebook. In non-felony trials, juror notebooks shall be optional.

Part V. Time Schedules and Discovery Procedures

(a) Mandatory Discovery. The furnishing of the items discoverable, referred to in Part I (a), (b) and (c) and Part II (b)(1), (c) and (d) herein, is mandatory and no motions for discovery with respect to such items may be filed.

(b) Time Schedule.

(1) In the event the defendant enters a plea of not guilty or not guilty by reason of insanity, or asserts the defense of impaired mental condition, the court shall set a deadline for such disclosure to the prosecuting attorney of those items referred to in Parts II (b) (1) and (c) herein, subject to objections which may be raised by the defense within that period pursuant to Part III (d) of this rule. In no case shall such disclosure be less than 35 days before trial for a felony trial, or 7 days before trial for a non-felony trial, except for good cause shown.

(2) If either the prosecuting attorney or the defense claims that discoverable material under this rule was not furnished, was incomplete, was illegible or otherwise failed to satisfy this rule, or if claim is made that discretionary disclosures pursuant to Part I (d) should be made, the

prosecuting attorney or the defense may file a motion concerning these matters and the motion shall be promptly heard by the court.

(3) For good cause, the court may, on motion of either party or its own motion, alter the time for all matters relating to discovery under this rule.

(c) Cost and Location of Discovery. The cost of duplicating any material discoverable under this rule shall be borne by the party receiving the material, based on the actual cost of copying the same to the party furnishing the material. Copies of any discovery provided to a defendant by court appointed counsel shall be paid for by the defendant. The place of discovery and furnishing of materials shall be at the office of the party furnishing it, or at a mutually agreeable location.

(d) Compliance Certificate.

(1) When deemed necessary by the trial court, the prosecuting attorney and the defense shall furnish to the court a compliance certificate signed by all counsel listing specifically each item furnished to the other party. The court may, in its discretion, refuse to admit into evidence items not disclosed to the other party if such evidence was required to be disclosed under Parts I and II of this rule.

(2) If discoverable matters are obtained after the compliance certificate is filed, copies thereof shall be furnished forthwith to the opposing party and, upon application to the court, the court may either permit such evidence to be offered at trial or grant a continuance in its discretion.

Rule 17. Subpoena

In every criminal case, the prosecuting attorneys and the defendant have the right to compel the attendance of witnesses and the production of tangible evidence by service upon them of a subpoena to appear for examination as a witness upon the trial or other hearing.

(a) For Attendance of Witnesses – Form – Issuance. A subpoena shall be issued either by the clerk of the court in which case is filed or by one of counsel whose appearance has been entered in the particular case in which the subpoena is sought. It shall state the name of the court and the title, if any, of the proceedings, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein.

(b) Pro Se Defendants. Subpoenas shall be issued at the request of a pro se defendant, as hereinafter provided. The court or a judge thereof, in its discretion in any case involving a pro se defendant, may order at any time that a subpoena be issued only upon motion or request of a pro se defendant and upon order entered thereon. The motion or request shall be supported by an affidavit stating facts supporting the contention that the witness or the items sought to be subpoenaed are material and relevant and that the defendant cannot safely go to trial without the witness or items which are sought by subpoena. If the court is satisfied with the affidavit it shall

direct that the subpoena be issued.

(c) For Production of Documentary Evidence and of Objects. A subpoena may also command the person to whom it is directed to produce the books, papers, documents, photographs, or other objects designated therein. The subpoenaing party shall forthwith provide a copy of the subpoena to opposing counsel (or directly to the defendant if unrepresented) upon issuance. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents, photographs, or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents, photographs, or objects or portions thereof to be inspected by the parties and their attorneys.

(d) Service on a Minor. Service of a subpoena upon a parent or legal guardian who has physical care of an unemancipated minor that contains wording commanding said parent or legal guardian to produce the unemancipated minor for the purpose of testifying before the court shall be valid service compelling the attendance of both said parent or legal guardian and the unemancipated minor for examination as witnesses. In addition, service of a subpoena as described in this subsection shall compel said parent or legal guardian either to make all necessary arrangements to ensure that the unemancipated minor is available before the court to testify or to appear in court and show good cause for the unemancipated minor's failure to appear.

(e) Service. Unless service is admitted or waived, a subpoena may be served by the sheriff, by his deputy, or by any other person who is not a party and who is not less than eighteen years of age. Service of a subpoena may be made by delivering a copy thereof to the person named. Service may also be made in accordance with Section 24-30-2104(3), C.R.S. Service is also valid if the person named has signed a written admission or waiver of personal service. If ordered by the court, a fee for one day's attendance and mileage allowed by law shall be tendered to the person named if the person named resides outside the county of trial.

(f) Place of Service.

(1) In Colorado. A subpoena requiring the attendance of a witness at a hearing or trial may be served anywhere within Colorado.

(2) Witness from Another State. Service on a witness outside this state shall be made only as provided by law.

(g) For Taking Deposition – Issuance. A court order to take a deposition authorizes the issuance by the clerk of the court of subpoenas for the persons named or described in the order.

(h) Failure to Obey Subpoena.

(1) Contempt. Failure by any person without adequate excuse to obey a duly served subpoena may be deemed a contempt of the court from which the subpoena issued. Such contempt is indirect contempt within the meaning of C.R.C.P. 107. The trial court may issue a contempt citation under this subsection (1) whether or not it also issues a bench warrant under subsection (2) below.

(2) Trial Witness – Bench Warrant.

(A) When it appears to the court that a person has failed without adequate excuse to obey a duly served subpoena commanding appearance at a trial, the court, upon request of the subpoenaing party, shall issue a bench warrant directing that any peace officer apprehend the person and produce the person in court immediately upon apprehension or, if the court is not then in session, as soon as court reconvenes. Such bench warrant shall expire upon the earliest of:

(i) submission of the case to the jury; or

(ii) cancellation or termination of the trial.

(B) Upon the person's production in court, the court shall set bond.

Rule 18. Venue

Comment. The place for trying criminal cases is governed by applicable statutes or rules, such as section 18-1-202 (general venue statute), section 13-73-107 and section 13-74-107 (on statewide and judicial district grand jury indictments), section 18-2-202(2) (a) (conspiracy), section 18-3-304(4) (violation of custody orders), and section 19-2-105 (juvenile cases), as well as section 16-6-101 et seq. and Crim. P. 21 (change of venue), or the state or federal constitutions.

Rule 19.

No Colorado Rule.

Rule 20.

No Colorado Rule.

Rule 21. Change of Venue or Judge

(a) Change of Venue.

(1) For Fair or Expeditious Trial. The place of trial may be changed when the court in its sound

discretion determines that a fair or expeditious trial cannot take place in the county or district in which the trial is pending.

(2) The Motion for Change of Venue.

(I) A motion for a change of venue shall be in writing and accompanied by one or more affidavits setting forth the facts upon which the moving party relies, or in lieu of such affidavits the motion, with approval of the court, may contain a stipulation of the parties to a change of venue.

(II) The written motion and the affidavits shall be served upon the opposing party 7 days before the hearing; the nonmoving party may submit a written brief or affidavit or both in opposition to the motion.

(III) As soon as practicable, the court may hold a hearing on the motion.

(3) Effect of Motions. After a motion for a change of venue has been denied, the applicant may renew his motion for good cause shown, if since denial he has learned of new grounds for a change of venue. All questions concerning the regularity of the proceedings in obtaining changes of venue or the right of the court to which the change is made to try the case and execute the judgment, and all grounds for a change of venue, shall be considered waived if not raised before trial.

(4) Order of Change. Every order for a change of venue shall be in writing, signed by the judge, and filed by the clerk with the motion as a part of the record in the case. The order shall state the court to which venue has been changed and the date and time at which the defendant shall appear at said court. The bond made, if any, shall remain in force and effect.

(5) Disposition of Confined Defendant. When the defendant is in custody, the court shall order the sheriff, or other officer having custody of the defendant, to remove him not less than 7 days before trial to the jail of the county to which the venue is changed and there deliver him together with the warrant under which he is held, to the jailer. The sheriff or other officers shall endorse on the warrant of commitment the reason for the change of custody, and deliver the warrant, with the prisoner, to the jailer of the proper county, who shall give the sheriff or other officer a receipt and keep the prisoner in the same manner as if he had originally been committed to his custody.

(6) Transcript of Record. When a change of venue is granted, the clerk of the court from which the change is granted shall immediately make a full transcript of the record and proceedings in the case, and of the motion and order for the change of venue, and shall transmit the same, together with all papers filed in the case, including the indictment or information, complaint, or summons and complaint, and bonds of the defendant and of all witnesses, to the proper court. When the change is granted to one or more, but not of several defendants, a certified copy of the indictment or information, and of each other paper in the case, shall be transmitted to the court to which the change of venue is ordered. Such certified copies shall stand as the originals, and the

defendant shall be tried upon them. The transcript and papers may be transmitted by mail, or in any other way the court may direct. The clerk of the court to which the venue is changed shall file the transcript and papers transmitted to him, and docket the case; and the case shall proceed before and after judgment, as if it had originated in that court.

(7) Imprisonment. When after a change of venue the defendant is convicted and sentenced to imprisonment in the county jail, the sheriff shall transport him at once to the county where the crime was committed if that county has a jail or other place of confinement.

(b) Substitution of Judges.

(1) Within 14 days after a case has been assigned to a court, a motion, verified and supported by affidavits of at least two credible persons not related to the defendant, may be filed with the court and served on the opposing party to have a substitution of the judge. Said motion may be filed after the 14-day period only if good cause is shown to the court why it was not filed within the original 14-day period. The motion shall be based on the following grounds:

(I) The judge is related to the defendant or to any attorney of record or attorney otherwise engaged in the case; or

(II) The offense charged is alleged to have been committed against the person or property of the judge, or of some person related to him; or

(III) The judge has been of counsel in the case; or

(IV) The judge is in any way interested or prejudiced with respect to the case, the parties, or counsel.

(2) Any judge who knows of circumstances which disqualify him in a case shall, on his own motion, disqualify himself.

(3) Upon the filing of a motion under this section (b), all other proceedings in the case shall be suspended until a ruling is made thereon. If the motion and supporting affidavits state facts showing grounds for disqualification, the judge shall immediately enter an order disqualifying himself or herself. Upon disqualifying himself or herself, the judge shall notify forthwith the chief judge of the district, who shall assign another judge in the district to hear the action. If no other judge in the district is available or qualified, the chief judge shall notify forthwith the state court administrator, who shall obtain from the Chief Justice the assignment of a replacement judge.

Rule 22. Time of Motion to Transfer

A motion for a change of venue or for a change of judge under these Rules may be made at or

before arraignment or, for good cause shown for a late filing, at any time before trial.

Rule 23. Trial by Jury or to the Court

(a) (1) Every person accused of a felony has the right to be tried by a jury of twelve. Before the jury is sworn, the defendant may, except in class 1 felonies, elect a jury of less than twelve but no fewer than six, with the consent of the court.

(2) Every person accused of a misdemeanor has the right to be tried by a jury of six. Before the jury is sworn, the defendant may elect a jury of less than six but no fewer than three, with the consent of the court.

(3) Every person accused of a class 1 or class 2 petty offense has the right to be tried by a jury of three, if he or she:

(I) Files a written jury demand within 21 days after entry of a plea;

(II) Tenders twenty-five dollars to the court within 21 days after entry of a plea, unless such fee is waived by the judge because of the indigence of the defendant. If the charge is dismissed or the defendant is acquitted of the charge, or if the defendant, having paid the jury fee, files with the court, at least 7 days before the scheduled trial date a written waiver of jury trial, the jury fee shall be returned to the defendant.

(4) The jury, in matters involving class 1 and class 2 petty offenses, shall consist of a greater number than three, not to exceed six, if requested by the defendant in the jury demand.

(5) (I) The person accused of a felony or misdemeanor may, with the consent of the prosecution, waive a trial by jury in writing or orally in court. Trial shall then be to the court.

(II) The court shall not proceed with a trial to the court after waiver of jury trial without first determining:

(a) That the defendant’s waiver is voluntary;

(b) That the defendant understands that:

(i) The waiver would apply to all issues that might otherwise need to be determined by a jury including those issues requiring factual findings at sentencing;

(ii) The jury would be composed of a certain number of people;

(iii) A jury verdict must be unanimous;

(iv) In a trial to the court, the judge alone would decide the verdict;

(v) The choice to waive a jury trial is the defendant's alone and may be made contrary to counsel's advice.

