MEMORANDUM

TO: Civil Rules Committee

FROM: Judge Robert J. Frick, Chair, Colorado Municipal Court Rules Subcommittee

Judge Billy R. Stiggers, II, Colorado Municipal Court Rules Subcommittee

RE: Proposed Changes to the Colorado Municipal Court Rules

Date: May 29, 2018

I. INTRODUCTION

The Colorado Municipal Court Rules Subcommittee ("Colorado Municipal Court Rules Subcommittee" or "Subcommittee") respectfully submits the following proposed changes to the Colorado Municipal Court Rules for consideration by the Civil Rules Committee ("Civil Rules Committee" or "Committee") for recommendation of adoption to the Colorado Supreme Court.

The proposed revisions come after a rulemaking process that occurred with the Subcommittee from 2017 to 2019.[1] This process reflects a substantive and wholesale look at the Colorado Municipal Court Rules that has not occurred since 1988.[2]

The Subcommittee recognizes that the proposed rule revisions fall into either a 'simple or clean-up' to 'contested' categories. Different stakeholders have a wide variety of positions

[1] See https://www.coloradomunicipalcourts.org/rulemaking/

[2] Colorado Municipal Court Rules, Amended June 30, 1988, effective January 1, 1989 (exception: Rule of Seven – December 14, 2011).

regarding the proposed changes. The Committee has several options for consideration and recommendation of adoption to the Colorado Supreme Court. As such, the Subcommittee recommends that the Committee consider the proposed rule revisions as follows:

Group 1 – Rules 204, 210, 223, 241, and 254

Group 2 – Rules 212, 216, 237, 243, and 248

The Subcommittee would anticipate that the proposed rule revisions as contained in Group 1 are non-controversial and may be recommended for adoption by the Committee to the Supreme Court with little delay. The proposed rule revisions as contained in Group 2 may be controversial or potentially have wide public interest and require further publication and invitation for public comment.

A. Historical Background

Municipal or local courts are often referred to as "quality of life courts". The courts give the public their primary and often only impression of the criminal justice system. However, the role of these courts has evolved over time. Municipalities, especially Home Rule Municipalities, have asserted greater jurisdiction and handle more complex matters. Changes in case law and legislation have further necessitated changes to the Colorado Municipal Court Rules.

The Colorado Municipal Court Rules were promulgated for the "just determination of all charter and ordinance violations. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay."[3] The

[3] C.M.C.R. 202

Colorado Municipal Court Rules were revised substantively and most recently on June 30, 1988 (with the noted exception of the "Rule of Seven" changes in 2011).[4] Much has changed in practice and subject matter of the Colorado Municipal Courts since those revisions.

There are 271 incorporated municipalities in Colorado representing 101 Home Rule Cities/Towns; 12 Statutory Cities, 1 Territorial Charter City; and 157 Statutory Towns. There are two consolidated City and County governments.[5] Municipalities may often be in one or more counties and judicial districts.[6] There are approximately 215 Colorado Municipal Courts serving these communities.[7]

The size and subject matter that come before the Colorado Municipal Courts differs greatly amongst the jurisdictions. Colorado Municipal Courts range from small 'part-time' courts that handle traffic and simple criminal matters to 'major-courts' such as Aurora, Colorado Springs, Lakewood, and Denver[8] that handle case numbers that exceed most of the Colorado Judicial Districts. Serious crimes including acts of domestic violence, assault, auto theft, drug possession, etc., are the subject matter of many jurisdictions. Additionally, the Colorado Municipal Courts, especially Home Rule municipalities, often have exclusive jurisdiction in municipal ordinances that are civil in nature such as local election laws, business

[4] Colorado Municipal Court Rules, Amended June 30, 1988, effective January 1, 1989 (exception: Rule of Seven – December 14, 2011).
[5] See https://www.coloradomunicipalcourts.org/about/
[6] The City and County of Denver and City and County of Broomfield are the two consolidated City and County governments in Colorado; See also https://www.coloradomunicipalcourts.org/about/
[7] See https://www.coloradomunicipalcourts.org/about/; See generally www.cml.org.
[8] The City and County of Denver is a consolidated City and County government. Municipal ordinance violations and infractions go before the Criminal/General Sessions Division of the City and County of Denver's County Court.

and other licensing, liquor and marijuana regulation, safety and health regulations, code and nuisance violations.

Colorado Municipal Courts are given grants and limitations of power by the United States Constitution,[9] the Colorado Constitution,[10] the Colorado Revised Statutes,[11] and rules of procedure promulgated by the Colorado Supreme Court.[12] These courts have original, special, exclusive, limited and concurrent jurisdiction in relation to other courts within the State.

B. Colorado Municipal Court Rules - Rulemaking

The Colorado Supreme Court – Civil Rules Committee appointed the Colorado Municipal Courts Rules Subcommittee on August 14, 2017. Judge Corrine Magid served initially as Chair of the Subcommittee. Members of the Colorado Municipal Judges Association make up this Subcommittee. Judge Robert J. Frick replaced Judge Corrine Magid as Chair on March 26, 2019.[13]

A variety of working groups, stakeholder meetings, and input occurred between 2017 and 2019.[14] The Subcommittee solicited input from city attorneys and prosecutors, Colorado Criminal Defense Bar, municipal judges, attorneys, law schools and clinics, municipal public defender's offices, and members of the public.[15] There were many informal discussions and

[9] United States Constitution, Amendments I through X and XIV.
[10] Colorado Constitution, Art. II, §§ 1-30; Art. III; Art. VI, §1; Art. XX; Art. XIV, §§ 13 and 14; Art. XX, §§ 1, 6, and 10.
[11] See generally Colorado Revised Statutes 13-10-101, 13-10-103, 13-10-104, 13-10-112, 31-1-101, *et seq.,* 31-4-208, 13-10-105(2), 31-15-101 through 1004, 31-16-101 *et seq.,* 31-16-111, and 42-4-110.
[12] Colorado Municipal Court Rules of Procedure (C.M.C.R.); Colorado Rules of Criminal Procedure (Crim. P), Rules 37 and 57; Colorado Appellate Rules (C.A.P.).
[13] Governor Jared Polis appointed Corinne Magid to the Jefferson County Court in the First Judicial District on February 7, 2019. Judge Magid subsequently stepped down as Chair for the Subcommittee.
[14] See https://www.coloradomunicipalcourts.org/rulemaking/
[15] See https://www.coloradomunicipalcourts.org/rulemaking/

debates throughout this process. The subcommittee gathered recommendations, proposals, and ideas regarding rule changes from a number of stakeholders.[16] There was an online comment period on the Colorado Municipal Judges Association website available to the public from November 1, 2018 through January 15, 2019.[17] The Subcommittee collected and published the online stakeholder comments[18] and the various versions of the proposed rule changes as they evolved throughout this process.[19]

The proposed rule changes were presented at the Colorado Municipal League – "Prosecutor's Boot Camp" on January 18, 2019 to the city attorneys and prosecutors, as they existed at that time. There was feedback and discussion received and brought back before the Subcommittee and Working Groups for consideration.

Proposed changes of the Colorado Municipal Court Rules were first submitted to the Civil Rules Committee on April 1, 2019. A subsequent presentation of the proposed rule changes occurred at the Colorado Municipal Judges Association Spring 2019 Judicial Conference on April 26, 2019 which resulted is some changes to certain proposed rules and alternative proposals for consideration.

