

MEMORANDUM

To: Colorado Municipal Court Rules Committee

From: Shira Cohen

Date: May 28, 2026

Re: Proposed Revisions to the Colorado Rules for Civil Infractions

I. Introduction

I respectfully submit the following proposed revisions to the Colorado Rules for Civil Infractions for consideration by the Municipal Court Rules Subcommittee and recommendation of adoption to the Colorado Supreme Court. Each proposed change is discussed in this memorandum, and I have included redlined and clean versions of the proposed revisions below.

II. Historical Background

The Colorado Rules for Civil Infractions (the “Rules”) were adopted in April 2022, approximately a month after the repeal and reenactment of C.R.S. § 16-2.3-101 et. seq., the statutory section classifying civil infractions and setting out a general description of the process by which civil infractions are assessed and prosecuted. HB22-1229, the bill responsible for the repeal and reenactment of C.R.S. § 16-2.3-101 et. seq., was passed as a clean-up of SB21-271, the bill that created the classification of civil infractions. SB21-271 adopted the 2021 recommendations of the Colorado criminal and juvenile justice commission as part of a larger wave of criminal reform bills that were introduced in the legislature in 2021.¹

¹ Other criminal reform bills introduced during 2021 include HB21-1211, restricting the use of solitary confinement; HB21-1214, addressing the sealing of arrest records; HB21-1250, adding provisions to the 2020 police accountability reforms; HB21-1314, ending the suspension of driver’s licenses for unpaid debt; HB21-1315, reforming an array of court fees and fines; HB21-1280, addressing pre-trial detention; and SB21-71, limiting the detention of juveniles.

The goals behind the creation of the civil infraction classification were sound and sensible. A wide variety of unlawful activities that were formerly petty offenses and misdemeanors were decriminalized and reclassified as civil infractions. While these activities, which range from violating hotel rate posting requirements² to failing to display a vessel number³, may be contrary to law, it is absurd that careless water-skiing⁴ could land a person with a permanent criminal record. Now, these civil infraction cases are quickly brought before a judge, who hears testimony from the defendant and the officer who charged the case, determines guilt, and issues any applicable fines. The civil infraction classification, along with the procedures established in statute and rule for its enforcement, simplified the legal process for dealing with these less serious misbehaviors and imposed more reasonable consequences for wrongful but not truly criminal acts. In the four years since the Rules were passed, the procedures for initiating, prosecuting, and resolving cases set out in the Rules have generally operated as smoothly and simply as intended.

In classifying wrongful acts as civil infractions, the Legislature has occasionally added various procedural requirements that do not appear in the streamlined Rules to civil infraction statutes that are enforced at the county level. These additional procedural requirements are designed to ensure that the proper county officers are involved in the civil infraction cases that bear upon their areas of expertise; for example, a county's chief zoning official is tasked with identifying violations of the county zoning code⁵ instead of the peace officer contemplated by the Rules, who is able to determine what constitutes littering⁶ but is understandably not well-

² C.R.S. § 18-14-104.

³ C.R.S. § 33-13-104.

⁴ C.R.S. § 33-13-110.

⁵ C.R.S. § 30-28-124.

⁶ C.R.S. § 18-4-511.

versed in whether a porch has been built too far into the required setback. Unfortunately, these more specific procedures often conflict directly with the procedure required by the Rules, making enforcement of many civil infractions completely unworkable.⁷

To address some conflicts between statutes that penalize civil infractions and the Rules, I and a number of other county attorneys drafted a bill, HB26-1239, prioritizing the substantive considerations of these statutes that deal with enforcement of county regulations over the procedural requirements of the Rules. Drafted by and for counties as it was, HB26-1239 clarifies county enforcement powers and does not resolve the broader problem created by the intersection of specific, statutorily-mandated processes and Rules' procedural requirements. Further, the Rules contain imprecise and unclear language that, while easily remedied, is not addressed by HB26-1239. The purposes of my proposed changes to the Colorado Rules for Civil Infractions are to (1) add clarity to language in the Rules that lacks precision and (2) eliminate the potential for conflicts created by the interaction of substantive statutes and the more procedural Rules.