(III) In a proceeding where the waiver of a jury trial is part of a determination preceding the entry of a guilty or nolo contendere plea, the court need only make the determinations required by Rule 11(b) and not those required by this rule.

(6) A defendant may not withdraw a voluntary and knowing waiver of trial by jury as a matter of right, but the court, with the consent of the prosecution, may permit withdrawal of the waiver prior to the commencement of the trial.

(7) In any case in which a jury has been sworn to try a case, and any juror by reason of illness or other cause becomes unable to continue until a verdict is reached, the court may excuse such juror. Except in class 1 felonies, if no alternate juror is available to replace such juror, the defendant and the prosecution, at any time before verdict, may stipulate in writing or on the record in open court, with approval of the court, that the jury shall consist of less than twelve but no fewer than six in felony cases, and less than six but no fewer than three in misdemeanor cases, and the jurors thus remaining shall proceed to try the case and determine the issues.

(8) All jury verdicts must be unanimous.

Rule 24. Trial Jurors

(a) Orientation And Examination Of Jurors. An orientation and examination shall be conducted to inform prospective jurors about their duties and service and to obtain information about prospective jurors to faciliate an intelligent exercise of challenges for cause and peremptory challenges.

(1) The jury commissioner is authorized to examine and, when appropriate, excuse prospective jurors who do not satisfy the statutory qualifications for jury service, or who are entitled to a postponement, or as otherwise authorized by appropriate court order.

(2) When prospective jurors have reported to the courtroom, the judge shall explain to them in plain and clear language:

(i) The grounds for challenge for cause;

(ii) Each juror's duty to volunteer information that would constitute a disqualification or give rise to a challenge for cause;

(iii) The identities of the parties and their counsel;

(iv) The nature of the case using applicable instructions if available or, alternatively a joint statement of factual information intended to provide a relevant context for the prospective jurors to respond to questions asked of them. Alternatively, at the request of counsel and in the discretion of the judge, counsel may present such information through brief non-argumentative statements;

(v) General legal principles applicable to the case including the presumption of innocence, burden of proof, definition of reasonable doubt, elements of charged offenses and other matters that jurors will be required to consider and apply in deciding the issues.

(3) The judge shall ask prospective jurors questions concerning their qualifications to serve as jurors. The parties or their counsel shall be permitted to ask the prospective jurors additional questions. In the discretion of the judge, juror questionnaires, posterboards and other methods may be used. In order to minimize delay, the judge may reasonably limit the time available to the parties or their counsel for juror examination. The court may limit or terminate repetitious, irrelevant, unreasonably lengthy, abusive or otherwise improper examination.

(4) Jurors shall not be required to disclose personal locating information, such as address or place of business in open court and such information shall not be maintained in files open to the public. The trial judge shall assure that parties and counsel have access to appropriate and necessary locating information.

(5) Once the jury is impaneled, the judge shall again explain in more detail the general principles of law applicable to criminal cases, the procedural guidelines regarding conduct by jurors during the trial, case specific legal principles and definitions of technical or special terms expected to be used during the presentation of the case.

(b) Challenges for Cause.

(1) The court shall sustain a challenge for cause on one or more of the following grounds:

(I) Absence of any qualification prescribed by statute to render a person competent as a juror;

(II) Relationship within the third degree, by blood, adoption, or marriage, to a defendant or to any attorney of record or attorney engaged in the trial of the case;

(III) Standing in the relation of guardian and ward, employer and employee, landlord and tenant, debtor and creditor, or principal and agent to, or being a member of the household of, or associated in business with, or surety on any bond or obligation for, any defendant;

(IV) The juror is or has been a party adverse to the defendant in a civil action, or has complained against or been accused by him in a criminal prosecution;

(V) The juror has served on the grand jury which returned the indictment or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or the information, or on any other investigatory body which inquired into the facts of the crime charged;

(VI) The juror was a juror at a former trial arising out of the same factual situation or involving the same defendant;

(VII) The juror was a juror in a civil action against the defendant arising out of the act charged as a crime;

(VIII) The juror was a witness to any matter related to the crime or its prosecution;

(IX) The juror occupies a fiduciary relationship to the defendant or a person alleged to have been injured by the crime or the person on whose complaint the prosecution was instituted;

(X) The existence of a state of mind in a juror manifesting a bias for or against the defendant, or for or against the prosecution, or the acknowledgement of a previously formed or expressed opinion regarding the guilt or innocence of the defendant shall be grounds for disqualification of the juror, unless the court is satisfied that the juror will render an impartial verdict based solely upon the evidence and the instructions of the court;

(XI) [Reserved]

(XII) The juror is an employee of a public law enforcement agency or public defender's office.

(2) If either party desires to introduce evidence, other than the sworn responses of the prospective juror, for the purpose of establishing grounds to disqualify or challenge the juror for cause, such evidence shall be heard and all issues related thereto shall be determined by the court out of the presence of the other prospective jurors. All matters pertaining to the qualifications and competency of the prospective jurors shall be deemed waived by the parties if not raised prior to the swearing in of the jury to try the case, except that the court for good cause shown or upon a motion for mistrial or other relief may hear such evidence during the trial out of the presence of the jury and enter such orders as are appropriate.

(c) Challenge to Pool.

(1) Upon the request of the defendant or the prosecution in advance of the commencement of the trial, the defendant or the prosecution shall be furnished with a list of prospective jurors who will be subject to call in the trial.

(2) Either the prosecution or the defendant may challenge the pool on the ground that there has

been a substantial failure to comply with the requirements of the law governing the selection of jurors. Such challenge must be made in writing setting forth the particular ground upon which it is based and shall be accompanied by one or more affidavits specifying the supporting facts and demographic data. The challenge must be filed prior to the swearing in of the jury selected to try the case.

(3) If the court finds the affidavit or affidavits filed under subsection (2) of this section, if true, demonstrate a substantial failure to comply with the "Uniform Jury Selection and Service Act", the moving party is entitled to present in support of the motion the testimony of any person responsible for the implementation of the "Uniform Jury Selection and Service Act." Any party may present any records used in the selection and summoning of jurors for service, and any other relevant evidence. If the court determines, by a preponderance of the evidence, that in selecting either a grand jury or a petit jury there has been a substantial failure to comply with the "Uniform Jury Selection and Service Act", the court shall discharge the jury panel and stay the proceedings pending the summoning of a new juror pool or dismiss an indictment, information, or complaint, or grant other appropriate relief.

(d) Peremptory Challenges.

(1) For purposes of Rule 24 a capital case is a case in which a class 1 felony is charged.

(2) In capital cases the state and the defendant, when there is one defendant, shall each be entitled to ten peremptory challenges. In all other cases where there is one defendant and the punishment may be by imprisonment in a correctional facility, the state and the defendant shall each be entitled to five peremptory challenges, and in all other cases, to three peremptory challenges. If there is more than one defendant, each side shall be entitled to an additional three peremptory challenges for every defendant after the first in capital cases, but not exceeding twenty peremptory challenges to each side; in all other cases, where the punishment may be by imprisonment in a correctional facility, to two additional peremptory challenges for every defendant after the first, not exceeding fifteen peremptory challenges to each side; and in all other cases to one additional peremptory challenge for every defendant after the first, not exceeding ten peremptory challenges to each side. In any case where there are multiple defendants, every peremptory challenge shall be made and considered as the joint peremptory challenge of all defendants. In case of the consolidation of any indictments, informations, complaints, or summons and complaints for trial, such consolidated cases shall be considered, for all purposes concerning peremptory challenges, as though the defendants had been joined in the same indictment, information, complaint, or summons and complaint. When trial is held on a plea of not guilty by reason of insanity, the number of peremptory challenges shall be the same as if trial were on the issue of substantive guilt.

(3) For good cause shown, the court at any time may add peremptory challenges to either or both sides.

(4) Peremptory challenges shall be exercised by counsel, alternately, the first challenge to be exercised by the prosecution. A prospective juror so challenged shall be excused, and another juror from the panel shall replace the juror excused. Counsel waiving the exercise of further peremptory challenges as to those jurors then in the jury box may thereafter exercise peremptory challenges only as to jurors subsequently called into the jury box without, however, reducing the total number of peremptory challenges available to either side.

(e) Alternate Jurors. The court may direct that a sufficient number of jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors in the order in which they are called shall replace jurors who become unable or disqualified to perform their duties. Alternate jurors shall be drawn in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, facilities, and privileges as the regular jurors. An alternate juror shall not be discharged until the jury renders its verdict or until such time as determined by the court. When alternate jurors are impaneled, each side is entitled to one peremptory challenge for each alternate to be selected, and such additional peremptory challenges may be exercised as to any prospective jurors. In a case in which a class 1, 2 or 3 felony is charged and in any case in which a felony listed in section 24-4.1-302(1), C.R.S. is charged, the court, at the request of the defendant or the prosecution, shall impanel at least one alternate juror.

(f) Custody of Jury.

(1) The court should only sequester jurors in extraordinary cases. Otherwise, (J)urors should be permitted to separate during all trial recesses, both before and after the case has been submitted to the jury for deliberation. Cautionary instructions as to their conduct during all recesses shall be given to the jurors by the court.

(2) The jurors shall be in the custody of the bailiff whenever they are deliberating and at any other time as ordered by the court.

(3) If the jurors are permitted to separate during any recess of the court, the court shall order them to return at a day and hour appointed by the court for the purpose of continuing the trial, or for resuming their deliberations if the case has been submitted to the jury.

(g) Juror Questions. Jurors shall be allowed to submit written questions to the court for the court to ask of witnesses during trial, in compliance with procedures established by the trial court. The trial court shall have the discretion to prohibit or limit questioning in a particular trial for reasons related to the severity of the charges, the presence of significant suppressed evidence or for other good cause.

Rule 25. Disability of Judge

If by reason of absence from the district, death, sickness, or other disability, the judge before

whom the defendant was tried is unable to perform the duties to be performed by the court after a verdict or finding, any other judge regularly sitting in or assigned to the court may perform those duties. If the substitute judge is satisfied that he cannot perform those duties because he did not preside at the trial, or for any other reason, he may, in his discretion, grant a new trial.

Rule 26. Evidence

In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by law.

Rule 26.1. Determination of Foreign Law

A party who intends to raise an issue concerning the law of a foreign country shall give reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party. The court's determination shall be treated as a ruling on a question of law.

Rule 26.2. Written Records

Deleted by amendment November 9, 2006, effective January 1, 2007.

Rule 27. Proof of Official Record

Deleted by amendment November 9, 2006, effective January 1, 2007.

Rule 29. Motion for Acquittal

(a) Motion for Judgment of Acquittal. Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The court on motion of a defendant or of its own motion shall order the entry of a judgment of acquittal of one or more offenses charged in the indictment or information, or complaint, or summons and complaint after the evidence on either side is closed, if the evidence is insufficient to sustain a conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at the close of the evidence offered by the prosecution is not granted, the defendant may offer evidence without having reserved the right. The court may not reserve ruling on a motion for judgment of acquittal made at the close of the People's case.

(b) Reservation of Decision on Motion. If a motion for a judgment of acquittal is made at the close of all the evidence, the court may reserve decision on the motion, submit the case to the jury, and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict.

(c) Motion After Verdict or Discharge of Jury. If the jury returns a verdict of guilty or is

discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 14 days after the jury is discharged or within such further time as the court may fix during the 14-day period. If a verdict of guilty is returned, the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned, the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that such a similar motion has been made prior to the submission of the case to the jury.

Rule 30. Instructions

A party who desires instructions shall tender his proposed instructions to the court in duplicate, the original being unsigned. All instructions shall be submitted to the parties, who shall make all objections thereto before they are given to the jury. Only the grounds so specified shall be considered on motion for a new trial or on review. Before argument the court shall read its instructions to the jury, but shall not comment upon the evidence. Such instructions may be read to the jury and commented upon by counsel during the argument, and they shall be taken by the jury when it retires. All instructions offered by the parties, or given by court, shall be filed with the clerk and, with the endorsement thereon indicating the action of the court, shall be taken as a part of the record of the case.

Rule 31. Verdict

(a) Submission and Finding.

(1) Forms of Verdict. Before the jury retires the court shall submit to it written forms of verdict for its consideration.

