

# Office of the Municipal Public Defender

City and County of Denver

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January 14, 2019

Colorado Supreme Court Civil Rules Committee

Colorado Supreme Court

2 East 14<sup>th</sup> Avenue

Denver, CO 80202

*Submitted via email to [info@coloradomunicipalcourts.org](mailto:info@coloradomunicipalcourts.org)*

RE: Proposed revisions to Colorado Municipal Court Rules

Honorable Corrine Magid and Robert J. Frick:

Thank you for the opportunity to comment on these proposed revisions to the rules. The Office of the Municipal Public Defender for the City and County of Denver (hereinafter “OMPD”) is the largest municipal defense office in Colorado. Each year we handle more than 12,000 cases involving indigent individuals accused of violating Denver municipal ordinances. We welcome the chance to present our position on these proposed changes and answer any follow questions you or the Committee may have.

## **OMPD Supports the Proposed Revisions to Rule 204**

Extending the time within which a defendant served with a Municipal Summons and Complaint must appear from seven to fourteen days is a welcome change. A large number of individuals accused of municipal ordinance violations are indigent, transient, and without reliable transportation. Providing an additional seven days recognizes and works to accommodate the difficulties these individuals face on a daily basis. OMPD strongly supports this change.

## **OMPD Objects to the Proposed Revisions to Rule 212**

The proposed revision “All motions shall be written unless otherwise ordered by the court” creates an additional requirement which conflicts with and could undermine the stated purpose of the Municipal Court Rules “to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.” C.M.C.R. 202.

First, this proposed revision imposes a written requirement that does not exist in the Colorado state court analog Crim.P. 12.

Second, the proposed revision could drastically and unnecessarily increase the workloads of the defense, prosecution, court staff, and judges. In Denver, jury trials are set every Tuesday, Wednesday, and Thursday. There are often between ten and twenty jury trials set per day. A large percentage of those cases are dismissed on the day of trial. Creating a requirement that all motions be in writing (unless otherwise ordered by the court) and filed within 21 days of the entry of a plea could result in a glut of pretrial Motions and Motions Hearings in cases which are ultimately dismissed.

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The requirement “Motions shall be made . . . within 21 days of the date of entry of a plea” is problematic when viewed in conjunction with the proposed revisions to C.M.C.R. 216, which requires the prosecution to provide discovery “as soon as practicable but not later than 21 days after the defendant's entry of ‘not guilty’ plea.” Given these time frames, it is possible that a defendant may not have discovery until the day Motions are due.

OMPD respectfully suggests that the Committee eliminate the requirements that all motions be in writing and filed with 21 days of the date of entry of a plea, or alternatively, include language that allows practitioners to file motions after an established deadline for “good cause.”

## **OMPD Supports the Proposed Revisions to Rule 216**

OMPD welcomes the proposed changes to Rule 216, which acknowledge municipal defendants’ constitutional rights to present a defense, confrontation, and due process of law. OMPD is confident that these revisions will work to eliminate confusion and create uniformity in discovery requirements across Colorado’s various municipal courts.

Given the rise in the use of body worn cameras by law enforcement officers, and concomitant reduction in inaccurate claims by defendants and law enforcement officers, OMPD respectfully requests the Committee explicitly include body worn camera footage in Part 1,(a),(IV) of Rule 216.

## **OMPD Suggests Revisions to Rule 223**

OMPD contends that the prerequisites to jury trial set forth in Rule 223 violate municipal defendant’s fundamental constitutional rights to a jury trial. The controlling Colorado Supreme Court case, Christie v. People, overlooks the strain and unrealistic time constraints these prerequisites place on defendants’ fundamental right to a jury trial, which shall remain inviolate. 837 P.2d 1237 (Colo. 1992).

Many municipal defendants are advised of these prerequisites at their first in custody appearance. Notably, this appearance provides incarcerated defendants with their first opportunity to argue bond and seek release from incarceration. Contrary to Court’s claim in Christie, advisement of the prerequisites does little to focus an incarcerated defendant’s mind on what s/he must to preserve these rights. These defendants are primarily concerned with their release from jail, their jobs, their families, their possessions, and maintaining their residences (in the event they have one).

Municipal defendants who are able to post bond and be released must then work to keep jobs (often after missing days of work), regain their possessions (which is extremely difficult for homeless defendants), and pay their rent. Domestic violence cases with no contact orders are even more challenging where the defendant must obtain a civil assist for wallet and keys and find an entirely new place to live). In most cases, these defendant’s lives are in a state of crisis, characterized by the prospect of losing their jobs, family ties, possessions, and homes. The requirement that they satisfy these prerequisites within 21 days of their first appearance is unconstitutional.

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Many out of custody municipal defendants do not have \$25.00 to secure a jury trial. Denver courts do not *sua sponte* waive the fee for those individuals. To obtain a waiver of the fee, those individuals must

1. Collect written documentation required for the Application for Public Defender. §21-1-103(3), C.R.S.
2. Travel to the Lindsey Flanigan Courthouse (which for many clients, involves lengthy trips via public transit);
3. Proceed through security, (which can take up to an hour on busy court days);
4. Go the third floor, and wait in the OMPD office for administrative staff to process the application (which can take anywhere from 20 minutes to 3-4 hours).
5. Repeat the process if they do not have the requisite documentation.

Individuals who do not qualify for representation by OMPD must perform the following tasks:

1. Secure the \$25 dollar fee.
2. In many instances, take a day off work.
3. Travel to Lindsey Flanigan Courthouse (via public transit or personal vehicle and pay for parking).
4. Proceed through security.
5. Wait in line at the Clerk's Office, and tender the \$25 fee and written demand.

When one views these prerequisites through a procedural justice lens, it is clear that they violate municipal defendants' fundamental constitutional right to jury trials. OMPD respectfully suggests that the Committee eliminate the \$25 fee (or waiver) and written demand prerequisites. Or alternatively, eliminate the requirement that defendant's complete these prerequisites within 21 days of being so advised. Doing so will ensure that individuals who wish to exercise their fundamental rights to a jury trial may do so, and that individuals who do not wish to exercise their right to a jury trial do not.

## **OMPD Supports the Proposed Revision to Rule 241 (No comment)**

## **OMPD Objects to Proposed Revisions to Rule 248**

The proposed revision "except if the court, in the exercise of sound judicial discretion, determines good cause exists to warrant an additional delay of up to 91 days," doubles the time within which a municipal defendant must be brought to trial without establishing any guidelines or parameters for municipal court judges.

OMPD fears without any guidance or parameters different judges will perform different analysis and make inconsistent findings as to what constitutes "good cause." This conflicts with the requirement in Rule 202 that the rules "shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay."

OMPD suggests that the Committee include the following non-exhaustive list of factors a court shall consider in determining whether good cause exists:

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- Reason for the delay. Barker v. Wingo, 407 U.S. 514 (1972).
- Whether the prosecution has exercised due diligence. See §18-1-405(6)(g)(I). C.R.S. (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 this evidence will be available at the late date);
- Any prejudice to the defendant from the delay. Barker v. Wingo, 407 U.S. 514 (1972).

The addition of these factors will provide the court with guidance, ensure fairness, and eliminate unjustifiable expense and delay.

**OMPD Supports the Proposed Revisions to Rule 254 (no comment).**

Respectfully,



Damon Brune  
Deputy Public Defender

*/s/ Alice Norman*  
Alice Norman  
Chief Public Defender

Office of the Municipal Public Defender