III. Proposed Revisions

The two categories of proposed revisions to the Rules appear below as follows: clarifying language appears in underlined red text, and language eliminating conflict appears in italicized and underlined red text. The clarifying language is designed to further the civil infraction system's goal of placing pro se parties on equal footing with the state in these cases, so the alterations to the existing language are the point of these proposed changes. The language in italicized text, on the other hand, is designed to remove the potential for conflict between statutes

⁷ In theory, these conflicts could be avoided by applying the more specific provision of law over the more general. In practice, it is technically possible to comply with both statute and rule in some limited contexts, even though the resulting process completely defeats the point of the specific procedure set out in statute. I have had a case dismissed with prejudice because a peace officer required by rule was not present at a zoning hearing, even though the zoning official required by statute appeared to give informed testimony that the peace officer was not equipped to provide. *See Grand County District Court case 2023CV30047, Order Reversing Judgment of County Court.*

and the Rules, so it is the idea and not the phrasing that is the goal. Neither category of revision is meant to alter or even address the policy decisions behind the Rules. These proposed revisions are instead designed to allow the Rules to work properly in all civil infraction cases.

A. Proposed Revisions to Rule 2

The proposed change to Rule 2 adds a section (b) to unambiguously state that when statutes require specific individuals to play specific roles in the civil infraction process, those statutory requirements control over any conflicting requirements in the Rules. In addition to effectuating statutory intent, this change allows statutes designed to penalize unlawful behavior without bringing the might of the traditional criminal justice system to bear to provide the presiding judicial officer with all relevant information from all relevant sources, ensuring a well-informed and just result.

B. Proposed Revisions to Rule 4

i. Section (a)

The new language in subsection (1) of section (a) clarifies what it means for an officer to be “present” to issue a charging document for a civil infraction; that “present” means “present to witness the commission of a civil infraction” may be implied, but more explicit language is easier for both courts and laypeople to parse. The added subsection (2) of section (a) allows specific statutory processes for issuance of charging documents to control over the process set out in the Rules.

ii. Section (b)

The nonitalicized changes to section (b) again promote clarity. As it currently reads, section (b) authorizes a county court to personally serve a defendant without explaining how the court can physically effect service—must the judge track down a defendant to hand over a

summons? The added language explains that an officer effectuates service on behalf of the court. The italicized addition authorizes other officials to effectuate service where required by statute.

It is worth pointing out the unusual content of section (b). The language authorizing the court to issue a charging document “in” a civil infraction case implies that the case exists before the document is issued, which cannot be true under the Rules. It is also unclear what benefit there is to having a court, rather than the official designated by Rule or statute, issue a charging document. There is no analogous provision for process issued by the court in criminal law, and a similar provision in the Colorado Municipal Court Rules of Procedure is also proposed to be removed. As these proposed changes to the Rules are not intended to make policy determinations, the substance of this section (b) is left unchanged, but the Committee may wish to consider the language nonetheless.

iii. Section (c)

The changes to subsection (1) of section (c) address situations where the fine for a civil infraction is not specified. A number of civil infractions are punishable by a maximum fine, not a discrete monetary amount.⁸ The requirement in sub-subsection (e) that a charging document contain the specific amount of the fine forces the charging document’s author to pick a dollar amount; since the maximum fine amount is the only number specified in statute, that maximum amount is the natural choice. This state of affairs eliminates a judge’s discretion in tailoring the fine to the facts and effectively imposes the maximum fine in every case. The proposed change removes these problems. The change to the requirement in sub-subsection (h) that an option allowing a defendant to agree to pay “the fine” within twenty days appear on the charging document is similar to the change in sub-subsection (e): when there is no specified fine, a

⁸ See e.g., C.R.S. § 30-15-402, stating that any person who violates a county ordinance commits a civil infraction that is punishable “by a fine of not more than one thousand dollars for each separate violation.”

defendant cannot agree to pay it, and an option to do so should not appear on the charging document.

C. Proposed Revisions to Rule 5

The addition of an exception to the limits on the District Attorney's representation of the state in civil infractions resolves an issue of statutory consistency. In a few statutes addressing county enforcement of county regulations, the District Attorney is required or authorized to prosecute civil infraction cases but is expressly forbidden to do so by the Rule.⁹ This change resolves that conflict without expanding the District Attorney's role in run-of-the-mill civil infraction cases.