The Subcommittee respectfully submits this Memorandum and incorporates all changes herein.

C. Subcommittee Members

[16] See https://www.coloradomunicipalcourts.org/rulemaking/working-and-proposed-rules/
[17] See https://www.coloradomunicipalcourts.org/rulemaking/
[18] See https://www.coloradomunicipalcourts.org/stakeholder-comments/
[19] See https://www.coloradomunicipalcourts.org/rulemaking/;
https://www.coloradomunicipalcourts.org/rulemaking/working-and-proposed-rules/

The following members of the Colorado Municipal Judges Association serve as members of the Colorado Municipal Court Rules Subcommittee: Judge Teresa Ablao; Judge Paul Basso; Judge Melissa Beato; Judge Corrin M. Flannigan; Judge Robert J. Frick; Judge Lisa Hamilton-Fieldman; Judge William Hardesty; Judge Geri Joneson; Judge Andrea Koppenhofer; Judge Corrine Magid; Judge Cynthia Mares; Judge Care' McInnis; Judge Leonard Miller; Judge Brandilynn Nieto; Judge Charles Peters; Judge Angela Schmitz; Judge Billy R. Stiggers, II; Judge Victor M. Zerbi.

Sub-Subcommittee (Working Groups) were created to address specific rules with the following leads:

Rule 212 – Judge Andrea Koppenhoffer

Rule 216 – Judge Billy R. Stiggers, II

Rule 217 – Judge Melissa Beato

Rule 243 – Judge Andrea Koppenhoffer

Rule 248 – Judge Corinne Magid

Others Rules – Judge Robert J. Frick

II. Group 1 – Proposed Revisions to Rules 204, 210, 223, 241, and 254

A. Rule 204

The Subcommittee proposes two changes to Rule 204. See Exhibit 1.

The first proposal is to increase the minimum time prior to the time that defendant is required to appear from 7 days to 14 days. In practice, most of the Colorado Municipal Courts set out arraignment dates anywhere from three to 14 weeks after the alleged incident or contact by law enforcement has occurred. This additional 7-day period, in part, allows for additional administrative processing by law enforcement and courts.

The second proposal is to define how alternate service may be accomplished, as Rule 204 was previously silent. 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 (e.g. a parent accepting service on behalf of a minor, etc.). Personal service shall be made by a peace officer or any disinterested party over the age of eighteen years.

The proposal to include service by any 'disinterested party over the age of eighteen years' was to specifically include, although not limited to, the non-sworn personnel of a law enforcement agency or those employees of a municipality whose duties include enforcing the health and safety municipal code and charter provisions (e.g. code enforcement inspector, animal control officer, etc.).

B. Rule 210

The Subcommittee proposes changes to Rule 210 to reflect the court's duty to inform on first appearance in court and on pleas of guilty pursuant to § 16-7-207, C.R.S. See Exhibit 2.

The court's duty to inform on first appearance in court and on pleas of guilty pursuant to § 16-7-207, C.R.S., is now applicable to the Colorado Municipal Courts as of July 1, 2018 for prosecutions of municipal charter and ordinance violations.[20] The application of the enhanced advisement requirements of § 16-7-207, C.R.S., does not apply to traffic infractions.[21] As such, there are now slight inconsistencies and differences in language between Rule 210 and § 16-7-207, C.R.S. Further, a defendant's right to trial by jury or by the court is defined in Rule 223 and does not need to be duplicated in Rule 210.

The right to 'have process issued by the court' as detailed in the current Rule 210(4)(IV) is proposed to be removed as it is not contained in § 16-7-207, C.R.S., nor the analogous provisions of Crim.P. 10. Service of a subpoena is defined in § 13-9-115, C.R.S. and other applicable case law and statutes.

C. Rule 223

The Subcommittee proposes three changes to Rule 223. See Exhibit 3.

Under the Colorado Municipal Court Rules, "Trials shall be to the Court" unless the defendant is entitled to a jury trial.[22] The United States and Colorado Constitutions grant

[20] See H.B. 16-1309 and 17-1083. ((Note: The effective date of H.B. 16-1309 changed from May 1, 2017 to July 1, 2018, by H.B. 17-1316. See L. 2017, p. 607)).
[21] See H.B. 17-1083.
[22] C.M.C.R. 223(a)

defendants in criminal trials the right to trial by jury. The states are required to afford jury trials for serious offenses[23]. The right to a jury trial is a fundamental right.[24] Both § 13-10-101, C.R.S. and C.M.C.R. 223 recognize the right to a jury trial in municipal court prosecutions. Exceptions have been made for minor traffic violations, which have been decriminalized and no jail sentence may be imposed.[25] Some municipalities have by ordinance provided for no jury trials for violations allegedly committed by minors, for which no jail term may be imposed.

The first proposal is to include additional language 'or the offense carries the possible penalty of imprisonment'. This language is proposed to further define when someone is eligible for a jury trial and is the status of current law. The addition of this language does not create a new right to a jury trial, but rather adds clarification. In addition, recent discussion before the Colorado legislature in HB 16-1309[26], 17-1083[27], and 19-1225[28] has made a noticeable distinction between what municipal ordinances may be 'jail able' versus 'non-jail able' for purposes of advisement, counsel representation, and bail.

The second proposal is to modify Rule 223 to remove the language after 'arraignment or' to delineate that the 21 day period for filing a jury demand and tendering the jury fee does not begin until the after the 'entry of plea'. This proposal provides further clarification and consistency of practice amongst the Colorado Municipal Courts.

[23] *Duncan v. Louisiana*, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968).
[24] *People v. Curtis*, 681 P.2d 504 (Colo. 1984).
[25] See C.R.S. 42-4-1701 *et seq.*
[26] H.B. 16-1309 – Concerning a Defendant's Right to Counsel.
[27] H.B. 17-1083 – Court's Duty to Inform on First Appearance – Traffic Infractions.
[28] H.B. 19-1225 – Concerning Prohibiting the Use of Monetary Bond for Certain Level of Offenses

The third proposal is to add 'unless good cause is shown' to allow a court discretion in the determination on whether or not a defendant has waived his right to a jury trial if he fails to comply with the requirements of filing a written jury demand. The Subcommittee does not propose to define what may constitute 'good cause'. This will allow for a case by case determination and more discretion by the court. This specific language proposal came from Prof. Ann England of the University of Colorado School of Law – Criminal Defense Clinic and "would allow for counsel to raise issues regarding choice of jury trial or court trial … if there was in fact good cause for a defendant's failure to file a jury demand."[29]

Please note that the stakeholder comments from the (Denver) Office of the Municipal Public Defender contends that the procedural requirements of the 'written jury demand', 'jury fee', and '21 day' deadline should be removed and are unconstitutional.[30]

The Subcommittee does not propose to remove the procedural requirements of a 'written jury demand', 'jury fee', or the '21 day' deadline as detailed in Rule 223 at this time. An overwhelming majority of Subcommittee members and municipal judges prefer these procedural requirements of Rule 223 for cases that come before the Colorado Municipal Courts. The 'jury fee' may be "waived by the judge because of indigence of the defendant."[31] The third proposal to add 'unless good cause is shown' will allow a court discretion in the determination of whether or not good cause may exist when a defendant waives his right to a

[29] See Exhibit 11 - Stakeholder Comment – University of Colorado School of Law – Criminal Defense Clinic 1-2-2019.
[30] See Exhibit 12 - Stakeholder Comment – (Denver) Office of the Municipal Public Defender – 1-15-2019.
[31] C.M.C.R. 223(a)

jury trial if he fails to comply with the requirements of filing a written jury demand. This may be the subject for future changes to Rule 223.