(2) Retirement of Jury. When the jury retires to consider its verdict, the bailiff shall be sworn or affirmed to conduct the jury to some private and convenient place, and to the best of his ability to keep the jurors together until they have agreed upon a verdict. The bailiff shall not speak to any juror about the case except to ask if a verdict has been reached, nor shall he allow others to speak to the jurors. When they have agreed upon a verdict, the bailiff shall return the jury into court. However, in any case except where the punishment may be death or life imprisonment, the court, upon stipulation of counsel for all parties, may order that if the jury should agree upon a verdict during the recess or adjournment of court for the day, it shall seal its verdict, to be retained by the foreman and delivered by the jury to the judge at the opening of the court, and that thereupon the jury may separate, to meet in the jury box at the opening of court. Such a sealed verdict may be received by the court as the lawful verdict of the jury.

(3) Return. The verdict shall be unanimous and signed by the foreman. It shall be returned by the jury to the judge in open court.

(b) Several Defendants. If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to

whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(c) Conviction of Lesser Offense. The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(d) Poll of Jury. When a verdict is returned and before it is recorded, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

Rule 32. Sentence and Judgment

(a) Presentence or Probation Investigation.

(1) When Investigation and Report Required.

(i) In General. The probation officer must make presentence investigation and written report to the court before the imposition of sentence or granting of probation:(a) in any case in which the defendant is to be sentenced for a felony and the court has discretion as to the punishment, or

(b) when the court so orders in any case in which the defendant is to be sentenced for a misdemeanor.

(ii) Waiver. The court, with the concurrence of the defendant and the prosecuting attorney, may dispense with the presentence investigation and report unless a presentence report is required by statute, including but not limited to the requirements of section 16- 11-102(1)(b), c.r.s.

(2) Court May Order Examination. The court, upon its own motion or upon the petition of the probation officer, may order any defendant who is subject to presentence investigation or who has made application for probation to submit to a mental and physical examination.

(3) Delivery of Report Copies. The probation officer must provide copies of the presentence report, including any recommendations as to probation, to the prosecuting attorney and to defense counsel or the defendant if unrepresented. the copies must be provided:(i) at least 72 hours before the sentencing hearing, or

(ii) at least 7 days before the sentencing hearing if either the prosecuting attorney, defense counsel, or the defendant if unrepresented, so requests of the court within 7 days of the time the court sets the date for the sentencing hearing. if the probation department informs the court it cannot provide the report copies at least 7 days before the sentencing hearing, the court must grant the probation department additional time to complete the report and must reset the sentencing hearing so that it is held at least 7 days after the probation department provides the

report copies.

(b) Sentence and judgment.

(1) Sentence shall be imposed without unreasonable delay. Before imposing sentence, the court shall afford the defendant an opportunity to make a statement in his or her own behalf, and to present any information in mitigation of punishment. The state also shall be given an opportunity to be heard on any matter material to the imposition of sentence. Alternatives in sentencing shall be as provided by law. When imposing sentence, the court shall consider restitution as required by section 18-1.3-603(1), C.R.S.

(2) Upon conviction of guilt of a defendant of a class 1 felony, and after the sentencing hearing provided by law, the trial court shall impose such sentence as is authorized by law. At the time of imposition of a sentence of death, the trial court shall enter an order staying execution of the judgment and sentence until further order of the Supreme Court.

(3) Judgment.

(I) A judgment of conviction shall consist of a recital of the plea, the verdict or findings, the sentence, the finding of the amount of presentence confinement, and costs, if any are assessed against the defendant, the finding of the amount of earned time credit if the defendant had previously been placed in a community corrections program, an order or finding regarding restitution as required by section 18-1.3-603, C.R.S., and a statement that the defendant is required to register as a sex offender, if applicable.

(II) If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly.

(III) All judgments shall be signed by the trial judge and entered by the clerk in the register of actions.

(c) Advisement.

(1) Where judgment of conviction has been entered following a trial, the court shall, after passing sentence, inform the defendant of the right to seek review of the conviction and sentence, and the time limits for filing a notice of appeal. The court shall at that time make a determination whether the defendant is indigent, and if so, the court shall inform the defendant of the right to the assistance of appointed counsel upon review of the defendant's conviction and sentence, and of the defendant's right to obtain a record on appeal without payment of costs. In addition, the court shall, after passing sentence, inform the defendant of the right to seek postconviction reduction of sentence in the trial court under the provisions of Rule 35(b).(2) Where judgment of conviction has been entered following a plea of guilty or nolo contendere, the court shall, after passing sentence, inform the defendant that the defendant may in certain circumstances have the

right to appellate review of the sentence, of the time limits for filing a notice of appeal, and that the defendant may have a right to seek postconviction reduction of sentence in the trial court under the provisions of Rule 35(b).

(3) When the court imposes a sentence that includes payment of any monetary amount, the court shall instruct the defendant that:

(i) If at any time the defendant is unable to pay the monetary amount due, the defendant must contact the court's designated official or appear before the court to explain why he or she is unable to pay the monetary amount; and

(ii) If the defendant has the ability to pay the monetary amount as directed by the court or the court's designee but willfully fails to pay, the defendant may be imprisoned for failure to comply with the court's lawful order to pay pursuant to section 18-1.3-702, C.R.S.

(d) Withdrawal of Plea of Guilty or Nolo Contendere. A motion to withdraw a plea of guilty or of nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended.If the court decides that the final disposition should not include the charge or sentence concessions contemplated by a plea agreement, as provided in Rule 11(f) of these Rules, the court shall so advise the defendant and the district attorney and then call upon the defendant to either affirm or withdraw the plea of guilty or nolo contendere.

(e) Criteria for Granting Probation. The court in its discretion may grant probation to a defendant unless, having regard to the nature and circumstances of the offense and to the history and character of the defendant, it is satisfied that imprisonment is the more appropriate sentence for the protection of the public.The conditions of probation shall be as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life and to assist the defendant to do so. The court shall provide as an explicit condition of every sentence to probation that the defendant not commit another offense during the period for which the sentence remains subject to revocation.

(f) Proceedings for Revocation of Probation.

(1) At the first appearance of the probationer in court, or at the commencement of the hearing, whichever is first in time, the court shall advise the probationer as provided in Rule 5(2)(I) through (VI) of these Rules insofar as such matters are applicable, except that there shall be no right to a trial by jury in proceedings for revocation of probation.

(2) At or prior to the commencement of the hearing, the court shall advise the probationer of the charges against the probationer and the possible penalty or penalties therefor, and shall require the probationer to admit or deny the charges.

(3) At the hearing, the prosecution shall have the burden of establishing by a preponderance of

the evidence the violation of a condition or conditions of probation, except that the commission of a criminal offense must be established beyond a reasonable doubt unless the probationer has been convicted thereof in a criminal proceeding. The court may, when it appears that the alleged violation of conditions of probation consists of an offense with which the probationer is charged in a criminal proceeding then pending, continue the probation revocation hearing until the termination of such criminal proceeding. Any evidence having probative value shall be received regardless of its admissibility under the exclusionary rules of evidence if the defendant is accorded a fair opportunity to rebut the evidence.

(4) If the probationer is in custody, the hearing shall be held within 14 days after the filing of the complaint, unless delay or continuance is granted by the court at the instance or request of the probationer or for other good cause found by the court justifying further delay.

(5) If the court determines that a violation of a condition or conditions of probation has been committed, it shall within 7 days after the said hearing either revoke or continue the probation. In the event probation is revoked, the court may then impose any sentence, including probation which might originally have been imposed or granted.

(g) Proceedings in the Event of Failure to Pay. When a defendant fails to pay a monetary amount imposed by the court, the court shall follow the procedures set forth in section 18-1.3-702(3), C.R.S.

Rule 32.1. Death Penalty Sentencing Hearing

(a) Purpose and Scope. The purpose of this rule is to establish a uniform, expeditious procedure for conducting death penalty sentencing hearings in accordance with section 18-1.3-1201 , 6 C.R.S.

(b) Statement of Intention to Seek Death Penalty. In any class 1 felony case in which the prosecution intends to seek the death penalty, the prosecuting attorney shall file a written statement of that intention with the trial court no later than 63 days (9 weeks) after arraignment and shall serve a copy of the statement on the defendant’s attorney of record or the defendant if appearing pro se.

(c) Date of Sentencing Hearing. After a verdict of guilt to a class 1 felony, the trial judge shall set a date for the sentencing hearing. The sentencing hearing shall be held as soon as practicable following the trial.

(d) Discovery Procedures for Sentencing Hearing. The following discovery provisions shall apply to the death penalty sentencing hearing:

(1) Aggravating Factors. Not later than 21 days after the filing of the written statement of intention required in subsection (b) of this rule, the prosecuting attorney shall provide to the

defendant, and file with the court a list of the aggravating factors enumerated at section 18-1.3-1201(5), 6 C.R.S., and that the prosecuting attorney intends to prove at the hearing.

(2) Prosecution Witnesses. Not later than 21 days after the filing of the written statement of intention required in subsection (b) of this rule, the prosecuting attorney shall provide to the defendant a list of the witnesses whom the prosecuting attorney may call at the sentencing hearing and shall promptly furnish the defendant with written notification of any such witnesses who subsequently become known or the materiality of whose testimony subsequently becomes known. Along with the name of the witness, the prosecuting attorney shall furnish the witness' address and date of birth, the subject matter of the witness' testimony, and any written or recorded statement of that witness, including notes.

(3) Prosecution Books, Papers, Documents. Not later than 21 days after the filing of the written statement of intention required in subsection (b) of this rule, the prosecuting attorney shall provide to the defendant a list of the books, papers, documents, photographs, or tangible objects, and access thereto, that the prosecuting attorney may introduce at the sentencing hearing and shall promptly furnish the defendant written notification of additional such items as they become known.

(4) Prosecution Experts. As soon as practicable but not later than 63 days (9 weeks) before trial, the prosecuting attorney shall provide to the defendant any reports, recorded statements, and notes, including results of physical or mental examinations and scientific tests, experiments, or comparisons, of any experts whom the prosecuting attorney intends to call as a witness at the sentencing hearing and shall promptly furnish the defendant additional such items as they become available.

(5) Material Favorable to the Accused. Not later than 21 days after the filing of the written statement of intention required in subsection (b) of this rule, the prosecuting attorney shall make available to the defendant any material or information within the prosecuting attorney's possession or control that would tend to mitigate or negate the finding of any of the aggravating factors the prosecuting attorney intends to prove at the sentencing hearing, and the prosecuting attorney shall promptly make available to the defendant any such material or information that subsequently comes into the prosecuting attorney's possession or control.

(6) Prosecution's Rebuttal Witnesses. Upon receipt of the information required by subsection (7), the prosecuting attorney shall notify the defendant as soon as practicable but not later than 14 days before trial of any additional witnesses whom the prosecuting attorney intends to call in response to the defendant's disclosures.

(7) Defendant's Disclosure.

(A) Subject to constitutional limitations, the defendant shall provide the prosecuting attorney with the following information and materials not later than 35 days before trial:

(I) A list of witnesses whom the defendant may call at the sentencing hearing. Along with the name of the witness, the defendant shall furnish the witness's address and date of birth, the subject matter of the witness's testimony, and any written or recorded statement of that witness, including notes, that comprise substantial recitations of witness statements and relate to the subject matter of the testimony;

(II) A list of the books, papers, documents, photographs, or tangible objects, and access thereto, that the defendant may introduce at the sentencing hearing;

(III) Any reports, recorded statements, and notes of any expert whom the defendant may call as a witness during the sentencing hearing, including results of physical or mental examinations and scientific tests, experiments, or comparisons.

(B) Any material subject to this subsection (7) that the defendant believes contains self-incriminating information that is privileged from disclosure to the prosecution prior to the sentencing hearing shall be submitted by the defendant to the trial judge under seal no later than 49 days before trial. The trial judge shall review any material submitted under seal pursuant to this paragraph (B) to determine whether it is in fact privileged.

(I) Any material submitted under seal pursuant to this paragraph (B) that the judge finds to be privileged from disclosure to the prosecution prior to the sentencing hearing shall be provided forthwith to the prosecution if the defendant is convicted of a class 1 felony.

(II) If the trial judge finds any of the material submitted under seal pursuant to this paragraph (B) to be not privileged from disclosure to the prosecution prior to the sentencing hearing, the trial judge shall notify the defense of its findings and allow the defense 7 days after such notification in which to seek a modification, review or stay of the court's order requiring disclosure.

(III) The trial judge may excise information it finds privileged from information it finds not privileged in order to disclose as provided in (II) above.