D. Proposed Revisions to Rule 6

The nonitalicized proposed change to Rule 6 replaces the payment of a "penalty assessment" with the payment of "applicable fines and surcharges" because a "penalty assessment" is a specifically defined term in the Rules and should not be used as a catch-all term for the penalties assessed for commission of a civil infraction, intuitive as the phrasing may be. As defined in Rule 3(b), a penalty assessment is one of the four types of charging document that can initiate a civil infraction case. There does not seem to be a reason to give a defendant the option to resolve a case by paying a fine brought under any of the four types of charging document in Rule 4, but prohibit the clerk of the court from accepting payment of that fine if the charging document is a summons instead of a penalty assessment. This change ensures that all civil infraction cases can proceed in the streamlined fashion intended.

The italicized changes to Rule 6 prevent the clerk of the court from accepting payment and closing out a case when the civil infraction is one prosecuted by an attorney representing the

⁹ See e.g., C.R.S. § 30-28-124.

government. These cases generally involve continuing status-based violations, like the presence of a porch built into a setback,¹⁰ instead of single incidents, like allowing a person under twelve years of age to hunt big game.¹¹ If a defendant is able to pay the fine for the unlawfully constructed porch and close the case without facing the government representative(s) at a hearing, that defendant will face an unwelcome surprise when the government comes back the next month to initiate another civil infraction case because the porch is still built into the setback. As opposed to the penalizing and deterrence-based goals of single-incident civil infractions, which can be accomplished by the payment of a fine, the goal of continuing status-based civil infractions is to encourage compliance. Allowing a defendant to pay a fine and close the case without remedying the underlying violation (1) defeats the purpose of the status-based civil infraction, (2) runs the risk of imposing repeat fines on unknowing defendants, and (3) removes the government's ability to dismiss the case and forego the fine when a defendant remedies the underlying violation.¹²

Because the italicized changes to Rule 6 are meant to ensure that status-based civil infractions are enforced as they should be, the phrasing of these changes is not specifically tailored to clarify imprecise language. Different phrasing may better effectuate the goal of this proposed revision.

¹⁰ The phrase "status-based" is used here to refer to the status of a structure or object. The status of a porch impermissibly built into a setback is one of noncompliance with a county zoning regulation, because the porch will be in violation as long as it exists in its current form. The owner of the porch commits a civil infraction for as long as the porch retains its noncompliant status, hence the phrase "status-based." *See* C.R.S. § 30-28-124, designating violation of a county zoning regulation as a civil infraction.

¹¹ C.R.S. § 33-6-107(4).

¹² This strategy of dismissing a civil infraction case without the payment of a fine when a defendant remedies the underlying violation is common across county attorneys enforcing zoning violations. I in my capacity as Assistant County Attorney have dismissed two thirds of the zoning enforcement cases I have filed before the imposition of any fine when the defendant came into compliance with the applicable zoning regulations. (This statistic appears more impressive than it is, as Grand County has only filed three zoning enforcement cases during my tenure. The point, however, still stands).

E. Proposed Revisions to Rule 7

The first proposed change in section (a) brings Rule 7 in line with the proposed change in Rule 6 that allows the fine imposed by any type of charging document to be paid prior to appearing before a judicial officer. The second, italicized change in the added section (g) requires government attorneys to appear in the status-based cases they prosecute, which provides an opportunity to negotiate a deal¹³ where the government will dismiss the case if the defendant comes into compliance. This change also helps simplify scheduling of the final hearing.

F. Proposed Revisions to Rule 10

The proposed revision to Rule 10 allows the governmental official specified by statute to appear at the final hearing in a civil infraction case to offer testimony instead of the peace officer required by the current version of the Rule. This change ensures that the governmental official with knowledge of the case attends the final hearing to provide helpful testimony to the court.