D. Rule 241

The Subcommittee proposes changes to Rule 241 to expand the authority of the Colorado Municipal Courts to issue a search warrant when it relates to a charter or ordinance violation involving a threat to public health, safety or order. See Exhibit 4.

As mentioned in the Introduction of this Memorandum, the size and subject matter that come before the Colorado Municipal Courts differs greatly amongst the jurisdictions. Colorado Municipal Courts range from small 'part-time' courts that handle traffic and simple criminal matters to 'major-courts' such as Aurora, Colorado Springs, Lakewood, and Denver[32] that handle case numbers that exceed most of the Colorado Judicial Districts. Serious crimes including acts of domestic violence, assault, auto theft, drug possession, etc., are the subject matter of many jurisdictions. The Colorado Municipal Courts, especially Home Rule municipalities, often have exclusive jurisdiction in municipal ordinances that are civil in nature such as local election laws, business and other licensing, liquor and marijuana regulation, safety and health regulations, code and nuisance violations.

The proposed changes to Rule 241 through the stakeholder process notably have been related to Home Rule municipalities as they deal with the ever-increasing issues involving marijuana sale and grow operations, unattended deaths (to which no criminal activity is suspected or are natural), and other threats to public health, safety, or order. The proposed

[32] The City and County of Denver is a consolidated City and County government. Municipal ordinance violations and infractions go before the Criminal/General Sessions Division of the City and County of Denver's County Court.

Rule 241 changes provide for additional tools for municipalities (and their respective law enforcement, code enforcement, and public health agencies) as they deal with these matters of local concern. A particular municipality may still seek a search warrant from the respective state court as the law allows.

The Subcommittee anticipates that the expansion of Rule 241 may also provide some relief to the state courts. Nothing of the proposed Rule 241 changes will impact the ability to appeal the decision of a lower court to a higher court as authorized by law.

E. Rule 254

The Subcommittee proposes the addition of Rule 254 as a simple and clarifying rule to provide guidance for Colorado Municipal Courts. The subject matter of the proposed Rule 254 is the current law. See Exhibit 5.

As mentioned in the Introduction of this Memorandum, the size and subject matter that comes before the Colorado Municipal Courts differs greatly amongst the jurisdictions. Colorado Municipal Courts range from small 'part-time' courts that handle traffic and simple criminal matters to 'major-courts' such as Aurora, Colorado Springs, Lakewood, and Denver[33] that handle case numbers that exceed most of the Colorado Judicial Districts. Serious crimes including acts of domestic violence, assault, auto theft, drug possession, etc., are the subject matter of many jurisdictions. The Colorado Municipal Courts, especially Home Rule municipalities, often have exclusive jurisdiction in municipal ordinances that are civil in nature

[33] The City and County of Denver is a consolidated City and County government. Municipal ordinance violations and infractions go before the Criminal/General Sessions Division of the City and County of Denver's County Court.

such as local election laws, business and other licensing, liquor and marijuana regulation, safety and health regulations, code and nuisance violations.

The Colorado Supreme Court has adopted the Colorado Municipal Court Rules of Procedure that govern the operations, proceedings and conduct of all municipal courts within the State of Colorado.[34] The Colorado Municipal Court Rules "… are intended to provide for the just determination of all municipal charter and ordinance violations. They shall be construed to secure simplicity in procedure, fairness and administration and the elimination of unjustifiable expense and delay."[35] If no procedure is specifically presented by the Colorado Municipal Court Rules, the court can look for guidance to any directive of the Supreme Court regarding the conduct of formal judicial proceedings.[36]

[34] C.R.S. 13-10-103 and 13-10-112; C.M.C.R. 201.

[35] C.M.C.R. 202; *City of Englewood v. Municipal Court,* 687 P.2d 521 (Colo. App. 1984).

[36] [If no procedure is specifically presented by the Municipal Court Rules, the court can look for guidance to the Colorado Rules of Criminal Procedure. *Bachicha v. Municipal Court,* 581 P.2d 746 (Colo. App. 1978). "As their parallel purposes and numbering system indicate, the Colorado Rules of Criminal Procedure and the Colorado Municipal Court Rules of Procedure are *in pari materia.* See, Crim. P. 2; C.M.C.R. 202. Being *in pari materia,* they should be reconciled if possible. See*, People v. Cornelison,* 559 P.2d 1102 (Colo. 1977). See also, *People ex rel. Farina v. District Court,* 184 Colo. 406, 521 P.2d 778 (1974); "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 Rule of Civil Procedure and to the applicable." See, *People v. Cornelison, supra; People v. Linger,* 566 P.2d 1367 (Colo. App. 1977).]

III. Group 2 – Proposed Revisions to Rules 212, 216, 237, 243, and 248

A. Rule 212

The Subcommittee proposes two changes to Rule 212. See Exhibit 6.

The first proposed change is to require that motions filed with the Colorado Municipal Courts be 'written' unless otherwise ordered by the court. This changes the presumptive practice from 'oral' to 'written' motions, but does allow for the discretion of the court to allow oral motions.

Many, but not all, of the Colorado Municipal Courts already have this as a standard practice. These particular Colorado Municipal Courts require the filing of 'written motions' as part of a standing or administrative order or as part of pre-trial order when a matter is set for trial. Time deadlines, pre-trial procedures, notice and opportunity for timely hearings, and other administrative concerns will help to facilitate the effective and efficient handling of a particular case and overall docket management. Compliance by all parties with C.R.C.P. 5 regarding the service and filing of pleadings and other papers is required.

This proposed change for the presumption of written motions, in part, focuses on those motions that involve the suppression of evidence, statements or other constitutional considerations that often require an ability for a reflective and versed response and an opportunity to make argument.

Of note is the concern raised by the (Denver) Office of Municipal Public Defender. They argue, among other things, that this "proposed revision could drastically and unnecessarily

increase the workloads of the defense, prosecution, court staff, and judges. …"[37] A similar concern by several municipal judges is notably for the simple or administrative requests that may come from the parties to a case. In response, a court does have the discretion to allow for oral motions.

The second proposed change is to make a presumptive deadline that motions are filed "within 21 days of entry of plea, or within other such time frame as is established by the court. …"[38] This proposed change establishes a definitive time deadline for the filing of motions but does allow discretion of the court to deviate from this deadline. This presumptive 21 day deadline is also consistent with the proposed Rule 223[39] and 216[40] changes.

The Subcommittee recognizes the concerns raised by both Professor Anne England[41] and the (Denver) Office of the Municipal Public Defender[42] that the requirement for motions to be filed within 21 days (of entry of plea or by such other time period as is established by the court) may be in conflict with the proposed changes to Rule 216 that discovery is to be provided within 21 days (of entry of plea or by such other time period is established by the court).