(8) Regulation of Discovery and Sanctions. No party shall be permitted to rely at the sentencing hearing upon any witness, material, or information that is subject to disclosure pursuant to this rule until it has been disclosed to the opposing party. The trial court, upon a showing of good cause, may grant an extension of time to comply with the requirements of this rule. If it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may enter an order against such party that the court deems just under the circumstances, and which is consistent with constitutional limitations, including but not limited to an order to permit the discovery or inspection of materials not previously disclosed, to grant a continuance, to prohibit the offending party from introducing the information and materials, or impose sanctions against the offending party.

Rule 32.2. Death Penalty Post-Trial Procedures

(a) Purpose and Scope. The purpose of this rule is to establish a fair, just and expeditious procedure for conducting trial court review of any post-trial motions and of any post-conviction motions, and for conducting appellate review of direct appeal and post-conviction review appeal in class one felony cases in which a sentence of death is imposed, as directed by section 16-12-201 , et seq.

(b) Trial Court Procedure.

(1) Stay of Execution. The trial judge, upon the imposition of a death sentence, shall set the time of execution pursuant to section 18-1.3-1205 and enter an order staying execution of the judgment and sentence until receipt of an order from the supreme court. The trial court shall immediately mail to the supreme court a copy of the judgment, sentence, and mittimus.

(2) Motions for New Trial. The defendant may file any post-trial motions, pursuant to Crim. P. 33, no later than 21 days after the imposition of sentence. The trial court, in its discretion, may rule on such motion before or after the sentencing hearing, but must rule no later than 91 days (13 weeks) after the imposition of sentence.

(3) Advisement and Order. Within 7 days after the imposition of a sentence of death, the court shall hold a hearing (advisement date) and shall advise the defendant pursuant to sections 16-12-204 and 205. On the advisement date, the court shall:

(I) Appoint new counsel to represent the defendant concerning direct appeal and post-conviction review matters absent waiver by the defendant;

(II) Make specific findings as to whether any waiver by the defendant of the right to post-conviction review, direct appeal, or the appointment of new counsel is made knowingly, voluntarily and intelligently;

(III) Order the prosecuting attorney to deliver to counsel for the defendant within 7 days of the advisement date one copy of all material and information in the prosecuting attorney's possession or control that is discoverable under Crim. P. 16 or pertains to punishment, unless such material and information has been previously provided to that counsel. Costs of copying and delivery of such material and information shall be paid by the prosecuting attorney;

(IV) If new counsel is appointed for the defendant, order defendant's trial counsel, at his or her cost, to deliver a complete copy of trial counsel's file to new counsel within 7 days of the advisement date;

(V) Direct that any post-conviction review motions be filed within 154 days (22 weeks) of the advisement date; and

(VI) Order the production of three copies of a certified transcript of all proceedings in the case:

one for the supreme court, one for the prosecution and one for the defense. Transcripts that are completed by the advisement date will be immediately provided to the prosecution and to defense counsel to the extent that counsel does not already possess those transcripts. All other transcripts shall be completed and delivered within 21 days of the advisement date or within 21 days of any subsequent hearing.

(4) Resolution of Post-conviction Motions. The court, upon receipt of any motion raising post-conviction review issues, as described in section 16-12-206 , shall promptly determine whether an evidentiary hearing is necessary, and if so, shall schedule the matter for hearing within 63 days (9 weeks) of the filing of such motions and enter its order on all motions within 35 days of the hearing. If no evidentiary hearing is required, the trial court shall rule within 35 days of the last day for filing the motions.

(5) Record on Appeal. In an appeal under this rule, the trial court shall designate the entire trial court record as the record on appeal. Within 21 days of the filing of the unitary notice of appeal, the trial court shall deliver to the supreme court any portion of the record not previously delivered under subsection (b)(3)(VI) of this rule.

(6) Extension of Time. Upon a showing of extraordinary circumstances that could not have been foreseen and prevented, the court may grant an extension of time with regard to the time requirements of sections (b)(2), (3), (4) and (5) of this rule.

(c) Appellate Procedure.

(1) Unitary Notice of Appeal. The notice of appeal for the direct appeal and the notice of appeal for all post-conviction review shall be filed by unitary notice in the supreme court within 7 days after the trial court's order on post-conviction review motions, or within 7 days after the expiration of the deadline for filing post-conviction review motions if none have been filed. The unitary notice of appeal need conform only to the requirements of sections (1), (2), (6) and (8) of C.A.R. 3(g).

(2) Briefs. Counsel for defendant shall file an opening brief no later than 182 days (26 weeks) after the filing of the notice of appeal. The prosecution shall file an answer brief no later than 126 days (18 weeks) after filing of the opening brief. Counsel for defendant may file a reply brief no later than 63 days (9 weeks) after filing of the answer brief. Extensions of time will not be granted except on a showing of extraordinary circumstances that could not have been foreseen and prevented. The opening brief may not exceed 250 pages or, in the alternative, 79, 250 words; the answer brief may not exceed 250 pages or, in the alternative, 79, 250 words; and the reply brief may not exceed 100 pages or, in the alternative, 31,700 words. The Supreme Court may approve extensions not to exceed 75 pages or, in the alternative, 23,775 words for the opening and answer briefs, and 50 pages or 15, 850 words for the reply brief upon a showing of compelling need.

(3) Consolidation. Any direct appeal, any appeal of post-conviction review proceedings, and the review required by section 18-1.3-1201(6) (a), shall be consolidated and resolved in one proceeding before the supreme court.

(4) Further Proceedings.

(I) After the supreme court resolves the appeal, ineffective assistance of counsel on direct appeal may only be raised by a petition for rehearing filed in the supreme court, pursuant to section 16-12-204 ;

(II) Any notice of appeal concerning a trial court decision entered pursuant to section 16-12-209 or concerning any second or subsequent request for relief filed by the defendant, shall be filed in the supreme court within 35 days of the entry of the trial court's order. Such appeal shall be governed by the Colorado appellate rules as may be modified by the supreme court in case-specific orders designed to expedite the proceedings.

(d) Sanctions. The trial court and the supreme court may impose sanctions on counsel for willful failure to comply with this rule.This rule shall apply to class one felony offenses committed on or after January 1, 1998 for which a sentence of death is imposed.

Rule 33. New Trial

(a) Motions for New Trial or Other Relief Optional.The party claiming error in the trial of any case may move the trial court for a new trial or other relief. The party, however, need not raise all the issues it intends to raise on appeal in such motion to preserve them for appellate review. If such a motion is filed, the trial court may dispense with oral argument on the motion after it is filed.

(b) Motions for New Trial or Other Relief Directed by the Court.The court may direct a party to file a motion for a new trial or other relief on any issue. The failure of the party to file such a motion when so ordered shall preclude appellate review of the issues ordered to be raised in the motion. The party, however, need not raise all the issues it intends to raise on appeal in such motion to preserve them for appellate review.

(c) Motion; Contents; Time. The court may grant a defendant a new trial if required in the interests of justice. The motion for a new trial shall be in writing and shall point out with particularity the defects and errors complained of. A motion based upon newly discovered evidence or jury misconduct shall be supported by affidavits. A motion for a new trial based upon newly discovered evidence shall be filed as soon after entry of judgment as the facts supporting it become known to the defendant, but if a review is pending the court may grant the motion only on remand of the case. A motion for a new trial other than on the ground of newly discovered evidence shall be filed within 14 days after verdict or finding of guilt or within such additional time as the court may fix during the 14-day period.

(d) Appeal by Prosecution. The order of the trial court granting the motion is a final order reviewable on appeal.

Rule 34. Arrest of Judgment

The court shall arrest judgment if the indictment or information, complaint, or summons and complaint does not charge an offense, or if the court was without jurisdiction of the offense charged. The motion in arrest of judgment shall be made within 14 days after verdict or finding of guilt or within such further time as the court may fix during the 14-day period. A motion in arrest of judgment may be set forth alternatively as a part of a motion for a new trial.

Rule 35. Postconviction Remedies

(a) Correction of Illegal Sentence. The court may correct a sentence that was not authorized by law or that was imposed without jurisdiction at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

(b) Reduction of Sentence. The court may reduce the sentence provided that a motion for reduction of sentence is filed (1) within 126 days (18 weeks) after the sentence is imposed, or (2) within 126 days (18 weeks) after receipt by the court of a remittitur issued upon affirmance of the judgment or sentence or dismissal of the appeal, or (3) within 126 days (18 weeks) after entry of any order or judgment of the appellate court denying review or having the effect of upholding a judgment of conviction or sentence. The court may, after considering the motion and supporting documents, if any, deny the motion without a hearing. The court may reduce a sentence on its own initiative within any of the above periods of time.

(c) Other Remedies.

(1) If, prior to filing for relief pursuant to this paragraph (1), a person has sought appeal of a conviction within the time prescribed therefor and if judgment on that conviction has not then been affirmed upon appeal, that person may file an application for postconviction review upon the ground that there has been a significant change in the law, applied to the applicant's conviction or sentence, allowing in the interests of justice retroactive application of the changed legal standard.

(2) Notwithstanding the fact that no review of a conviction of crime was sought by appeal within the time prescribed therefor, or that a judgment of conviction was affirmed upon appeal, every person convicted of a crime is entitled as a matter of right to make application for postconviction review upon the grounds hereinafter set forth. Such an application for postconviction review must, in good faith, allege one or more of the following grounds to justify a hearing thereon:

(I) That the conviction was obtained or sentence imposed in violation of the Constitution or laws of the United States or the constitution or laws of this state;

(II) That the applicant was convicted under a statute that is in violation of the Constitution of the United States or the constitution of this state, or that the conduct for which the applicant was prosecuted is constitutionally protected;

(III) That the court rendering judgment was without jurisdiction over the person of the applicant or the subject matter;

(IV) Repealed.

(V) That there exists evidence of material facts, not theretofore presented and heard, which, by the exercise of reasonable diligence, could not have been known to or learned by the defendant or his attorney prior to the submission of the issues to the court or jury, and which requires vacation of the conviction or sentence in the interest of justice;

(VI) Any grounds otherwise properly the basis for collateral attack upon a criminal judgment; or

(VII) That the sentence imposed has been fully served or that there has been unlawful revocation of parole, probation, or conditional release.

(3) One who is aggrieved and claiming either a right to be released or to have a judgment of conviction set aside on one or more of the grounds enumerated in section (c)(2) of this Rule may file a motion in the court which imposed the sentence to vacate, set aside, or correct the sentence, or to make such order as necessary to correct a violation of his constitutional rights. The following procedures shall apply to the filing and hearing of such motions:

(I) Any motion filed outside of the time limits set forth in § 16-5-402 , 6 C.R.S., shall allege facts which, if true, would establish one of the exceptions listed in § 16-5-402(2), 6 C.R.S.

(II) Any motion filed shall substantially comply with the format of Form 4 and shall substantially contain the information identified in Form 4, Petition for Postconviction Relief Pursuant to Crim. P. 35(c). See Appendix to Chapter 29.

(III) If a motion fails to comply with Subsection (II) the court shall return to the defense a copy of the document filed along with a blank copy of Form 4 and direct that a motion in substantial compliance with the form be filed within 49 days.

(IV) The court shall promptly review all motions that substantially comply with Form 4, Petition for Postconviction Relief Pursuant to Crim. P. 35(c). In conducting this review, the court should consider, among other things, whether the motion is timely pursuant to § 16-5-402 , whether it fails to state adequate factual or legal grounds for relief, whether it states legal grounds for relief that are not meritorious, whether it states factual grounds that, even if true, do not entitle the party to relief, and whether it states factual grounds that, if true, entitle the party to relief, but the files and records of the case show to the satisfaction of the court that the factual allegations are

untrue. If the motion and the files and record of the case show to the satisfaction of the court that the defendant is not entitled to relief, the court shall enter written findings of fact and conclusions of law in denying the motion. The court shall complete its review within 63 days (9 weeks) of filing or set a new date for completing its review and notify the parties of that date.