G. Proposed Revisions to Rule 11

The proposed changes to Rule 11 stem from the procedural conflicts between the Rule the statutes that require district or county attorneys to prosecute civil infractions.¹⁴ The changes allow government attorneys to comply with these statutes by allowing them to present evidence, examine and cross-examine witnesses, and make arguments to the court. Permitting government attorneys and other relevant officials to present evidence also ensures that the court, which is

¹³ In theory, this kind of deal can be negotiated by the District Attorney pursuant to Rule 5. In practice, the District Attorney attends to criminal dockets and has no involvement in these civil matters. The District Attorney should not be expected to learn the ins and outs of the On-site Wastewater Treatment Systems Act, C.R.S. § 25-10-113, in order to negotiate a plea deal for a defendant who installed a septic system without a proper permit. That responsibility should be left to the representative of the local health board.

¹⁴ These statutes are C.R.S. §§ 30-28-124, 30-28-209, 35-4-114, and 35-5.5-118.5.

likely not familiar with the specifics of, say, the county building code,¹⁵ can hear from the county building official and make an informed ruling.

It seems likely that the Legislature will continue to enact civil infraction statutes and require county or district attorneys to prosecute them despite conflicts with the current Rules.¹⁶ The proposed revisions to Rule 11 are the cleanest way to resolve the procedural conflicts created by these statutes.

H. Proposed Revisions to Rule 12

The proposed change to Rule 12 removes a statutory citation from section (e), which states that a defendant's failure to pay a judgment is "treated as a default under C.R.S. § 16-2.3-105(4)." C.R.S. § 16-2.3-105(4) reads as follows: "An appeal from final judgment on a civil infraction matter must be taken to the district court for the county where the magistrate or judge acting as magistrate is located." While a citation to a statute that manages defaulting defendants would certainly be appropriate here, C.R.S. § 16-2.3-105(4) is not that statute.

Another thing to note about the current Rule 12 is section (b), which sets the burden of proof in civil infraction cases as beyond a reasonable doubt. As civil infractions are civil matters, a different burden of proof might be appropriate. The proper burden of proof is not addressed by these changes, but is a policy matter that the Committee might want to review.

I. Proposed Revisions to Rule 15

The proposed change to Rule 15 allows continuances to be granted upon a showing of good cause by a government attorney involved in a civil infraction case as well as a peace officer and defendant. This change is another one that brings parity to cases that are statutorily required to involve government officials other than peace officers.

¹⁵ C.R.S. § 30-28-209 addresses civil infraction prosecutions for violation of county building regulations.

¹⁶ Violations of C.R.S. § 35-5.5-118.5 were classified as civil infractions as recently as 2024.

**Proposed Revisions to the Colorado Rules for Civil Infractions
as adopted April 2022**

Rules 2, 4, 5, 6, 7, 10, 11, 12, and 15

Rule 2 Proposed Revisions

[REDLINE VERSION]

Rule 2. Application

(a) These rules apply to all proceedings alleging only a civil infraction in the State of Colorado. These rules do not apply to municipal ordinances or charter violations. To the extent these rules do not cover a particular topic, consulting Colorado's Rules of Criminal Procedure may be instructive to the determination of a fair and just procedure.

(b) When a statute designates an individual or entity other than the Officer and Judicial Officer contemplated by these rules to enforce, prosecute, or adjudicate a civil infraction, the requirements of such statute shall control over these rules.

[CLEAN VERSION]

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(b) When a statute designates an individual or entity other than the Officer and Judicial Officer contemplated by these rules to enforce, prosecute, or adjudicate a civil infraction, the requirements of such statute shall control over these rules.

Rule 4 Proposed Revisions

[REDLINE VERSION]

Rule 4. Commencement of Action

(a) Issuance of a charging document for civil infraction.

(1) A charging document may be issued to a defendant by an Officer when present to witness the commission of a civil infraction or with probable cause when not present. A copy shall be filed with the county court where the civil infraction is alleged to have occurred, and a copy is to be provided to the District Attorney with jurisdiction in that county.

(2) In cases prosecuted by government attorneys, a charging document may be issued as described in any applicable statute, county resolution, or county ordinance.

(b) Service. A charging document may also be issued by a county court in a prosecution for a civil infraction. Such charging document may be served by an Officer, or in cases prosecuted by government attorneys, by an appropriate government official, by giving a copy to the defendant personally, or by leaving the summons at the defendant's domicile or place of abode with a person 18 years of age or older residing therein, or by mailing a copy to the defendant's last known address. If a person refuses to accept service of the charging document, tender of the charging document by the Officer to the person constitutes personal service.

(c) Content.

