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**Sent:** Friday, November 30, 2018 1:27 PM

**To:** Carla L. Sikes <[csikes@pueblo.us](mailto:csikes@pueblo.us)>

**Subject:** RE: [External] [cmjalistserv] RE: Rulemaking - Colorado Municipal Court Rules - [www.coloradomunicipalcourts.org](http://www.coloradomunicipalcourts.org)

Rule 216 – This is a major change to the way discovery is handled in Municipal Court. The language they are using is drawn directly from Rule 16 of the Colorado Rules of Criminal Procedure, with some modifications. One of those modifications creates an apparent contradiction within the rule. I have highlighted the contradictory phrases in my attachment. If the language that was added that makes this rule different from C.R.Crim.P. 16 is found to not control the later language which is directly from Rule 16, then discovery would be mandatory in every case where a not guilty plea is entered. That would require discovery to be prepared even if the defendant doesn't want it, doesn't request it, never picks it up and never pays for it. This would cause incredible fiscal impact to the city and time usage/waste by whomever has to prepare the discovery.

If the intent of the proposed amendment is to still require a defendant to request discovery in writing before it is prepared, then the contradictory provision in Part V should be removed.

Rule 254 would also have a major effect on discovery because says if the Municipal Rules don't have a specific rule, then the court can refer specific rule in other sets of rules. It could therefore be argued the specific rule regarding discovery as modified in 216 would then trump the discovery process set forth in the Traffic Infraction rules. So, discovery would have to be provided within 21 days of a not guilty plea in every traffic infraction case.

## **Colorado Rules of Municipal Court 216**

### **Part I. Disclosure to the Defense**

#### **(b) Prosecutor's Performance of Obligations.**

(1) The prosecuting attorney shall perform his or her obligations under subsections (a)(1)(I), (III), (VI), and with regard to written or recorded statements of the accused or a codefendant under (VII) as soon as practicable but not later than 21 days after the defendant's entry of "not guilty" plea, the matter is set for trial and written request of the defense, 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. The prosecution's obligations does not begin until the written request of the defendant.

(2) The prosecuting attorney shall perform all other obligations under subsection (a)(1) as soon as practicable but not later than 14 days before trial, or by such date as is established by the court.

### **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.

## **C.R.Crim.P. 16**

### **Part I. Disclosure to the Defense**

#### **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.