(V) If the court does not deny the motion under (IV) above, the court shall cause a complete copy of said motion to be served on the prosecuting attorney if one has not yet been served by counsel for the defendant. If the defendant has requested counsel be appointed in the motion, the court shall cause a complete copy of said motion to be served on the Public Defender. Within 49 days, the Public Defender shall respond as to whether the Public Defender's Office intends to enter on behalf of the defendant pursuant to § 21-1-104(1)(b), 6 C.R.S. In such response, the Public Defender shall identify whether any conflict exists, request any additional time needed to investigate, and add any claims the Public Defender finds to have arguable merit. Upon receipt of the response of the Public Defender, or immediately if no counsel was requested by the defendant or if the defendant already has counsel, the court shall direct the prosecution to respond to the defendant's claims or request additional time to respond within 35 days and the defendant to reply to the prosecution's response within 21 days. The prosecution has no duty to respond until so directed by the court. Thereafter, the court shall grant a prompt hearing on the motion unless, based on the pleadings, the court finds that it is appropriate to enter a ruling containing written findings of fact and conclusions of law. At the hearing, the court shall take whatever evidence is necessary for the disposition of the motion. The court shall enter written or oral findings either granting or denying relief within 63 days (9 weeks) of the conclusion of the hearing or provide the parties a notice of the date by which the ruling will be issued.If the court finds that defendant is entitled to postconviction relief, the court shall make such orders as may appear appropriate to restore a right which was violated, such as vacating and setting aside the judgment, imposing a new sentence, granting a new trial, or discharging the defendant. The court may stay its order for discharge of the defendant pending appellate court review of the order. If the court orders a new trial, and there are witnesses who have died or otherwise become unavailable, the transcript of testimony of such witnesses at the trial which resulted in the vacated sentence may be used at the new trial.

(VI) The court shall deny any claim that was raised and resolved in a prior appeal or postconviction proceeding on behalf of the same defendant, except the following:

(a) Any claim based on evidence that could not have been discovered previously through the exercise of due diligence;

(b) Any claim based on a new rule of constitutional law that was previously unavailable, if that rule has been applied retroactively by the United States Supreme Court or Colorado appellate courts.

(VII) The court shall deny any claim that could have been presented in an appeal previously brought or postconviction proceeding previously brought except the following:

(a) Any claim based on events that occurred after initiation of the defendant's prior appeal or postconviction proceeding;

(b) Any claim based on evidence that could not have been discovered previously through the exercise of due diligence;

(c) Any claim based on a new rule of constitutional law that was previously unavailable, if that rule should be applied retroactively to cases on collateral review;

(d) Any claim that the sentencing court lacked subject matter jurisdiction;

(e) Any claim where an objective factor, external to the defense and not attributable to the defendant, made raising the claim impracticable.

(VIII) Notwithstanding (VII) above, the court shall not deny a postconviction claim of ineffective assistance of trial counsel on the ground that all or part of the claim could have been raised on direct appeal.

(IX) The order of the trial court granting or denying the motion is a final order reviewable on appeal.

Rule 36. Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders.

Rule 37. Appeals from County Court

(a) Filing Notice of Appeal and Docketing Appeal. The district attorney may appeal a question of law, and the defendant may appeal a judgment of the county court in a criminal action under simplified procedure to the district court of the county. To appeal the appellant shall, within 35 days after the date of entry of the judgment or the denial of posttrial motions, whichever is later, file notice of appeal in the county court, post such advance costs as may be required for the preparation of the record and serve a copy of the notice of appeal upon the appellee. He shall also, within such 35 days, docket the appeal in the district court and pay the docket fee. No motion for new trial or in arrest of judgment shall be required as a prerequisite to an appeal, but such motions if filed shall be pursuant to Rule 33(b) of these Rules.

(b) Contents of Notice of Appeal and Designation of Record. The notice of appeal shall state with particularity the alleged errors of the county court or other grounds relied upon for the appeal, and shall include a stipulation or designation of the evidence and other proceedings which the appellant desires to have included in the record certified to the district court. If the

appellant intends to urge upon appeal that the judgment or a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant to such finding or conclusion. The appellee shall have 14 days after service upon him of the notice of appeal to file with the clerk of the county court and serve upon the appellant a designation of any additional parts of the transcript or record which he deems necessary. The advance cost of preparing the additional record shall be posted by the appellant with the clerk of the county court within 7 days after service upon him of the appellee's designation, or the appeal will be dismissed. If the district court finds that any part of the additional record designated by the appellee was unessential to a complete understanding of the questions raised by the appeal, it shall order the appellee to reimburse the appellant for the cost advanced for the preparation of such part without regard to the outcome of the appeal.

(c) Contents of Record on Appeal. Upon the filing of a notice of appeal and upon the posting of any advance costs by the appellant, as are required for the preparation of a record, unless the appellant is granted leave to proceed as an indigent, the clerk of the county court shall prepare and issue as soon as possible a record of the proceedings in the county court, including the summons and complaint or warrant, the separate complaint if any has been issued, and the judgment. The record shall also include a transcription or a joint stipulation of such part of the actual evidence and other proceedings as the parties designate. If the proceedings have been recorded electronically, the transcription of designated evidence and proceedings shall be prepared in the office of the clerk of the court, either by him or her or under his or her supervision, within 42 days after the filing of the notice of appeal or within such additional time as may be granted by the county court. The clerk shall notify in writing the opposing parties of the completion of the record, and such parties shall have 14 days within which to file objections. If none are received, the record shall be certified forthwith by the clerk. If objections are made, the parties shall be called for hearing and the objections settled by the county judge and the record then certified.

(d) Filing of Record. When the record has been duly certified and any additional fees therefor paid, it shall be filed with the clerk of the district court by the clerk of the county court, and the opposing parties shall be notified by the clerk of the county court of such filing.

(e) Briefs. A written brief setting out matters relied upon as constituting error and outlining any arguments to be made shall be filed in the district court by the appellant within 21 days after certification of the record. A copy of the appellant's brief shall be served upon the appellee. The appellee may file an answering brief within 21 days after such service. A reply brief may be filed within 14 days after service of the answering brief. In the discretion of the district court, the time for filing briefs and answers may be extended.

(f) Stay of Execution. Pending the docketing of the appeal, a stay of execution shall be granted by the county court upon request. If a sentence of imprisonment has been imposed, the defendant may be required to post bail, and if a fine and costs have been imposed, a deposit of the amount thereof may be required by the county court. Upon a request for stay of execution made any time

after the docketing of the appeal, such action may be taken by the district court. Stays of execution granted by the county court or district court and, with the written consent of the sureties if any, bonds posted with such courts shall remain in effect until after final disposition of the appeal, unless modified by the district court.

(g) Trials de Novo; Penalty Not Increased. If for any reason an adequate record cannot be certified to the district court the case shall be tried de novo in that court. No action on appeal shall result in an increase in penalty.

(h) Judgment; How Enforced. Unless there is further review by the Supreme Court upon writ of certiorari pursuant to the rules of such court, after final disposition of the appeal the judgment on appeal entered by the district court shall be certified to the county court for action as directed by the district court, except in cases tried de novo by the district court or in cases in which the district court modifies the county court judgment, and in such cases, the judgment on appeal shall be that of the district court and so enforceable.

(i) Appeals to Superior Court. In counties in which a superior court has been established, appeals from the county court shall be taken to the superior court rather than the district court. All of the provisions of this section governing appeals from the county court to the district court are applicable when the appeal is taken to the superior court, and the term "district court" as used in this section shall be understood to include the superior court.

Rule 37.1. Interlocutory Appeal from County Court

(a) Grounds. The prosecuting attorney may file an interlocutory appeal in the district court from a ruling of a county court granting a motion made in advance of trial by the defendant for return of property and to suppress evidence or granting a motion to suppress evidence or granting a motion to suppress an extra-judicial confession or admission; provided that the prosecuting attorney certifies to the judge who granted such motion and to the district court that the appeal is not taken for purposes of delay and that the evidence is a substantial part of the proof of the charge pending against the defendant.

(b) Filing Notice of Appeal. The prosecuting attorney shall file the notice of appeal with the clerk of the district court and shall serve the defendant and the clerk of the trial court with a copy thereof. Such notice of appeal shall be filed within 14 days of the entry of the order being appealed and any docket fee shall be paid at the time of the filing.

(c) Contents of Record on Appeal. The record for an interlocutory appeal shall consist of the information or charging document, the motions filed by the defendant or defendants and the grounds stated in section (a) above, a transcript of all testimony taken at the hearing on said motions and such exhibits or reasonable copies, facsimiles, or photographs thereof as the parties may designate (subject to the provisions in C.A.R. 11(b) pertaining to exhibits of bulk), the order of court ruling on said motions and the date, if one has been fixed, that the case is set for trial or a

certificate by the clerk that the case has not been set for trial. The record shall be filed within 14 days of the date of filing the notice of appeal, and may be supplemented by order of the district court.

(d) Briefs. Within 14 days after the record has been filed in the district court, the prosecuting attorney shall file an opening brief. Within 14 days after service of said opening brief, the defendant shall file an answer brief, and the prosecuting attorney shall have 7 days after service of said answer brief to file a reply brief.

(e) Disposition of Cause. Unless oral argument is ordered by the court and it rules on the record and in the presence of the parties, the decision of the court shall be by written opinion, copies of which shall be transmitted by the clerk of the court by mail to the trial judge and to all parties. No petition for rehearing shall be permitted. A certified copy of the judgment and directions to the county court, and a copy of the written opinion, if any, shall constitute the mandate of the district court, concluding the appeal and restoring jurisdiction to the county court. Such mandate shall issue and be transmitted by the clerk of the court by mail to the trial judge and all parties on the 44th day after the district court's oral or written order, unless the district court is given notice by one of the parties that it has sought further review by the supreme court upon a writ of certiorari pursuant to the rules of that court, in which case the mandate shall issue upon notification that certiorari has been denied or upon receiving the remittitur of the supreme court.

(f) Time. The time limits herein may only be enlarged by order of the appropriate court before the existing time limit has expired.

(g) If no procedure is specifically prescribed by this rule, the court shall look to the Rules of Appellate Procedure for guidance.

(h) Nothing in this Rule 37.1 shall be construed to deprive the county court of jurisdiction to consider bail issues during the pendency of the interlocutory appeal.

Rule 38. Appeals from the District Court

Appeals from the district court shall be conducted pursuant to the Colorado Appellate Rules.

Rule 39. Stays

The filing of an interlocutory appeal or an appeal from an order that dismisses one or more counts of a charging document prior to trial automatically stays all proceedings until final determination of the appeal, unless the appellate court lifts such stay in whole or in part.

Rule 41. Search, Seizure, and Confession

(a) Authority to Issue Warrant. A search warrant authorized by this Rule may be issued by any

judge of a court of record.

(b) Grounds for Issuance. A search warrant may be issued under this Rule to search for and seize any property:

(1) Which is stolen or embezzled; or

(2) Which is designed or intended for use as a means of committing a criminal offense; or

(3) Which is or has been used as a means of committing a criminal offense; or

(4) The possession of which is illegal; or

(5) Which would be material evidence in a subsequent criminal prosecution in this state or in another state; or

(6) The seizure of which is expressly required, authorized, or permitted by any statute of this state; or

(7) Which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order, or to public health.

(c) Application for Search Warrant.

(1) A search warrant shall issue only on affidavit sworn or affirmed to before the judge, except as provided in (c)(3). Such affidav it shall relate facts sufficient to:

(I) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;

(II) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;

(III) Establish the grounds for issuance of the warrant, or probable cause to believe that such grounds exist; and

(IV) Establish probable cause to believe that the property to be searched for, seized, or inspected is located at, in, or upon the premises, person, place, or thing to be searched.

(2) The affidavit required by this section may include sworn testimony reduced to writing and signed under oath by the witness giving the testimony before issuance of the warrant. A copy of the affidavit and a copy of the transcript of testimony taken in support of the request for a search warrant shall be attached to the search warrant filed with the court.

(2.5) A no-knock search warrant, which means, for purposes of this section, a search warrant

authorized by the court to be executed by law enforcement officers through a forcible entry without first announcing their identity, purpose, and authority, shall be issued only if the affidavit for such warrant:

(I) Complies with the provisions of subsections (1) and (2) of this section (c) and section 16-3-303(4), C.R.S.;

(II) Specifically requests the issuance of a no-knock search warrant;

(III) Relates sufficient circumstances to support the issuance of a no-knock search warrant;

(IV) Has been reviewed and approved for legal sufficiency and signed by a district attorney with the date and his or her attorney registration number on the affidavit, pursuant to section 20-1-106.1(2), C.R.S.; and

(V) If the grounds for the issuance of a no-knock warrant are established by a confidential informant, the affidavit for such warrant shall contain a statement by the affiant concerning when such grounds became known or were verified by the affiant, but such statement shall not identify the confidential informant.