In response, the proposed changes to both Rule 212 and 216 allow for greater discretion by the court to establish time periods as appropriate, recognizing the current Rule 248 speedy trial of 91 day requirements. A party may also file for relief from the presumptive deadlines as appropriate with the respective Colorado Municipal Court on any case. The Subcommittee also

[37] See Exhibit 12 - Stakeholder Comment – (Denver) Office of the Municipal Public Defender – 1-15-2019
[38] See Exhibit 6
[39] See Exhibit 3
[40] See Exhibit 7
[41] See Exhibit 11 - Stakeholder Comment – University of Colorado School of Law – Criminal Defense Clinic 1-2-2019.
[42] See Exhibit 12 - Stakeholder Comment – (Denver) Office of the Municipal Public Defender – 1-15-2019

recognizes that the Rule 212 presumptive 21-day period for filing of motions may be extended (perhaps to 28 or 35 days, staying consistent with the "Rule of Seven") if changes are made to the Rule 248 speedy trial requirements.

B. Rule 216

The Subcommittee proposes substantive changes to Rule 216. The Subcommittee's revision of Rule 216 gives greater and more defined discovery rules for both the prosecution and the defense. The proposed changes will expand the discovery obligations of the parties with certain additional procedural requirements and safeguards. The changes make Rule 216 more analogous to Crim.P. 16 with some noted differences. The Subcommittee's goal is to ensure a fair trial for both sides in the municipal court and attenuate allegations of "trial by ambush." There is both support and opposition to these proposed changes. See Exhibit 7.

The current discovery procedures, in practice, vary greatly amongst the jurisdictions. There is often confusion between the requirements of Crim.P. 16 and Rule 216. Discovery obligations have changed in case law over time. Certain discovery may be mandatory or permissive. Many jurisdictions in current practice have standing orders, or incorporate as part of part of any pre-trial order, specific discovery obligations analogous to Crim.P. 16 (e.g. disclosure of criminal histories) either as outright obligations or upon written request or motion of the parties.

The present Rule 216 governing discovery for criminal cases in municipal court mandates the prosecution to provide the defendant with certain materials in its possession to include "any books, papers, documents, photographs, or tangible objects" and "the names and addresses of

persons whom the prosecution intends to call as witnesses at the hearing or trial, together with any witness statements."[43] However, no one rule of describes all of the law which must be applied.

Case law has expanded prosecutorial discovery obligations over the years and these changes are not reflected in the current Rule 216. Among other obligations, the prosecution is required to produce any exculpatory materials.[44] Evidence bearing on prosecution witness' credibility is exculpatory evidence.[45] Statements within the possession of the police are deemed in the possession of the prosecutor.[46] The prosecutor's disclosure obligation extends to materials and information in the possession or control of law enforcement.[47]

Municipal courts presently have the discretion to order discovery to the extent necessary to promote judicial efficiency and fundamental fairness.[48] The municipal rules, the Colorado Court of Appeals reasoned, are "to be read as a whole and liberally construed," and "[l]iberal discovery procedures in criminal cases are to be encouraged so as to avoid surprise or deception in the production of evidence."[49]

Proposed Rule 216 Part I (a) expands on the current Rule 216 (a) prosecution disclosure obligations for information and materials within the prosecution's possession and control. Inter alia, the proposed rule adds and/or specifies the prosecutions discovery obligation for police reports, criminal histories, electronic surveillance, body camera video, and material that would reduce the guilt of the defendant or reduce the punishment. A primary goal of the Subcommittee

[43] C.M.C.R. 216(a)-(b)
[44] See *Brady v. Maryland,* 373 U.S. 83 (1983).
[45] *People v. Cevallos-Acosta,* 140 P. 3d 116, 125 (Colo. App. 2005).
[46] *People v. Garcia,* 690 P.2d 869, 873 (Colo. App. 1984).
[47] *People v. District Court,* 793 P.2d 163 (Colo. 1990); *People v. Cevallos-Acosta,* 140 P. 3d 116, 125 (Colo. App. 2005).
[48] *Englewood by People v. Municipal Court of Englewood,* 687 P.2d 521, 523 (Colo. App. 1984).
[49] *Englewood by People v. Municipal Court of Englewood,* 687 P.2d 521, 522-523 (Colo. App. 1984)

and the comments to the proposed rule changes was to incorporate advances in technology into the current Rule 216. Electronic surveillance and body worn cameras are frequently used in municipal court trials. The Subcommittee asserts it is essential for Rule 216 to explicitly address the discovery of such materials. The other expanded items in the Proposed Rule 216 Part I (a) incorporate case law, statutes/ordinances, and common municipal court discovery orders into a consistent, coherent rule.

Proposed Rule 216 Part I (b) adds that the prosecution's discovery obligation begins at the defendant's oral or written requests and provides for specific deadlines. Another key revision is in Proposed Rule 216 Part 1(c). The change specifies the prosecution's obligations to make reasonable efforts to provide discoverable information in the possession of other government personnel. This is not required in the current Rule 216. This rule change will require extra efforts by municipal prosecution offices but will, more importantly, ensure a fair and informed trial for the defendant.

There are currently no discovery obligations for a defendant under Rule 216. Any disclosure obligations on a municipal defendant are by case law, a specific order of a municipal court or under § 16-7-102, C.R.S. a criminal trial procedure statute requiring the defense disclosure of an alibi defense and witnesses to the prosecution.

The Proposed Rule 216 Part II adds a defendant's duty to disclose certain information to the prosecution. Under the proposed rule change, the defendant is obligated to disclose nontestimonial identification, expert witness medical and scientific reports, nature of defense(s), and provide a 14-day notice of an alibi defense and witnesses.

These are the most notably impactful changes to the prosecution and defendant discovery obligations contemplated by the Subcommittee's proposed rule change. The Subcommittee is of

the view that prosecution and defense discovery are related and that the giving of a fair right of discovery to the defense is dependent upon giving also a fair right of discovery to the prosecution. The hope is this will result in consistently fair trials.

The Subcommittee feels it is in the interest of justice to have Rule 216 more analogous to Crim.P. 16. Crim.P. 16 provides broadly defined discovery obligations for the prosecution and defense that coalesce case law, statutes, court orders and common practices into a coherent rule. Crim.P. 16 has proven its effectiveness in Colorado state court. The proposed rule change will help eliminate the current confusion and inconsistencies found in Colorado municipal court practice under the current Rule 216. Finally, the Subcommittee asserts it will be more efficient for the entire legal community to have a more consistent discovery rule for state and municipal courts.

C. Rule 237

The Subcommittee proposes to change Rule 237 to include the reference to Crim.P. 37.1. This proposed rule change did not go through the Subcommittee Rulemaking process and offered for the first time. See Exhibit 8.

Rule 237, as with all of the Colorado Municipal Court Rules, was most substantively amended on June 30, 1988.[50] At the time of adoption, Crim.P. 37.1 had not been adopted for purposes of interlocutory appeals. Crim.P. 37.1 was added to the Criminal Rules of Procedure July 16, 1992[51] and was not included into Rule 237. This proposed change will specifically allow

[50] Colorado Municipal Court Rules, Amended June 30, 1988, effective January 1, 1989 (exception: Rule of 7 – December 14, 2011).
[51] Crim.P. 37.1, Added Uly 16, 1992, effective November 1, 1992; (b) to (e) amended and adopted December 14, 2011, effective July 1, 2012.

for interlocutory appeals from the Colorado Municipal Courts and the related computation of time.

