

Rule 248 Dismissal.

Original:

(a) **By the Prosecution.** No case pending in any court shall be dismissed or a nolle prosequi therein entered by the prosecution, unless upon a motion in open court and with the court's consent and approval. Such a motion shall be supported by a statement concisely stating the reasons for the action. Such a dismissal may not be entered during the trial without the defendant's consent.

Revised:

(a) **By the Prosecution.** No case pending in any court shall be dismissed or a nolle prosequi ~~entered therein entered by the prosecution,~~ unless upon a motion ~~by the prosecution in open court~~ and with the court's consent and approval. Such a motion shall be supported by a statement concisely stating the reasons for the action. ~~Such a dismissal may not be entered during the trial without the defendant having an opportunity to object. Such a dismissal may not be entered during the trial without the defendant's consent.~~

Original:

~~(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.~~

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Revised:

(b)

- (1) Except as otherwise provided in this Rule, if a defendant is not brought to trial on the issues raised by the complaint within 91 days from the entry of a plea of not guilty, the defendant shall be discharged from custody if the defendant has not been admitted to bail, the pending charges shall be dismissed, whether the defendant is in custody or on bail, and the defendant shall not again be charged for the same offense, or for another offense based upon the same act or series of acts arising out of the same criminal episode.
- (2) If trial results in conviction which is reversed on appeal, any new trial must be commenced within 91 days after the date of the receipt by the trial court of the mandate from the appellate court.
- (3) If a trial date has been fixed by the court, and thereafter the defendant requests and is granted a continuance for trial, the trial shall be commenced within 91 days of the date the continuance is granted.
- (3.5) If the defendant fails to appear on the trial date fixed by the court, or for a pre-trial status conference to determine trial readiness, the defendant shall be brought to trial within 91 days of their next appearance.
- (4) If a trial date has been fixed by the court, and thereafter the prosecuting attorney requests and is granted a continuance, the time is not thereby extended within which the trial shall be had, as is provided in subsection (b)(1) of this Rule, unless the defendant in person or by their counsel in open court of record expressly agrees to the continuance. The time for trial, in the event of such agreement, is then extended by the number of days intervening between the granting of such continuance and the date to which trial is continued.
- (5) To be entitled to a dismissal under subsection (b)(1) of this Rule, the defendant must move for dismissal prior to the commencement of trial or

the entry of a plea of guilty to the charge or an included offense. Failure so to move is a waiver of the defendant's rights under this section.

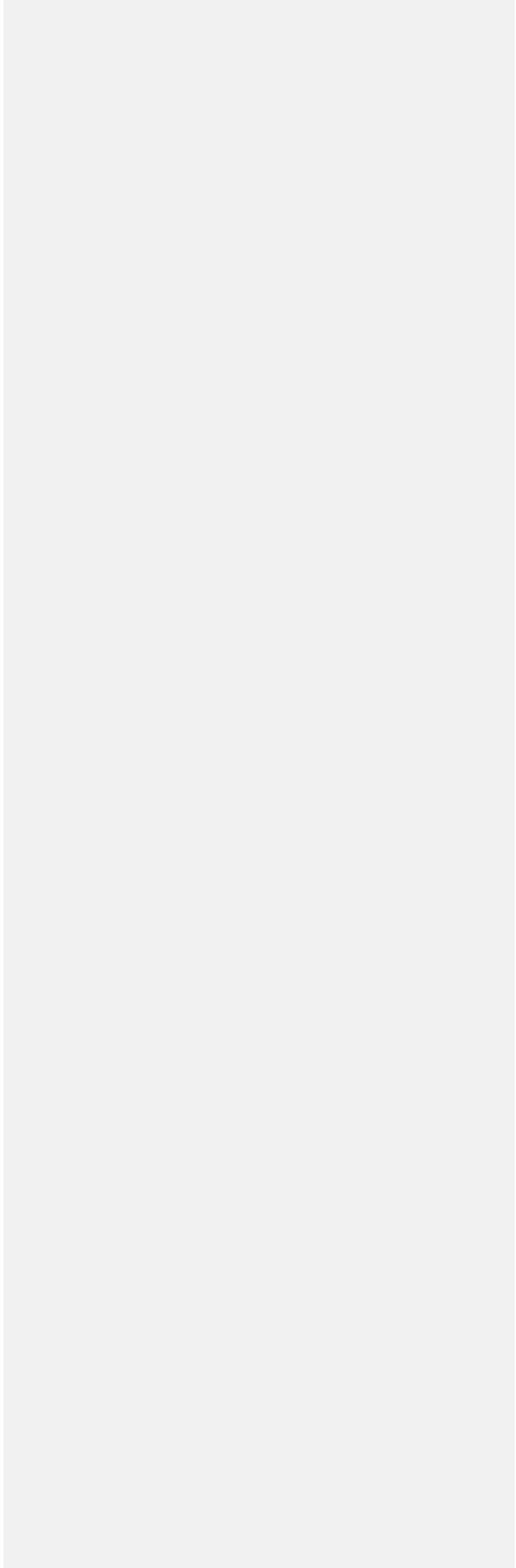
(5.5) If a trial date is offered by the court and neither the defendant nor counsel contemporaneously object to the offered date as beyond the time within which the defendant must be brought to trial under this Rule, then the period within which trial shall be had is extended until such trial date and may be extended further pursuant to any other applicable provision of this Rule.