(3) Application and Issuance of a Warrant by Facsimile or Electronic Transmission. A warrant, signed affidavit, and accompanying documents may be transmitted by electronic facsimile transmission (fax) or by electronic transfer with electronic signatures to the judge, who may act upon the transmitted documents as if they were originals. A warrant affidavit may be sworn to or affirmed by administration of the oath over the telephone by the judge. The affidavit with electronic signature received by the judge or magistrate and the warrant approved by the judge or magistrate, signed with electronic signature, shall be deemed originals. The judge or magistrate shall facilitate the filing of the original affidavit and original warrant with the clerk of the court and shall take reasonable steps to prevent the tampering with the affidavit and warrant. The issuing judge or magistrate shall also forward a copy of the warrant and affidavit, with electronic signatures, to the affiant. This subsection (c)(3) does not authorize the court to issue warrants without having in its possession either a faxed copy of the signed affidavit and warrant or an electronic copy of the affidavit and warrant with electronic signatures.

(d) Issuance, Contents, Execution, and Return of Warrant.

(1) If the judge is satisfied that grounds for the application exist, or that there is probable cause to believe that such grounds exist, he shall issue a search warrant, which shall:

(I) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;

(II) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;

(III) State the grounds or probable cause for its issuance; and

(IV) State the names of the persons whose affidavits of testimony have been taken in support thereof.

(2) The search warrant may also contain such other and further orders as the judge may deem necessary to comply with the provisions of a statute, charter, or ordinance, or to provide for the custody or delivery to the proper officer of any property seized under the warrant, or otherwise to accomplish the purposes of the warrant.

(3) Unless the court otherwise directs, every search warrant authorizes the officer executing the same:

(I) To execute and serve the warrant at any time; and

(II) To use and employ such force as may reasonably be necessary in the performance of the duties commanded by the warrant.

(4) Joinder. The search of one or more persons, premises, places, or things, may be commanded in a single warrant or in separate warrants, if compliance is made with Rule 41(c)(1)(IV) of these Rules.

(5) Execution and Return.

(I) Except as otherwise provided in this Rule, a search warrant shall be directed to any officer authorized by law to execute it in the county wherein the property is located.

(II) Any judge issuing a search warrant, for the search of a person or for the search of any motor vehicle, aircraft, or other object which is mobile or capable of being transported may make an order authorizing a peace officer to be named in such warrant to execute the same, and the person named in such order may execute such warrant anywhere in the state. All sheriffs, coroners, police officers, and officers of the Colorado State Patrol, when required, in their respective counties, shall aid and assist in the execution of such warrant. The order authorized by this subsection (5) may also authorize execution of the warrant by any officer authorized by law to execute it in the county wherein the property is located.

(III) When any officer, having a warrant for the search of a person or for the search of any motor vehicle, aircraft, or other object which is mobile or capable of being transported, shall be in pursuit thereof and such person, motor vehicle, aircraft, or other object shall cross or enter into another county, such officer is authorized to execute the warrant in such other county.

(IV) It shall be the duty of all peace officers into whose hands any search warrant shall come, to

execute the same, in their respective counties or municipalities, and make due return thereof.

(V) The officers executing a search warrant shall first announce their identity, purpose, and authority, and if they are not admitted, may make a forcible entry into the place to be searched; however, the officers may make forcible entry without such prior announcement if the warrant expressly authorizes them to do so or if the particular facts and circumstances known to them at the time the warrant is to be executed adequately justify dispensing with this requirement.

(VI) A search warrant shall be executed within 14 days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. The judge upon request shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(e) Motion for Return of Property and to Suppress Evidence. A person aggrieved by an unlawful search and seizure may move the district court for the county where the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that:

(1) The property was illegally seized without warrant; or

(2) The warrant is insufficient on its face; or

(3) The property seized is not that described in the warrant; or

(4) There was not probable cause for believing the existence of the grounds on which the warrant was issued; or

(5) The warrant was illegally executed.The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the court where the trial is to be had. The motion shall be made and heard before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court, in its discretion, may entertain the motion at the trial.

(f) Return of Papers to Clerk. The judge who has issued a warrant shall attach to the warrant a

copy of the return, inventory, and all other documents in connection therewith, including any affidavit in application for the warrant, and shall file them with the clerk of the district court for the county of origin. If a case has been filed in the district court after issuance of the warrant, the clerk of the district court shall notify the clerk of the county court which issued it that the warrant has been filed in the district court. When the warrant has been issued by the county judge and there is no subsequent filing in the district court, after the issuance of the warrant, the documents shall remain in the county court. Any documents transmitted by fax or electronic transmission to the judge to obtain the warrant and the documents transmitted by the judge to the applicant shall be filed with the clerk of the court.

(g) Suppression of Confession or Admission. A defendant aggrieved by an alleged involuntary confession or admission made by him, may make a motion under this Rule to suppress said confession or admission. The motion shall be made and heard before trial unless opportunity therefor did not exist or defendant was not aware of the grounds for the motion, but the court, in its discretion, may entertain the motion at the trial. The judge shall receive evidence on any issue of fact necessary to the decision of the motion.

(h) Scope and Definition. This Rule does not modify any statute, inconsistent with it, regulating search, seizure, and the issuance and execution of search warrants in circumstances for which special provision is made.

Rule 41.1. Court Order for Nontestimonial Identification

(a) Authority to Issue Order. A nontestimonial identification order authorized by this Rule may be issued by any judge of the Supreme, District, Superior, County Court, or Court of Appeals.

(b) Time of Application. A request for a nontestimonial identification order may be made prior to the arrest of a suspect, after arrest and prior to trial or, when special circumstances of the case make it appropriate, during trial.

(c) Basis for Order. An order shall issue only on an affidavit or affidavits sworn to or affirmed before the judge, or by the procedures set forth in Crim. P. 41(c)(3), and establishing the following grounds for the order:

(1) That there is probable cause to believe that an offense has been committed;

(2) That there are reasonable grounds, not amounting to probable cause to arrest, to suspect that the person named or described in the affidavit committed the offense; and

(3) That the results of specific nontestimonial identification procedures will be of material aid in determining whether the person named in the affidavit committed the offense.

(d) Issuance. Upon a showing that the grounds specified in section (c) exist, the judge shall issue

an order directed to any peace officer to take the person named in the affidavit into custody to obtain nontestimonial identification. The judge shall direct that the designated nontestimonial identification procedures be conducted expeditiously. After such identification procedures have been completed, the person shall be released or charged with an offense.

(e) Contents of Order. An order to take into custody for nontestimonial identification shall contain:

(1) The name or description of the individual who is to give the nontestimonial identification;

(2) The names of any persons making affidavits for issuance of the order;

(3) The criminal offense concerning which the order has been issued and the nontestimonial identification procedures to be conducted specified therein;

(4) A mandate to the officer to whom the order is directed to detain the person for only such time as is necessary to obtain the nontestimonial identification;

(5) The typewritten or printed name of the judge issuing the order and his signature.

(f) Execution and Return.

(1) Nontestimonial identification procedures may be conducted by any peace officer or other person designated by the judge. Blood tests shall be conducted under medical supervision, and the judge may require medical supervision for any other test ordered pursuant to this section when he deems such supervision necessary. No person who appears under an order of appearance issued pursuant to this section (f) shall be detained longer than is reasonably necessary to conduct the specified nontestimonial identification procedures unless he is arrested for an offense.

(2) The order may be executed and returned only within 14 days after its date.

(3) The order shall be executed in the daytime unless the issuing judge shall endorse thereupon that it may be served at any time, because it appears that the suspect may flee the jurisdiction if the order is not served forthwith.

(4) The officer executing the order shall give a copy of the order to the person upon which it is served.

(5) No search of the person who is to give nontestimonial identification may be made, except a protective search for weapons, unless a separate search warrant has been issued.

(6) A return shall be made to the issuing judge showing whether the person named has been:

(I) Detained for such nontestimonial identification;

(II) Released or arrested.

(7) If, at the time of such return, probable cause does not exist to believe that such person has committed the offense named in the affidavit or any other offense, the person named in the affidavit shall be entitled to move that the judge issue an order directing that the products of the nontestimonial identification procedures, and all copies thereof, be destroyed. Such motion shall, except for good cause shown, be granted.

(g) Nontestimonial Identification Order at Request of Defendant. A person arrested for or charged with an offense may request a judge to order a nontestimonial identification procedure. If it appears that the results of specific nontestimonial identification procedures will be of material aid in determining whether the defendant committed the offense, the judge shall order the state to conduct such identification procedure involving the defendant under such terms and conditions as the judge shall prescribe.

(h) Definition of Terms. As used in this Rule, the following terms have the designated meanings:

(1) "Offense" means any felony, class 1 misdemeanor, or other crime which is punishable by imprisonment for more than one year.

(2) "Nontestimonial identification" includes, but is not limited to, identification by fingerprints, palm prints, footprints, measurements, blood specimens, urine specimens, saliva samples, hair samples, specimens of material under fingernails, or other reasonable physical or medical examination, handwriting exemplars, voice samples, photographs, appearing in lineups, and trying on articles of clothing.

(i) Motion to Suppress. A person aggrieved by an order issued under this Rule may file a motion to suppress nontestimonial identification seized pursuant to such order and the said motion shall be granted if there were insufficient grounds for the issuance or the order was improperly issued. The motion to suppress the use of such nontestimonial identification as evidence shall be made before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court, in its discretion, may entertain the motion at the trial.

Rule 41.2. Interlocutory Appeal from the County Court

Repealed July 16, 1992, effective November 1, 1992.

Rule 41.3. Interlocutory Appeal from District Court

See Colorado Appellate Rules.

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Rule 43. Presence of the Defendant

(a) Presence Required. The defendant shall be present at the preliminary hearing, at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule.

(b) Continued Presence Not Required. The trial court in its discretion may complete the trial, and the defendant shall be considered to have waived his right to be present, whenever a defendant, initially present:

(1) Voluntarily absents himself after the trial has commenced, whether or not he has been informed by the court of his obligation to remain during the trial, or

(2) After being warned by the court that disruptive conduct will cause him to be removed from the courtroom, persists in conduct which is such as to justify his being excluded from the courtroom.

(c) Presence Not Required. A defendant need not be present in the following situations:

(1) A corporation may appear by counsel for all purposes.

(2) At a conference or argument upon a question of law.

(3) At a reduction of sentence under Rule 35.

(d) Waiver. The voluntary failure of the defendant to appear at the preliminary hearing may be construed by the court as an implied waiver of his right to a preliminary hearing.

(e) Presence of the Defendant by Interactive Audiovisual Device.

(1) Definitions. As used in this Rule 43:

(I) “Interactive audiovisual device” means a television or computer based audiovisual system capable of two-way transmission and of sufficient audio and visual quality that persons using the system can view and converse with each other with a minimum of disruption.

(2) A defendant may be present within the meaning of this Rule 43 by the use of an interactive audiovisual device, in lieu of the defendant’s physical presence, for the following hearings:

(I) First appearances pursuant to Crim.P. 5, for the purpose of advisement and setting of bail, including first appearances on probation or deferred sentence revocation complaints;

(II) Further appearances for the filing of charges or for setting the preliminary hearing;

(III) Hearings to modify bail;

(IV) Entry of pleas and associated sentencing or probation violation hearings in misdemeanor, petty offense, and traffic cases where the offense charged is not included within those offenses enumerated in C.R.S. 24-4.1-302(I).

(V) Waivers of preliminary hearing;

(VI) Restitution hearings;

(VII) Appeal bond hearings;

(VIII) Crim.P. 35(B) hearings.

(3) Minimum standards. Every use of an interactive audiovisual device must comply with the following minimum standards in addition to those set forth in Crim.P. 43(e)(l):

(I) If defense counsel appears, such appearance shall be at the same physical location as the defendant if so requested by the defendant. If defense counsel does not appear in the same location as the defendant, a separate confidential communication line, such as a phone line, shall be provided to allow for private and confidential communication between the defendant and counsel.

(II) No defendant shall be compelled to appear by interactive video device at a hearing pursuant to subsection (e)(2)(III), (VI) or (VIII) of this rule.

(III) Installation of the interactive audiovisual device in the courtroom shall be done in such a manner that members of the public are reasonably able to observe, and, where appropriate, participate in the hearing.

(IV) Any hearing held pursuant to Crim.P. 43(e)(2)(IV) shall be conducted with the written consent of the defendant. The court shall advise a defendant of the following prior to obtaining a defendant's written consent and prior to any plea discussions being conducted:

(a) The rights enumerated in Crim.P. 5(2).

(b) The defendant has the right to appear in person and will not be prejudiced if he chooses to do so.