Interlocutory appeals from the Colorado Municipal Courts, as they have from county court, has become more commonplace involving the return of property and to suppress evidence or granting a motion to suppress an extra-judicial confession or admission. However, Rule 237 is silent as to interlocutory appeals. Further, a reviewing court is limited to the current language in Rule 248 for the computation of time. Please note that proposed revisions to Rule 248 to include, among other things, the computation of time for interlocutory appeals.[52]

For a recent example, in the Order Granting Rule 106(a)(4) Relief, dated May 16, 2019, from *Stephen Westra v. Westminster Municipal Court,*[53] the district court in that case held that it lacked jurisdiction to hear an interlocutory appeal from the Westminster Municipal Court and followed Rule 248(b) for the computation of time. This decision has not been appealed as of the submission of this Memorandum.

D. Rule 243

The Subcommittee proposes the addition of Rule 243 to define the Presence of the Defendant. See Exhibit 9.

The current Colorado Municipal Court Rules are silent as to when the Presence of the Defendant is required. For guidance, the Colorado Municipal Courts may rely upon Crim.P. 43,

[52] See Exhibit 10.
[53] *Stephen Westra v. Westminster Municipal Court,* 17th Judicial District Court Case No. 2018CV31365 (Appeal from Westminster Municipal Court case _____).

§ 16-7-202, C.R.S. and the Colorado Rules for Traffic Infractions when applicable. As technology has improved and as recent legislation has required[54], the Colorado Municipal Courts as a whole have an expanded use of interactive audiovisuals devices, especially for purposes of in-custody arraignments, bond hearings, advisements, and other appearances.

The proposed addition of Rule 243 is analogous to Crim.P. 43, while incorporating similar provisions of § 16-7-202, C.R.S. and the Colorado Rules for Traffic Infractions.

E. Rule 248

The Subcommittee proposes changes to the Rule 248 expanding time for speedy trial and the computation of time. There is a majority proposal and an alternate proposal for consideration. There is both support and opposition to these proposed changes. See Exhibit 10.

Both the majority and the alternate proposed rule changes include the computation of time as contemplated with the proposed changes to Rule 237. This outlines, among other things, time computation for interlocutory appeals, new trials after reversal on appeal, mistrials, and other delays caused, analogous to Crim.P. 48.

The majority proposal is to keep the existing 91 day period for speedy trial and then allow for an additional delay of up to 91 days (from the current "not to exceed 28 days"[55]) when good cause exists to warrant such a delay (for demonstration, 91 days plus up to an additional 91 days for a total of up to 182 days). The alternate proposal is to adopt the same or

[54] E.g. H.B. 17-1338 – Concerning a Requirement for Timely Hearing for a Defendant with a Municipal Court Hold.
[55] See C.M.C.R. 248(b).

similar standards as Crim.P. 48 and set speedy trial "within six months from the entry of plea"[56] or a similar time period (such as 182 to be consistent with the "Rule of Seven"). There are pros and cons to either approach.

A majority of municipal court judges favor the increased speedy trial requirements, under either the 'majority proposal' or 'the alternate proposal'. There is a small minority of municipal court judges that would prefer the speedy trial time periods remain under the current rule.

There are concerns noted from the (Denver) Office of the Municipal Prosecutor[57] and Professor England of the University of Colorado Law School – Criminal Defense Clinic[58] that the proposed changes do not include any definition or list of factors as to what may constitute 'good cause' for essentially doubling what would be the current speedy trial time period.

In response, the proposed changes do not include a definition or list of factor or factors for 'good cause' and this is intentional. This proposed change allows an opportunity for the parties make argument as to what factor or factors may constitute 'good cause' in a particular situation. It also allows for greater discretion on behalf of the court in making any findings and determination.

[56] See Crim.P. 48(b).
[57] See Exhibit 12 - Stakeholder Comment – (Denver) Office of the Municipal Public Defender – 1-15-2019
[58] See Exhibit 11 - Stakeholder Comment – University of Colorado School of Law – Criminal Defense Clinic 1-2-2019.

Group 1 Exhibits

Rules 204, 210, 223, 241, and 254

EXHIBIT 1

Rule 204 – Proposed Revisions
Version 10-31-2018

[REDLINE VERSION]

Rule 204

…

(e) Service of Summons and Complaint. A copy of a summons or summons and complaint issued pursuant to these rules shall be served personally upon the defendant. In lieu of personal service, service may be made by leaving a copy of the summons or summons and complaint 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 by certified mail, return receipt requested, not less than ~~7~~ 14 days prior to the time the defendant is required to appear. 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.

…

(No other proposed changes to this Rule)

[CLEAN VERSION]

Rule 204

…

(e) Service of Summons and Complaint. A copy of a summons or summons and complaint issued pursuant to these rules shall be served personally upon the defendant. In lieu of personal service, service may be made by leaving a copy of the summons or summons and complaint 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 by registered mail with return receipt requested or certified mail with return receipt requested, not less than 14 days prior to the time the defendant is required to appear. 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.

…

(No other proposed changes to this Rule)

EXHIBIT 2

Rule 210 – Proposed Revisions
Version 12-6-2018

[REDLINE VERSION]

Rule 210. Arraignment.

…

(4) ~~A defendant appearing without counsel at arraignment shall be advised by the court of the nature of the charges contained in the complaint and of the maximum penalty which the court may impose in the event of a conviction; in addition, the court shall inform the defendant of the following rights~~: At the first appearance of the defendant in court or upon arraignment, whichever is first in time, it is the duty of the judge to inform the defendant and make certain that the defendant understands the following:

(I) ~~To bail;~~ The defendant need make no statement, and any statement made can and may be used against him or her.
(II) ~~To make no statement, and that any statement made can and may be used against the defendant~~; The defendant has a right to counsel.
(III) ~~To be represented by counsel, and, if indigent, the right to appointed counsel as applicable;~~ If the defendant is an indigent person, he or she may make application for a court-appointed attorney, and, upon payment of the application fee, he or she will be assigned counsel as provided by law or applicable rule of criminal procedure.
(IV) ~~To have process issued by the court, without expense to the defendant, to compel the attendance of witnesses in defendant's behalf;~~ Any plea the defendant makes must be voluntary on his or her part and not the result of undue influence or coercion on the part of anyone.
(V) ~~To testify or not to testify in defendant's own behalf;~~ The defendant has a right to bail, if the offense is bailable, and the amount of bail that has been set by the court.
(VI) To a trial by jury ~~where such right is granted by statute or ordinance, together with the requirement that the defendant, if desiring a jury trial, demand such trial by jury in writing within 21 days after arraignment or entry of a plea; also the number of jurors allowed by law, and of the requirement that the defendant, if desiring a jury trial, tender to the court within 21 days after arraignment or entry of a plea a jury fee of $25 unless the fee be waived by the judge because of the indigence of the defendant~~ or by the court pursuant to C.M.C.R. 223.
(VII) ~~To appeal.~~ The nature of the charges against the defendant and the maximum possible penalties.
…

(No other proposed changes to this Rule)

[CLEAN VERSION]

Rule 210. Arraignment.

….

