

From: [Ann England](#)
To: info@coloradomunicipalcourts.org
Cc: [Cooke, Linda](#)
Subject: [External] Comments about proposed municipal court rules
Date: Wednesday, January 02, 2019 9:35:18 PM

Hello Municipal Court Committee on Rule Changes:

First, I would like to express my gratitude for many of the changes that have been proposed in these changes. I am a professor at the University of Colorado, School of Law and the director of the criminal defense clinic there. Maybe more importantly my clinic has held the Boulder municipal court public defender contract for the last 13 years. I also had the honor of acting as the public defender for the City of Longmont for a few years.

Proposed Rule 212(e) - I am concerned with the 21 day deadline from the entry of plea only because in proposed Rule 216 the prosecution is not required to give discovery including body camera footage until 21 days after entry of the plea. This would be the same day that the defense is required to file motions. This will make it impossible for the defense to file anything but very stock motions. It will make it impossible for the defense to determine if there is a good faith basis to file constitutional motions regarding the stop and statements and file motions in limine. I think that there needs to be time after the prosecution's discovery deadline, especially the body camera footage, for the defense to file motions. I understand that each individual Court can modify this but this inconsistency seems like a procedural problem the Rules should avoid. What if Rule 216(b)(1) required the disclosure of the materials within 14 days of the entry of the not guilty plea. Then the 21 day deadline to file motions would allow the defense to file them 7 days after the prosecution's initial disclosure?

Proposed Rule 216. I very much appreciate the changes made to this Rule and think that they will give criminal defendants and their counsel the ability to better try cases and receive fairer outcomes. I have a few suggestions: First is to specifically add the language "body camera footage" to 1(a)(III). Although it does say videos, we see body camera footage in almost every case and this change would clarify what is meant by video. My second suggestion is listed above. I also would change the final sentence of 1(b)(1) which states, "The prosecution's obligations does not begin until the written request of the defendant". I am not sure how this would work? Why is there a difference if it is a jury trial or a court trial. In both a jury trial and court trial the defendant needs full discovery. So I would strike that last sentence or clarify it. I would also add "or by such date as is established by the court" to 1(b)(1) just so that if Court's are setting trials quickly they can issue orders that require the prosecution to move more quickly. _

-
Proposed Rule 223- I believe that after the final sentence "A defendant who fails to file with the court the written jury demand as provided above waives the right to a jury trial." that the Committee add the words "unless good cause is shown". This would allow counsel to raise issues regarding the choice of a jury trial or a court trial with the Court via written motion, as required in Rule 212 if there is in fact good cause for a defendant's failure to file a jury trial demand.

Proposed Rule 248 – I would ask that the Committee clarify what is "good cause" and add that "good

cause” can only allow for one continuance by the Court. Under the State’s speedy trial rules, the reasons for the additional time are very specifically defined. C.R.Crim.P, Rule 48 states, “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.” It seems inconsistent that under the State’s rules there is a very specific and limited ability to increase speedy trial. It specifically does not authorize the extension of speedy trial because of Court congestion. The same limitations should apply to Municipal Court. If the Court does allow for such a continuance to accommodate Court congestion beyond speedy trial there should be a requirement that the Court grant the defendant a PR bond so that a defendant, who is prepared for trial does not end up sitting in jail longer due to the Court’s docket.

I hope that this input is helpful in the creation of these new Rules. I look forward to them going into effect.

Regards,

Ann England
Clinical Law Professor
University of Colorado School of Law
Wolf Law Building, 401 UCB
Boulder, Colorado 80309-0401
Office: 303-492-0285
Cell: 303-919-5960