(c) The defendant has the right to have his or her counsel appear with him or her at the same physical location.

(d) The defendant's decision to appear by use of an interactive audiovisual device must be voluntary on the defendant's part and must not be the result of undue influence or coercion on the part of anyone.

(e) If the defendant is pro se, the identity and role of all individuals with whom the defendant may have contact through the interactive audiovisual device.

(V) An interactive audiovisual system used for hearings pursuant to Crim.P. 43(e)(2)(IV) shall include the ability to electronically transfer documents between the defendant and the court and such transferred documents shall be considered the same as originals.

(4) Nothing in this rule shall require a court to use an interactive audiovisual device.

(5) In the event of inclement weather or other exceptional circumstances, which would otherwise prevent a hearing from occurring under Crim.P. 5, the court may conduct the hearing by use of an interactive audiovisual procedure which does not comply with the minimum standards set forth in subsection (3).

Rule 44. Appearance of Counsel

(a) Appointment of Counsel. If the defendant appears in court without counsel, the court shall advise the defendant of the right to counsel. In an appropriate case, if, upon the defendant's affidavit or sworn testimony and other investigation, the court finds that the defendant is financially unable to obtain counsel, an attorney shall be assigned to represent the defendant at every stage of the trial court proceedings. In any misdemeanor case the court may appoint as counsel law students who shall act under the provisions of C.R.C.P. 205.7. No lawyer need be appointed for a defendant who, after being advised, with full knowledge of his rights thereto, elects to proceed without counsel. Except in a case in which a law student has been appointed, unless good cause exists otherwise, the court shall appoint the state public defender.

(b) Multiple Representation by Counsel. Whenever two or more defendants have been jointly charged pursuant to Rule 8(b) or have been joined for trial pursuant to Rule 13, and are represented by the same retained or assigned counsel or by retained or assigned counsel who are associated in the practice of law, the court shall promptly inquire with respect to such joint representation and shall personally advise each defendant of the right to the effective assistance of counsel, including separate representation. Unless it appears that there is good cause to believe no conflict of interest is likely to arise, the court shall take such measures as may be appropriate to protect each defendant's right to counsel.

(c) Request for Withdrawal of a Lawyer During Proceedings. Except as provided in section (e), withdrawal of a lawyer in a criminal case is a matter within the sound discretion of the court. In exercising such discretion, the court shall balance the need for orderly administration of justice with the facts underlying the request.

(d) Procedure for Withdrawal During Proceedings.

(1) A lawyer may withdraw from a case only upon order of the court. In the discretion of the court, a hearing on a motion to withdraw may be waived with the consent of the prosecution and if a written substitution of counsel is filed which is signed by current counsel, future counsel and the defendant. A request to withdraw shall be in writing or may be made orally in the discretion of the court and shall state the grounds for the request. A request to withdraw shall be made as soon as practicable upon the lawyer becoming aware of the grounds for withdrawal. Advance notice of a request to withdraw shall be given to the defendant before any hearing, if practicable. Such notice to withdraw shall include:

(I) That the attorney wishes to withdraw;

(II) The grounds for withdrawal;

(III) That the defendant has the right to object to withdrawal;

(IV) That a hearing will be held and withdrawal will only be allowed if the court approves;

(V) That the defendant has the obligation to appear at all previously scheduled court dates;

(VI) That if the request to withdraw is granted, then the defendant will have the obligation to hire other counsel, request the appointment of counsel by the court or elect to represent himself or herself.

(2) Upon setting of a hearing on a motion to withdraw, the lawyer shall make reasonable efforts to give the defendant actual notice of the date, time and place of the hearing. No hearing shall be conducted without the presence of the defendant unless the motion is made subsequent to the failure of the defendant to appear in court as scheduled. A hearing need not be held and notice need not be given to a defendant when a motion to withdraw is filed after a defendant has failed to appear for a scheduled court appearance and has not reappeared within six months.

(e) Termination of Representation.

(1) Unless otherwise directed by the trial court or extended by an agreement between counsel and a defendant, counsel's representation of a defendant, whether retained or appointed, shall terminate at the conclusion of trial court proceedings and after a final determination of restitution. Trial court proceedings shall conclude at the point in time:

(I) When dismissal is granted by the court and no timely appeal has been filed;

(II) When an order enters granting a deferred prosecution, deferred sentence, or probation;

(III) After a sentence to incarceration is imposed upon conviction when no motion has been timely filed pursuant to Crim.P. 35(b) or such motion so filed is ruled on; or

(IV) When a notice of appeal is filed by the defendant.

(2) At the time a deferred prosecution or deferred sentence is granted or at the time sentence is imposed upon conviction, the court shall inform the defendant when representation shall terminate.

Rule 45. Time

(a) Computation. In computing any period of time prescribed or allowed by these rules, the day of the event from which the designated period of time begins to run is not to be included. Thereafter, every day shall be counted including holidays, Saturdays, and Sundays. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event. As used in these Rules, "legal holiday" includes the first day of January, observed as New Year's Day; the third Monday in January, observed as Martin Luther King Day; the third Monday in February, observed as Washington-Lincoln Day; the last Monday in May, observed as Memorial Day; the fourth day of July, observed as Independence Day; the first Monday in September, observed as Labor Day; the second Monday in October, observed as Columbus Day; the 11th day of November, observed as Veteran's Day; the fourth Thursday in November, observed as Thanksgiving Day; the twenty-fifth day of December, observed as Christmas Day, and any other day except Saturday or Sunday when the court is closed.

(b) Enlargement. When an act is required or allowed to be performed at or within a specified time, the court for cause shown may at any time in its discretion:

(1) With or without motion or notice, order the period enlarged if application therefor is made before expiration of the period originally prescribed or of that period as extended by a previous order; or,

(2) Upon motion, permit the act to be done after expiration of the specified period if the failure to act on time was the result of excusable neglect.

(c) to (e) Repealed.

(f) Inmate Filings. A document filed by an inmate confined in an institution is timely filed with the court if deposited in the institution's internal mailing system on or before the last day for fling. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule.

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Rule 46. Bail

In considering the question of bail, the Court shall be governed by the statutes and the Constitution of the State of Colorado and the United States Constitution.

Rule 46.1. Bail – County Courts

Repealed April 2, 1987, effective September 1, 1987.

Rule 47. Motions

(a) An application to the court for an order shall be by motion. A motion other than one made during a trial or hearing shall be in writing unless the court permits it to be made orally. It shall state the grounds upon which it is made and shall set forth the relief or order sought. It may be supported by affidavit.

(b) A written motion, other than one which may be heard ex parte, and notice of the hearing thereof, shall be served not later than 7 days before the time specified for the hearing unless a different period is fixed by rule or order of the court. For cause shown such an order may be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion, and opposing affidavits may be served not less than one day before the hearing unless the court permits them to be served at a later time.

Rule 48. Dismissal

(a) By the State. No criminal case pending in any court shall be dismissed or a nolle prosequi therein entered by any prosecuting attorney or his deputy, unless upon a motion in open court, and with the court's consent and approval. Such a motion shall be supported or accompanied by a written statement concisely stating the reasons for the action. The statement shall be filed with the record of the particular case and be open to public inspection. Such a dismissal may not be filed during the trial without the defendant's consent.

(b) By the Court.

(1) If, after the filing of a complaint, there is unnecessary delay in finding an indictment or filing an information against a defendant who has been held to answer in a district court, the court may dismiss the prosecution. Except as otherwise provided in this Rule, if a defendant is not brought to trial on the issues raised by the complaint, information, or indictment within six months from the entry of a plea of not guilty, he shall be discharged from custody if he has not been admitted to bail, the pending charges shall be dismissed, whether he is in custody or on bail, and the defendant shall not again be indicted, informed against, or committed for the same offense, or for another offense based upon the same act or series of acts arising out of the same criminal episode.

(2) If trial results in conviction which is reversed on appeal, any new trial must be commenced within six months after the date of the receipt by the trial court of the mandate from the appellate court.

(3) If a trial date has been fixed by the court, and thereafter the defendant requests and is granted a continuance for trial, the period within which the trial shall be had is extended for an additional six months period from the date upon which the continuance was granted.

(3.5) If a trial date has been fixed by the court and the defendant fails to make an appearance in person on the trial date, the period in which the trial shall be had is extended for an additional six months' period from the date of the defendant's next appearance.

(4) If a trial date has been fixed by the court, and thereafter the prosecuting attorney requests and is granted a continuance, the time is not thereby extended within which the trial shall be had, as is provided in subsection (b)(1) of this Rule, unless the defendant in person or by his counsel in open court of record expressly agrees to the continuance. The time for trial, in the event of such agreement, is then extended by the number of days intervening between the granting of such continuance and the date to which trial is continued.

(5) To be entitled to a dismissal under subsection (b)(1) of this Rule, the defendant must move for dismissal prior to the commencement of his trial or the entry of a plea of guilty to the charge or an included offense. Failure so to move is a waiver of the defendant's rights under this section.

(5.1) If a trial date is offered by the court to a defendant who is represented by counsel and neither the defendant nor his counsel expressly objects to the offered date as beyond the time within which the trial shall be had pursuant to this rule, then the period within which the trial shall be had is extended until such trial date and may be extended further pursuant to any other applicable provision of this rule.

(6) In computing the time within which a defendant shall be brought to trial as provided in subsection (b)(1) of this Rule, the following periods of time shall be excluded:

(I) Any period during which the defendant is incompetent to stand trial or is unable to appear by reason of illness or physical disability or is under observation or examination at any time after the issue of insanity, incompetency or impaired mental condition is raised;

(II) The period of delay caused by an interlocutory appeal, an appeal from an order that dismisses one or more counts of a charging document prior to trial, or after issuance of a rule to show cause in an original action brought under Colorado Appellate Rule 21, whether commenced by the defendant or by the prosecution;

(III) A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance;

(IV) The period or delay resulting from the voluntary absence or unavailability of the defendant; however, a defendant shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained, or he resists being returned to the state for trial;

(V) The period of delay caused by any mistrial, not to exceed three months for each mistrial;

(VI) The period of delay caused at the instance of the defendant;

(VII) The period of delay not exceeding six months resulting from a continuance granted at the request of the prosecuting attorney, without the consent of the defendant, if:

(A) The continuance is granted because of the unavailability of evidence material to the state's case, when the prosecuting attorney has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date; or

(B) The continuance is granted to allow the prosecuting attorney additional time in felony cases to prepare the state's case and additional time is justified because of exceptional circumstances of the case and the court entered specific findings with respect to the justification.

(VIII) The period of delay between the new date set for trial following the expiration of the time periods excluded by paragraphs (I), (II), (III), (IV), and (V) of this subsection (6), not to exceed three months.

(IX) The period of delay between the filing of a motion pursuant to section 18-1-202(11) and any decision by the court regarding such motion, and if such decision by the court transfers the case to another county, the period of delay until the first appearance of all the parties in a court of appropriate jurisdiction in the county to which the case has been transferred, and in such event the provisions of subsection (7) of this section shall apply.

(7) If a trial date has been fixed by the court and the case is subsequently transferred to a court in another county, the period within which trial must be had is extended for an additional three months from the date of the first appearance of all of the parties in a court of appropriate jurisdiction in the county to which the case has been transferred.

Rule 49. Service and Filing of Papers

(a) Service — When Required. Written motions other than those which are heard ex parte, written notices, and similar papers shall be served upon the adverse parties. A motion or other pleading that includes a claim alleging a state statute or municipal ordinance is unconstitutional shall also be served upon the Attorney General.

(b) Service — How Made. Whenever under these Rules or by court order service is required or

permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided for civil actions unless otherwise ordered by the court.

(c) Notice of Orders. Immediately upon entry of any order made out of the presence of the parties after the information or indictment is filed, the clerk shall mail to each party affected a notice of the order and shall note the mailing in the docket.

Rule 49.5. Electronic Filing and Service System

(a) Types of Cases Applicable. E-Filing and E-Service may be used for certain cases filed in the courts of Colorado as the service becomes available. The availability of the E-System for criminal cases will be determined by the Colorado Supreme Court and announced through its website http://www.courts.state.co.us/icces and through published directives to the clerks of the affected court systems.