(4) At the first appearance of the defendant in court or upon arraignment, whichever is first in time, it is the duty of the judge 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 him or her.
(II) The defendant has a right to counsel.
(III) If the defendant is an indigent person, he or she may make application for a court-appointed attorney, and, upon payment of the application fee, he or she will be assigned counsel as provided by law or applicable rule of criminal procedure.
(IV) Any plea the defendant makes must be voluntary on his or her part and not the result of undue influence or coercion on the part of anyone.
(V) The defendant has a right to bail, if the offense is bailable, and the amount of bail that has been set by the court.
(VI) To a trial by jury or by the court pursuant to C.M.C.R. 223.
(VII) The nature of the charges against the defendant and the maximum possible penalties.
…

(No other proposed changes to this Rule)

COMMENT:

The court's duty to inform on first appearance in court and on pleas of guilty pursuant to 16-7-207, C.R.S., is now applicable to municipal courts as of July 1, 2018. See H.B. 16-1316 and 17-1083 ((Note: The effective date of H.B. 16-1316 changed from May 1, 2017 to July 1, 2018, by H.B. 17-1316. See L. 2017, p. 607)).

A defendant's right to trial by jury or by the court is detailed in C.M.C.R. 223.

EXHIBIT 3

Rule 223 – Proposed Revisions
Version 5-1-19

[REDLINE VERSION]

Rule 223. Trial by Jury or by the Court.

(a) Trial by Jury. Trial shall be to the court, unless the defendant is entitled to a jury trial under the constitution, ordinance, charter, ~~or~~ general laws of the state, or the offense carries the possible penalty of imprisonment, in which case the defendant shall have a jury, if, within 21 days after ~~arraignment or~~ entry of a not guilty plea, the defendant files with the court a written jury demand and at the same time tenders to that court a jury fee of $25, unless the fee is waived by the judge because of the indigence of the defendant. If the action 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 refunded. A defendant who fails to file with the court the written jury demand as provided above waives the right to a jury trial unless good cause is shown.

…

(No other proposed changes to this Rule)

[CLEAN VERSION]

Rule 223. Trial by Jury or by the Court.

(a) Trial by Jury. Trial shall be to the court, unless the defendant is entitled to a jury trial under the constitution, ordinance, charter, general laws of the state, or the offense carries the possible penalty of imprisonment, in which case the defendant shall have a jury, if, within 21 days after entry of a not guilty plea, the defendant files with the court a written jury demand and at the same time tenders to that court a jury fee of $25, unless the fee is waived by the judge because of the indigence of the defendant. If the action 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 refunded. A defendant who fails to file with the court the written jury demand as provided above waives the right to a jury trial unless good cause is shown.

…

(No other proposed changes to this Rule)

EXHIBIT 4

Rule 241 – Proposed Revisions
Version 5-1-19

[REDLINE VERSION]

Rule 241. Search and Seizure

(a) Authority to Issue Warrant. A judge of any court shall have power to issue a search warrant under this Rule ~~only~~ when~~:~~
~~**(1)**~~ It relates to a charter or ordinance violation involving a ~~serious~~ threat to public health, safety or order~~; and~~
~~**(2) The violation is not also a violation prohibited by state statute for which a search warrant could be issued by a district or county court**~~.

…

(No other proposed changes to this Rule)

[CLEAN VERSION]

Rule 241. Search and Seizure

(a) Authority to Issue Warrant. A judge of any court shall have power to issue a search warrant under this Rule when it relates to a charter or ordinance violation involving a threat to public health, safety or order.

…

(No other proposed changes to this Rule)

EXHIBIT 5

Rule 254– Proposed Revisions
Version 11-29-2018

[REDLINE VERSION]

Rule 254. ~~No Colorado Rule.~~ Application

These Rules apply to all proceedings in municipal courts in the state of Colorado. In the absence of a specific Rule, the court may look for guidance to the Colorado Rules of Criminal Procedure, the Colorado Rules of Civil Procedure, the Colorado Rules for Traffic Infractions, and any other rules or Chief Justice directives promulgated by the Colorado Supreme Court regarding the conduct of formal judicial proceedings.

[CLEAN VERSION]

Rule 254. Application

These Rules apply to all proceedings in municipal courts in the state of Colorado. In the absence of a specific Rule, the court may look for guidance to the Colorado Rules of Criminal Procedure, the Colorado Rules of Civil Procedure, the Colorado Rules for Traffic Infractions, and any other rules or Chief Justice directives promulgated by the Colorado Supreme Court regarding the conduct of formal judicial proceedings.

Group 2 Exhibits

Rules 212, 216, 237, 243, and 248

EXHIBIT 6

Rule 212 – Proposed Revisions
Version 11-28-2018

[REDLINE VERSION]

Rule 212. Pleadings and Motions Before Trial.

…

(b) Oral or Written Motions. All motions shall be ~~oral~~ written unless otherwise ordered by the court.

…

(e) Time for Making Motion. Motions shall be made before a plea is entered, ~~but the court may permit it to be made within a reasonable time thereafter~~ within 21 days of the date of entry of a plea, or within such other time frame as is established by the court. If a party wishes to file a brief in support of a Motion, such brief shall be filed with the Motion.

…

(No other proposed changes to this Rule)

[CLEAN VERSION]

Rule 212. Pleadings and Motions Before Trial.

…

(b) Oral or Written Motions. All motions shall be written unless otherwise ordered by the court.

…

(e) Time for Making Motion. Motions shall be made before a plea is entered, within 21 days of the date of entry of a plea, or within such other time frame as is established by the court. If a party wishes to file a brief in support of a Motion, such brief shall be filed with the Motion.

…

(No other proposed changes to this Rule)

EXHIBIT 7

Rule 216 – Proposed Revisions

Version 2-1-2019

[REDLINE VERSION]

Rule 216. Discovery and Inspection

~~**(a) By Defendant.** Upon the motion of a defendant or upon the court's own motion at any time after the filing of the complaint or summons and complaint the court may order the prosecution to permit the defendant to inspect and copy or photograph any books, papers, documents, photographs, or tangible objects that are within the prosecution's possession and control, upon a showing that the items sought may be material to the preparation of the defense and that the request is reasonable. The order shall specify the time, place, and manner of making the inspection and of taking the copies or photographs and may prescribe such terms and conditions as are just~~.

~~**(b) Witness's Statements.** At any time after the filing of the complaint or summons and complaint, upon the request of a defendant or upon the order of court, the prosecution shall disclose to the defendant the names and addresses of persons whom the prosecution intends to call as witnesses at the hearing or trial, together with any witness statements.~~

~~**(c) Irrelevant Matters.** If the prosecution claims that any material or statement ordered to be produced under this rule contains matter which does not relate to the subject matter of the witness's testimony, the court shall order it to deliver the statement for the court's inspection in chambers. Upon such delivery the court shall excise the portions of the statement which do not relate to the subject matter of the witness's testimony, then the court shall direct delivery of the statement to the defendant.~~

~~**(d) Statement Defined.** The term "statement" as used in sections (b) and (c) of this Rule in relation to any witness who may be called by the prosecution means:~~

~~(1) A written statement made by such witness and signed or otherwise adopted or approved by the witness;~~

~~(2) A mechanical, electrical, or other recording, or a transcription thereof, which is a recital of an oral statement made by such witness; or~~

~~(3) Stenographic or written statements or notes which are in substance recitals of an oral statement made by such witness and which were reduced to writing contemporaneously with the making of such oral statement~~.

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) 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;

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

(IV) 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;

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

(VI) 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;

(VII) 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), (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 or by such other

time period is established by the court, 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 by 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.