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

- I. Any period during which the defendant is unable to appear by reason of illness or physical disability or is under observation or examination at any time after the issue of insanity or incompetency is raised;
- II. The period of delay caused by an interlocutory appeal, an appeal from an order that dismisses one or more counts of a charging document prior to trial, or after issuance of a rule to show cause in an original action brought under Colorado Appellate Rule 21, whether commenced by the defendant or by the prosecution;
- III. A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance;
- IV. The period of delay resulting from the voluntary absence or unavailability of the defendant; however, a defendant shall be considered unavailable whenever the defendant's whereabouts are known but the defendant's presence for trial cannot be obtained, or the defendant resists being returned to the jurisdiction for trial;
- V. The period of delay caused by any mistrial, not to exceed 91 days for each mistrial;

- VI. The period of delay caused at the instance of the defendant;
 - VII. The period of delay not exceeding 42 days resulting from a continuance granted at the request of the prosecuting attorney, without the consent of the defendant, if:
 - (A) The continuance is necessitated by the unavailability of an essential witness or evidence material to the prosecution's case, when the prosecuting attorney has exercised due diligence to obtain such witness or evidence and there are reasonable grounds to believe that such witness or evidence will be available at the later date;
 - (B) No Colorado Rule.
 - VIII. The period of delay between the new date set for trial following the expiration of the time periods excluded by paragraphs (I), (II), (III), (IV), and (V) of this subsection (6), not to exceed 91 days.
 - IX. No Colorado Rule.
 - X. Any period of delay caused by an unscheduled court closure, or a public health emergency or natural disaster declared by a Local, State or Federal Government.
- (7) No Colorado Rule.
- (8) If a trial date has been fixed by the court and the prosecution thereafter is granted permission to add an additional charge or charges, the defendant shall be brought to trial on all charges within 91 days of entry of a not guilty plea on the added charge or charges.

DRAFT



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(b) By the Court.

- (1) Except as otherwise provided in this Rule, if a defendant is not brought to trial on the issues raised by the complaint within 91 days from the entry of a plea of not guilty, the defendant shall be discharged from custody if the defendant has not been admitted to bail, the pending charges shall be dismissed, whether the defendant is in custody or on bail, and the defendant shall not again be charged for the same offense, or for another offense based upon the same act or series of acts arising out of the same criminal episode.
- (2) If trial results in conviction which is reversed on appeal, any new trial must be commenced within 91 days after the date of the receipt by the trial court of the mandate from the appellate court.
- (3) If a trial date has been fixed by the court, and thereafter the defendant requests and is granted a continuance for trial, the trial shall be commenced within 91 days of the date the continuance is granted.
- (3.5) If the defendant fails to appear on the trial date fixed by the court, or for a pre-trial status conference to determine trial readiness, the defendant shall be brought to trial within 91 days of their next appearance.
- (4) If a trial date has been fixed by the court, and thereafter the prosecuting attorney requests and is granted a continuance, the time is not thereby extended within which the trial shall be had, as is provided in subsection (b)(1) of this Rule, unless the defendant in person or by their counsel in open court of record expressly agrees to the continuance. The time for trial, in the event of such agreement, is then extended by the number of days

intervening between the granting of such continuance and the date to which trial is continued.

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

(5.5) If a trial date is offered by the court and neither the defendant nor counsel contemporaneously object to the offered date as beyond the time within which the defendant must be brought to trial under this Rule, then the period within which trial shall be had is extended until such trial date and may be extended further pursuant to any other applicable provision of this Rule.