(b) E-Filing May Be Mandated. With the permission of the Chief Justice, a chief judge may mandate E-Filing within a county or judicial district for specific case classes or types of cases. A judicial officer may mandate E-Filing and E-Service within that judicial officer's division for specific cases, for submitting documents to the court, and for serving documents on case parties. Where E-Filing is mandatory, the court may thereafter accept a document in paper form and the court shall scan the document and upload it to the E-System Provider. After notice to an attorney that all future documents are to be E-Filed, the court may charge a fee of $50 per document for the service of scanning and uploading a document filed in paper form. Where E-Filing and E-Service are mandatory, the Chief Judge or appropriate judicial officer may exclude pro se parties from mandatory E-Filing requirements.

(c) Definitions.
(1) Document. A pleading, motion, or other paper filed under the E-System.

(2) E-Filing/Service System. The E-Filing/Service System ("E-System") approved by the Colorado Supreme Court for filing and service of documents via the internet through the Court-authorized E-System Provider.

(3) Electronic Filing. Electronic Filing ("E-Filing") is the transmission of documents to the clerk of the court, and from the court, via the E-System.

(4) Electronic Service. Electronic Service ("E-Service") is the transmission of any documents to any party in a case via the E-System. Parties who have subscribed to the E-System have agreed to receive service of filings via the E-System, except when personal service is required.

(5) E-System Provider. The E-Filing/E-Service System Provider authorized by the Colorado Supreme Court.

(6) Signatures.

I. Electronic Signature. An electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by the person with the intent to sign the E-Filed or E-Served document.

II. Scanned Signature. A graphic image of a handwritten signature.

(d) To Whom Applicable.
(1) Attorneys licensed or certified to practice law in Colorado, or admitted pro hac vice under C.R.C.P. 205.3 or 205.5 may register to use the E-System. The E-System Provider will provide an attorney permitted to appear pursuant to C.R.C.P. 205.3 or 205.5 with a special user account for purposes of E-Filing and E-Service only in the case identified for pro hac vice admission. In districts where E-Filing is mandated pursuant to Subsection (b) of this Rule 49.5, attorneys must register and use the E-System.

(2) Where the system and necessary equipment are in place to permit it, pro se parties and government entities may register to use the E-System.

(e) E-Filing–Date and Time of Filing. Documents filed in cases on the E-System may be filed under Crim.P. 49 through E-Filing. A document transmitted to the E-System Provider for service by 11:59 p.m. Colorado time shall be deemed to have been filed with the clerk of the court on that date.

(f) E-Service/- When Required/- Date and Time of Service. Documents submitted to the court through E-Filing shall be served in accordance with Crim.P. 49 by E-Service to parties who have subscribed to the E-System. A document transmitted to the E-System Provider for service by 11:59 p.m. Colorado time shall be deemed to have been served on that date.

(g) Filing Party to Maintain the Signed Copy–Paper Document Not to be Filed–Duration of Maintaining of Document. A printed or printable copy of an E-Filed or E-Served document, with original, electronic, or scanned signatures shall be maintained by the filing party and made available for inspection by other parties or the court upon request, but shall not be filed with the court. Documents shall be maintained in accordance with the Rules of Professional Conduct.

(h) Documents Requiring E-Filed Signatures. For E-Filed and E-Served documents, signatures of attorneys, parties, witnesses, notaries and notary stamps may be affixed electronically or hand-written and scanned.

(i) Documents Under Seal. A motion for leave to file documents under seal may be E-Filed. Documents to be filed under seal pursuant to an order of the court, if filed electronically[,] must be submitted separately from the Motion to Seal.

(j) Transmitting of Orders, Notices and Other Court Entries. Courts shall distribute orders, notices and other court entries using the E-System in cases where E-Filings were received from any party.

(k) Form of E-Filed Documents. C.R.C.P. 10 shall apply to E-Filed documents.

(l) Relief in the Event of Technical Difficultiess.

(1) The court may enter an order permitting a document to be filed nunc pro tunc to the date it was first attempted to be sent electronically upon satisfactory proof that E-Filing or E-Service of the document was not completed because of:

(I) an error in the transmission of the document to the E-System Provider which was unknown to the sending party;

(II) a failure of the E-System Provider to process the E-Filed document(s) when received, or

(III) other technical problems experienced by the filer or E-System Provider.

(2) Upon satisfactory proof that an E-Served document was not received by or unavailable to a party served, the court may enter an order extending the time for responding to that document.

(m) Form of Electronic Documents.

(1) Electronic Document Format, Size and Density. Electronic document format, size and density shall be as specified by Chief Justice Directive #11-01.

(2) Multiple Documents. Multiple documents (including proposed orders) may be filed in a single electronic filing transaction. Each document (including proposed orders) in that filing must bear a separate document title.

(3) Proposed Orders. Proposed orders shall be E-Filed in editable format. Proposed orders that are E-Filed in a non-editable format shall be rejected by the clerk’s office and must be resubmitted.

(n) Document Security Level. Documents filed in a criminal case will not be electronically available to persons other than the parties until reviewed and provided by the clerk of court or his or her designee.

(o) Protective Orders. Nothing in these rules shall prohibit a court from ordering the limitation or prohibition of a nonparty's remote electronic access to a document filed with the court.

Rule 50. Calendars

The courts of record may provide for placing criminal proceedings upon appropriate calendars. Preference shall be given to criminal proceedings.

Rule 51. Exceptions Unnecessary

Exceptions to ruling or orders of the court are unnecessary. For all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the court ruling or order is made or sought, makes known to the court the action which he desires the court to take or his objection to the court's action and the grounds therefor. But if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice him.

Rule 52. Harmless Error and Plain Error

(a) Harmless Error. Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded.

(b) Plain Error. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court.

Rule 53. Regulation of Conduct in the Courtroom

Conduct in the courtroom pertaining to the publication of judicial proceedings shall conform to Canon 3 of the Canons of Judicial Ethics, as adopted by the Supreme Court of Colorado.

Rule 54. Application and Exception

(a) Courts. These Rules apply to all criminal proceedings in all courts of record in the state of Colorado. These Rules do not apply to municipal ordinance and charter violations.

(b) Proceedings.

(1) Peace Bonds. These Rules do not alter the power of judges to hold for security of the peace and for good behavior as provided by law, but in such cases the procedure shall conform to these

rules so far as they are applicable.

(2) Other Proceedings. These Rules are not applicable to extradition and rendition of fugitives; forfeiture of property for violation of a statute or the collection of fines and penalties; nor to any other special proceedings where a statutory procedure inconsistent with these Rules is provided.

(c) Application of Terms. “Law” includes statutes and judicial decisions. “Civil action” refers to a civil action in a court of record. “Oath” includes affirmations. “Prosecuting attorney” means the attorney general, a district attorney or his assistant or deputy or special prosecutor. The words “demurrer”, “motion to quash”, “plea in abatement”, “plea in bar”, and “special plea in bar”, or words to the same effect in any statute, shall be construed to mean the motion raising a defense or objection provided in Rule 12.

(d) Numbering — Meaning of “No Colorado Rule”. Insofar as practicable, the order and numbering of these Rules follows that of the Federal Rules of Criminal Procedure. In some instances, usually because of differences in judicial systems or of jurisdiction, there is no Colorado rule corresponding in number with an existing federal rule. In these instances to maintain the general numbering scheme, the phrase “No Colorado Rule” appears opposite the number for which there is a federal rule but not a Colorado rule. The phrase “No Colorado Rule” means only that there is no rule included in these Rules covering the subject of the federal rule bearing that number. The phrase does not imply either that there is or that there is not constitutional, statutory or case law in Colorado covering the subject of the corresponding federal rule.

Rule 55. Records

(a) Register of actions (criminal docket). The clerk shall keep a record known as the register of actions and shall enter therein those items set forth below. The register of actions may be in any of the following forms or styles:

(1) A page, sheet, or printed form in a book, case jacket, or separate file, or the cover of the case jacket for county court cases.

(2) A microfilm roll, film jacket, or microfiche card.

(3) Computer magnetic tape or magnetic disc storage, where the register of actions items appear on the terminal screen, or on a paper print-out of the screen display.

(4) Any other form or style prescribed by supreme court directive.A register of actions shall be prepared for each case or matter filed. The file number of each case or matter shall be noted on every page, jacket cover, film, or computer record whereon the first and all subsequent entries of

actions are made. All papers filed with the clerk, all process issued and returns made thereon, all costs, appearances, orders, verdicts, and judgments shall be noted chronologically in the register of actions. These notations shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The notation of an order or judgment shall show the date the notation is made. The notation of the judgment in the register of actions shall constitute the entry of judgment. When trial by jury has been demanded or ordered, the clerk shall enter the word jury on the page, jacket cover, film, or computer record assigned to that action.

(b) Criminal Record. Repealed effective September 4, 1974.

(c) Indices; Calendars. The clerk shall keep suitable indices of all records as directed by the court. The clerk shall also keep as directed by the court, calendars of all hearings and all cases ready for trial, which shall distinguish trials to a jury from trials to the court. Indices and calendars may be in any of the following forms or styles:

(1) A page or sheet in a book or separate file.

(2) A mechanical or hand operated index machine or card file.

(3) Computer magnetic tape or magnetic storage, where the information appears on the terminal screen, or on a print-out of the screen display.

(4) Microfilm copies of (1), (2), and (3) above.

(5) Any other form or style prescribed by supreme court directive.

(d) Files. All papers filed in a case shall be filed in a separate file folder except that “Summons and Complaint” documents may be filed otherwise but only as may be authorized by the Supreme Court.

(e) Reporter’s Notes; Custody, Use, Ownership, Retention. The practice and procedure concerning reporter’s notes and electronic or mechanical recordings shall be as prescribed in Rule 80, C.R.C.P., for district courts and Rule 380, C.R.C.P., for county courts.

(f) Retention and Disposition of Records. The clerk shall retain and dispose of all court records, including those created under Rule 55(b) prior to its repeal, in accordance with instructions provided in the manual entitled, Colorado judicial department, records management.

Rule 56. Courts and Clerks

(a) All Courts Deemed Open. All courts of record shall be deemed always open for the purpose

of filing any proper paper, of issuing and returning process and of making motions and orders. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Sundays, legal holidays and such other days as the courthouse of the particular court shall be closed as provided by federal or state statute.

(b) County Courts Away from County Seat. When a county court is held regularly at a location other than the county seat, the county judge shall designate by rule when such place shall be open for the transaction of court matters. The clerk's office, with the clerk or ex officio clerk or a deputy in attendance, shall be open during business hours on all days except Sundays, legal holidays, and such other days as the courthouse of the particular court shall be closed as provided by federal or state statute.

Rule 57. Rules of Court

(a) Rules of Courts of Record. All local court rules, including local county court procedures and standing orders having the effect of local court rules regarding the criminal courts, enacted before February 1, 1992, are hereby repealed. Each court, by a majority of its judges, may from time to time propose local court rules and amendments of the local court rules. A proposed local rule or amendment shall not be inconsistent with the Colorado Rules of Criminal Procedure or with any directive of the Supreme Court regarding the conduct of formal judicial proceedings in criminal courts. A proposed local rule or amendment shall not be effective until it is approved by the Supreme Court. To obtain approval, three copies of any proposed local rule or amendment shall be submitted to the Supreme Court through the office of the State Court Administrator. Reasonable uniformity of local court rules is required. Numbering and format of any local court rule shall be as prescribed by the Supreme Court. Numbering and format requirements are on file at the office of the State Court Administrator. Upon approval by the Supreme Court of the local rule or amendment, a copy shall be furnished to the office of the Judicial Administrator to the end that all rules as provided herein may be published promptly and that copies may be available to the public. The Supreme Court's approval of a local court rule or local procedure shall not preclude review of that rule or procedure under the law or circumstances of a particular case. Nothing in this rule is intended to affect the authority of a court to adopt internal administrative procedures not relating to the conduct of formal judicial proceedings as prescribed by the Colorado Rules of Criminal Procedure.

(b) Procedure Not Otherwise Specified. If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these Rules of Criminal Procedure or with any directive of the Supreme Court regarding the conduct of formal judicial proceedings in the criminal courts, and shall look to the Rules of Civil Procedure and to the applicable law if no Rule of Criminal Procedure exists.

Rule 58. Forms

See the Appendix to Chapter 29 for illustrative forms.

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Rule 59. Effective Date

These Rules, except as noted on specific rules, take effect on April 1, 1974. Amendments take effect on the date indicated. They govern all proceedings in criminal actions brought after they take effect and also all further proceedings in actions then pending.

Rule 60. Citation

These Rules may be known and cited as the “Colorado Rules of Criminal Procedure”, or “Crim. P.”.