(3) 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.

(4) The trial court may enter orders consistent with this rule for the time, place, and manner of making the inspection and of taking the copies or photographs and may prescribe such terms and conditions as are just.

(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, which is defined as including, 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.

(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 7 days before 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 14 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)(VI), 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. FOR MUNICIPAL COURTS OF RECORD, a record shall be made of such proceedings. If SUCH 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 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) FOR MUNICIPAL COURTS OF RECORD, 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) 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.

(e) Juror Notebooks.

Juror notebooks may be available during all jury trials and deliberations to aid jurors in the performance of their duties. When juror notebooks are available, 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. The use of juror notebooks is optional in municipal courts.

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 upon written request of the defendant.

(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 7 days before 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.

(e) Additional Rules.

Municipal courts may make such additional orders for discretionary or mandatory discovery by the defense or by the prosecution as are consistent with these rules and with any applicable law.

[CLEAN VERSION]

Rule 216. Discovery and Inspection

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) 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;

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

(IV) 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;

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

(VI) 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;

(VII) 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), (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 plea or by such other time period is established by the court, 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 by 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.

(3) 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.

(4) The trial court may enter orders consistent with this rule for the time, place, and manner of making the inspection and of taking the copies or photographs and may prescribe such terms and conditions as are just.

(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, which is defined as including, 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.

(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 7 days before 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 14 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)(VI), 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. FOR MUNICIPAL COURTS OF RECORD, a record shall be made of such proceedings. If SUCH 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 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) FOR MUNICIPAL COURTS OF RECORD, 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) 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.

(e) Juror Notebooks.

Juror notebooks may be available during all jury trials and deliberations to aid jurors in the performance of their duties. When juror notebooks are available, 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. The use of juror notebooks is optional in municipal courts.

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 upon written request of the defendant.

(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 7 days before 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.

(e) Additional Rules.

Municipal courts may make such additional orders for discretionary or mandatory discovery by the defense or by the prosecution as are consistent with these rules and with any applicable law.

EXHIBIT 8

Rule 237 – Proposed Revisions
Version 5-1-19

[REDLINE VERSION]

RULE 237. APPEALS

(a) Appeals From Courts Not of Record. Appeals from courts not of record shall be in accordance with sections 13-10-116 to 13-10-125, C.R.S. Rulings on motions in such courts are not appealable.
(b) Appeals From Courts of Record. Appeals from courts of record shall be in accordance with Rule 37 and 37.1 of the Colorado Rules of Criminal Procedure.

[CLEAN VERSION]

RULE 237. APPEALS

(a) Appeals From Courts Not of Record. Appeals from courts not of record shall be in accordance with sections 13-10-116 to 13-10-125, C.R.S. Rulings on motions in such courts are not appealable.
(b) Appeals From Courts of Record. Appeals from courts of record shall be in accordance with Rule 37 and 37.1 of the Colorado Rules of Criminal Procedure.

EXHIBIT 9

Rule 243 – Proposed Revisions
Version 5-1-2019

[REDLINE VERSION]

Rule~~s~~ 242 ~~and 243.~~ No Colorado Rule~~s~~.

Rule 243. Presence of the Defendant.

(a) Presence Required. The defendant shall be present 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 235.

(4) Payment before appearance for traffic infractions as authorized by Rule 6 of the Colorado Rules for Traffic Infractions.

(5) At a First Hearing, as authorized by Rule 7 of the Colorado Rules for Traffic Infractions.

(d) Presence of the defendant

(1) 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. In all prosecutions for lesser offenses, the defendant may appear by his or her attorney who may enter a plea on his or her behalf. See also 16-7-202, C.R.S.

(2) If a plea of guilty or nolo contendere (no contest) 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.

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

(1) Definitions. As used in this Rule 243:

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

(2) A defendant may be present within the meaning of this Rule 243 by the use of an interactive audiovisual device, in lieu of the defendant's physical presence, for the following hearings:

(I) First appearances 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;

(III) Hearings to modify bail;

(IV) Entry of pleas and associated sentencing or probation violation hearings in of municipal charter and ordinance violations.

(VI) Restitution hearings;

(VII) Appeal bond hearings;

(VIII) Any hearing to which the Court authorizes after motion and due consideration consistent with this rule.

(VIII) Rule 235 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 Rule 243(e)(I):

(I) If defense counsel appears, such appearance may be done by interactive audiovisual device. 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) 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.

(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, the court may conduct the hearing by use of an interactive audiovisual procedure consistent with this rule.

[CLEAN VERSION]

Rule 242. No Colorado Rule.

Rule 243. Presence of the Defendant.

(a) Presence Required. The defendant shall be present 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 235.

(4) Payment before appearance for traffic infractions as authorized by Rule 6 of the Colorado Rules for Traffic Infractions.

(5) At a First Hearing, as authorized by Rule 7 of the Colorado Rules for Traffic Infractions.

(d) Presence of the defendant

(1) 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. In all prosecutions for lesser offenses, the defendant may appear by his or her attorney who may enter a plea on his or her behalf. See also 16-7-202, C.R.S.

(2) If a plea of guilty or nolo contendere (no contest) 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.

(3) Payment before appearance for traffic infractions as authorized by Rule 6 of the Colorado Rules for Traffic Infractions.

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

(1) Definitions. As used in this Rule 243:

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

(2) A defendant may be present within the meaning of this Rule 243 by the use of an interactive audiovisual device, in lieu of the defendant's physical presence, for the following hearings:

(I) First appearances 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;

(III) Hearings to modify bail;

(IV) Entry of pleas and associated sentencing or probation violation hearings in of municipal charter and ordinance violations.

(VI) Restitution hearings;

(VII) Appeal bond hearings;

(VIII) Any hearing to which the Court authorizes after motion and due consideration consistent with this rule.

(VIII) Rule 235 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 Rule 243(e)(I):

(I) If defense counsel appears, such appearance may be done by interactive audiovisual device. 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) 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.

(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, the court may conduct the hearing by use of an interactive audiovisual procedure consistent with this rule.

EXHIBIT 10

Rule 248 – Proposed Revision
Version 5-1-2019

Proposal 1 – Majority Proposal

[REDLINE VERSION]

Rule 248. Dismissal

…

(b) By the Court.

(1) If there is unnecessary delay in the trial of a defendant, the court may dismiss the case. If the trial of a defendant is delayed more than 91 days (13 weeks) after the ~~arraignment~~ entry of a plea of not guilty by the defendant, ~~or unless the delay is occasioned by the action or request of the defendant~~, the court shall dismiss the case and the defendant shall not thereafter be tried for the same offense; except if ~~on the day of trial set within the last 7 days of the above time limit a necessity for a continuance arises which~~ the court, in the exercise of sound judicial discretion, determines ~~would warrant an additional delay, then one continuance, not exceeding 28 days, may be allowed, after which the dismissal shall be entered as above provided if trial is not held within the additional time allowed~~ good cause exists to warrant ~~an~~ additional delay up to 91 days. The court may not dismiss the case on these grounds if the delay is occasioned by the action or request of the defendant.

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

(I) The period of delay caused by an interlocutory appeal or an appeal from an order that dismisses one or more counts of a charging document prior to trial;

(II) 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;

(III) 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 municipality for trial;

(IV) The period of delay caused at the instance of the defendant.