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

- I. Any period during which the defendant is unable to appear by reason of illness or physical disability or is under observation or examination at any time after the issue of insanity or incompetency is raised;
- II. The period of delay caused by an interlocutory appeal, an appeal from an order that dismisses one or more counts of a charging document prior to trial, or after issuance of a rule to show cause in an original action brought under Colorado Appellate Rule 21, whether commenced by the defendant or by the prosecution;
- III. A reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run and there is good cause for not granting a severance;
- IV. The period of delay resulting from the voluntary absence or unavailability of the defendant; however, a defendant shall be considered unavailable whenever the defendant's whereabouts are

known but the defendant's presence for trial cannot be obtained, or the defendant resists being returned to the jurisdiction for trial;

- V. The period of delay caused by any mistrial, not to exceed 91 days for each mistrial;
- VI. The period of delay caused at the instance of the defendant;
- VII. The period of delay not exceeding 42 days resulting from a continuance granted at the request of the prosecuting attorney, without the consent of the defendant, if:
 - (A) The continuance is necessitated by the unavailability of an essential witness or evidence material to the prosecution's case, when the prosecuting attorney has exercised due diligence to obtain such witness or evidence and there are reasonable grounds to believe that such witness or evidence will be available at the later date;
 - (B) No Colorado Rule.
- VIII. The period of delay between the new date set for trial following the expiration of the time periods excluded by paragraphs (I), (II), (III), (IV), and (V) of this subsection (6), not to exceed 91 days.
- IX. No Colorado Rule.
- X. Any period of delay caused by an unscheduled court closure, or a public health emergency or natural disaster declared by a Local, State or Federal Government.

(7) No Colorado Rule.

(8) If a trial date has been fixed by the court and the prosecution thereafter is granted permission to add an additional charge or charges, the defendant

shall be brought to trial on all charges within 91 days of entry of a not guilty plea on the added charge or charges.

DRAFT

Committee: Tiffany Sorice, Joe Dirscherl, Paul Basso, Ari Krichiver, Adam Mueller, Brad Whitfield, Kellie Eastin, Jason Langagne

248 (a)- Changed “therein entered by the prosecution” to “entered” ... “by the prosecution” to make it more colloquial in nature.

Changed “Such a dismissal may not be entered during the trial without the defendant’s consent” to “Such a dismissal may not be entered during the trial without the defendant having an opportunity to object”. We thought the critical step was to ensure the defendant had an opportunity to be heard and object to the motion if they wished, so judges were not sui sponte granting the motions, and as long as that opportunity was available the Court’s actions were not dependent on the defense’s consent to the motion.

248 (b) starts tracking rule 48

First sentence of rule 48 omitted which allows a case to be dismissed if there is unnecessary delay in finding an indictment or filing an information against the defendant who has been held to answer in district court.

Substantive changes/additions include:

- (1) Speedy is 91 days from the entry of a plea of not guilty
- (2) If there is a reversal on appeal, any new trial must be commenced within 91 days after the receipt by the trial court of the mandate from the appellate court
- (3) If the defendant is granted a continuance, the new trial shall be commenced within 91 days of the date the continuance was granted

(3.5) In addition to a failure to appear on the trial date, this rule makes a failure to appear for a pre-trial status conference to determine trial readiness a triggering event that allows a new 91 day period from the defendant’s next appearance to bring the defendant to trial

(4) Identical

(5) Identical

(5.1) Regarding a trial date being offered by the Court and the defendant or defense counsel not objected, our rule 5.1 is requiring the objection to be contemporaneous

(6) Regarding periods that are to be excluded from speedy:

(I) Changed the verbiage a bit given the municipal court’s limitations when it comes to individuals alleged to be or who are found incompetent, but still creates a speedy exception when someone is ill, has a physical disability, or is under observation or examination for insanity or incompetence.

(II) Identical

(III) Identical

(IV) Regarding the defendant's absence or unavailability. Instead of verbiage relating to the defendant resisting being returned to the state for trial we said "to the jurisdiction"

(V) Regarding mistrial, the case is to be reset for trial within 91 days after each mistrial

(VI) Identical

(VII) Regarding a request to continue by prosecuting attorney without the consent of the defendant, the trial is to be reset within 42 days (as opposed to Rule 48 grants 6 months) when:

(A) References essential witness or evidence material instead of just evidence material

(B) No Colorado Rule (CMRP)

(VIII) References 91 days instead of 6 months

(IX) No Colorado Rule

(X) No comparable Rule 48: Any period of delay cause by an unscheduled court closure (inclement weather), or a public health emergency (covid) or natural disaster (earth quake) declared by a Local, State or Federal Government.

(7) No Colorado Rule

(8) No comparable Rule 48: Speaks to what case law has established in *People of the City of Aurora v. Allen*, 885 P.2d 207 (1994): Speedy commences at the time of entry for the last not guilty plea on any additional charges