(3) If trial results in a conviction which is reversed on appeal, any new trial must be commenced within 91 days after the date of the receipt by the trial court of the mandate from the district or appellate court.

(4) If a trial results in a mistrial, any new trial must be commenced within 91 days after the date of the mistrial.

(5) 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 91 days from the date upon which the continuance was granted.

(6) If a trial date has been fixed by the court and the defendant fails to appear to any court date after the plea of not guilty, the period in which the trial shall be had is extended for an additional 91 days from the date of the defendant's next appearance in court.

(7) 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.

(8) To be entitled to a dismissal under 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 Rule.

(9) If a trial date is offered by the court and the defendant nor his or her 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.

[CLEAN VERSION]

Rule 248. Dismissal

…

(b) By the Court.

(1) If there is unnecessary delay in the trial of a defendant, the court may dismiss the case. If the trial of a defendant is delayed more than 91 days (13 weeks) after the entry of a plea of not guilty by the defendant, the court shall dismiss the case and the defendant shall not thereafter be tried for the same offense; except if the court, in the exercise of sound judicial discretion, determines good cause exists to warrant additional delay up to 91 days. The court may not dismiss the case on these grounds if the delay is occasioned by the action or request of the defendant.

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

(I) The period of delay caused by an interlocutory appeal or an appeal from an order that dismisses one or more counts of a charging document prior to trial;

(II) 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;

(III) 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 municipality for trial;

(IV) The period of delay caused at the instance of the defendant.

(3) If trial results in a conviction which is reversed on appeal, any new trial must be commenced within 91 days after the date of the receipt by the trial court of the mandate from the district or appellate court.

(4) If a trial results in a mistrial, any new trial must be commenced within 91 days after the date of the mistrial.

(5) 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 91 days from the date upon which the continuance was granted.

(6) If a trial date has been fixed by the court and the defendant fails to appear to any court date after the plea of not guilty, the period in which the trial shall be had is extended for an additional 91 days from the date of the defendant's next appearance in court.

(7) 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.

(8) To be entitled to a dismissal under 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 Rule.

(9) If a trial date is offered by the court and the defendant nor his or her 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.

Proposal 2 – Alternate Proposal

Rule 248 – Alternate Proposed Revision
Version 5-1-2019

[REDLINE VERSION]

Rule 248. Dismissal

…

(b) By the Court.

(1) If there is unnecessary delay in the trial of a defendant, the court may dismiss the case. If the trial of a defendant is delayed more than ~~91~~ 182 days (~~13~~26 weeks) after the ~~arraignment~~ entry of a plea of not guilty by the defendant, ~~or unless the delay is occasioned by the action or request of the defendant~~, the court shall dismiss the case and the defendant shall not thereafter be tried for the same offense; except if ~~on the day of trial set within the last 7 days of the above time limit a necessity for a continuance arises which~~ the court, in the exercise of sound judicial discretion, determines ~~would warrant an additional delay, then one continuance, not exceeding 28 days, may be allowed, after which the dismissal shall be entered as above provided if trial is not held within the additional time allowed~~ good cause exists to warrant ~~an~~ additional delay up to 182 days. The court may not dismiss the case on these grounds if the delay is occasioned by the action or request of the defendant.

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

(I) The period of delay caused by an interlocutory appeal or an appeal from an order that dismisses one or more counts of a charging document prior to trial;

(II) 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;

(III) 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 municipality for trial;

(IV) The period of delay caused at the instance of the defendant.

(3) If trial results in a conviction which is reversed on appeal, any new trial must be commenced within 91 days after the date of the receipt by the trial court of the mandate from the district or appellate court.

(4) If a trial results in a mistrial, any new trial must be commenced within 182 days after the date of the mistrial.

(5) 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 182 days from the date upon which the continuance was granted.

(6) If a trial date has been fixed by the court and the defendant fails to appear to any court date after the plea of not guilty, the period in which the trial shall be had is extended for an additional 91 days from the date of the defendant's next appearance in court.

(7) 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.

(8) To be entitled to a dismissal under 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 Rule.

(9) If a trial date is offered by the court and the defendant nor his or her 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.

[CLEAN VERSION]

Rule 248. Dismissal

…

(b) By the Court.

(1) If there is unnecessary delay in the trial of a defendant, the court may dismiss the case. If the trial of a defendant is delayed more than 182 days (26 weeks) after the entry of a plea of not guilty by the defendant, the court shall dismiss the case and the defendant shall not thereafter be tried for the same offense; except if the court, in the exercise of sound judicial discretion, determines good cause exists to warrant additional delay up to 182 days. The court may not dismiss the case on these grounds if the delay is occasioned by the action or request of the defendant.

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

(I) The period of delay caused by an interlocutory appeal or an appeal from an order that dismisses one or more counts of a charging document prior to trial;

(II) 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;

(III) 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 municipality for trial;

(IV) The period of delay caused at the instance of the defendant.

(3) If trial results in a conviction which is reversed on appeal, any new trial must be commenced within 91 days after the date of the receipt by the trial court of the mandate from the district or appellate court.

(4) If a trial results in a mistrial, any new trial must be commenced within 182 days after the date of the mistrial.

(5) 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 182 days from the date upon which the continuance was granted.

(6) If a trial date has been fixed by the court and the defendant fails to appear to any court date after the plea of not guilty, the period in which the trial shall be had is extended for an additional 182 days from the date of the defendant's next appearance in court.

(7) 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.

(8) To be entitled to a dismissal under 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 Rule.

(9) If a trial date is offered by the court and the defendant nor his or her 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.

[CURRENT LANGUAGE]

Rule 248. Dismissal

…

(b) By the Court. If there is unnecessary delay in the trial of a defendant, the court may dismiss the case. If the trial of a defendant is delayed more than 91 days (13 weeks) after the arraignment of the defendant, or unless the delay is occasioned by the action or request of the defendant, the court shall dismiss the case and the defendant shall not thereafter be tried for the same offense; except that if on the day of a trial set within the last 7 days of the above time limit a necessity for a continuance arises which the court in the exercise of sound judicial discretion determines would warrant an additional delay, then one continuance, not exceeding 28 days, may be allowed, after which the dismissal shall be entered as above provided if trial is not held within the additional time allowed.

Select Stakeholder Comments – Exhibits

EXHIBIT 11

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

EXHIBIT 12

Office of the Municipal Public Defender
City and County of Denver
1437 Bannock Street, Suite 500
Denver, Colorado 80202
720-865-2840 phone
720-865-2859 fax
damon.brune@denvergov.org

January 14, 2019

Colorado Supreme Court Civil Rules Committee
Colorado Supreme Court
2 East 14th Avenue
Denver, CO 80202

Submitted via email to 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.

Office of the Municipal Public Defender
City and County of Denver
1437 Bannock Street, Suite 500
Denver, Colorado 80202
720-865-2840 phone
720-865-2859 fax
damon.brune@denvergov.org

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 perquisites 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.

Office of the Municipal Public Defender
City and County of Denver
1437 Bannock Street, Suite 500
Denver, Colorado 80202
720-865-2840 phone
720-865-2859 fax
damon.brune@denvergov.org

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:

Office of the Municipal Public Defender
City and County of Denver
1437 Bannock Street, Suite 500
Denver, Colorado 80202
720-865-2840 phone
720-865-2859 fax
damon.brune@denvergov.org

- 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