(1) Adult. The charging document issued to a person aged 18 or older shall include the following: (a) the identification of the alleged offender, (b) the name of the civil infraction alleged, (c) citation to the civil infraction alleged, (d) a brief description of the civil infraction, including but not limited to the date of infraction and approximate location, (e) the amount of the fine for the civil infraction, when specified by law, and the amount of the surcharges, if applicable, (f) instructions of when and where to appear in a specified county court if the fine and applicable surcharges are not paid, (g) the Officer's signature, and (h) if applicable, an option allowing the person to execute a signed acknowledgement of liability and agreement to pay the fine and surcharges within twenty days.

....

(No other proposed changes to this Rule)

[CLEAN VERSION]

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....

(No other proposed changes to this Rule)

Rule 5 Proposed Revisions

[REDLINE VERSION]

Rule 5. Plea Bargain

The District Attorney or the District Attorney's deputy may, in the District Attorney's discretion, enter civil infraction cases for the purpose of attempting to negotiate a plea or a stipulation to pretrial diversion or deferred judgment and sentence but shall not be required to so enter. The District Attorney shall not represent the state at hearings conducted by a Judicial Officer on civil infraction matters except as otherwise required or authorized by statute.

[CLEAN VERSION]

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Rule 6 Proposed Revisions

[REDLINE VERSION]

Rule 6. Payment Before Appearance

(a) ~~¶~~ *Except in cases prosecuted by government attorneys, the clerk of the court shall accept payments of applicable fines and surcharges as set out in the charging document ~~penalty assessment~~* by a defendant without an appearance before the Judicial Officer, if payment is made before the time scheduled for the first appearance.

(b) At the time of payment, the defendant shall sign a waiver of rights and acknowledgement of guilt or liability, as set forth in Form A in the appendix to these rules, and agree to pay court ordered restitution, if applicable.

(c) In cases prosecuted by government attorneys, the clerk of the court shall not accept payments of applicable fines and surcharges before the conclusion of the final hearing in a case.

[CLEAN VERSION]

Rule 6. Payment Before Appearance

(a) Except in cases prosecuted by government attorneys, the clerk of the court shall accept payments of applicable fines and surcharges as set out in the charging document penalty assessment by a defendant without an appearance before the Judicial Officer, if payment is made before the time scheduled for the first appearance.

(b) At the time of payment, the defendant shall sign a waiver of rights and acknowledgement of guilt or liability, as set forth in Form A in the appendix to these rules, and agree to pay court ordered restitution, if applicable.

(c) In cases prosecuted by government attorneys, the clerk of the court shall not accept payments of applicable fines and surcharges before the conclusion of the final hearing in a case.

Rule 7 Proposed Revisions

[REDLINE VERSION]

Rule 7. First Hearing

(a) If the defendant has not previously acknowledged guilt or liability and paid the ~~penalty assessment~~ applicable fines and surcharges, the defendant shall appear before the Judicial Officer at the time scheduled for the first hearing.

...

(g) In cases prosecuted by government attorneys, the government attorney shall appear before the Judicial Officer at the time scheduled for the first hearing. The Judicial Officer shall consult the defendant and the government attorney when setting the matter for final hearing.

[CLEAN VERSION]

Rule 7. First Hearing

(a) If the defendant has not previously acknowledged guilt or liability and paid the applicable fines and surcharges, the defendant shall appear before the Judicial Officer at the time scheduled for the first hearing.

....

(g) In cases prosecuted by government attorneys, the government attorney shall appear before the Judicial Officer at the time scheduled for the first hearing. The Judicial Officer shall consult the defendant and the government attorney when setting the matter for final hearing.

Rule 10 Proposed Revisions

[REDLINE VERSION]

Rule 10. Dismissal Before Final Hearing

(a) Except as provided in Rule 15, the charges shall be dismissed with prejudice if the Officer fails to appear at the final hearing. *In cases prosecuted by government attorneys, the charges shall be dismissed with prejudice if the appropriate government official, as specified in any applicable statute, fails to appear at the final hearing.*

(No other proposed changes to this Rule)

[CLEAN VERSION]

Rule 10. Dismissal Before Final Hearing

(a) Except as provided in Rule 15, the charges shall be dismissed with prejudice if the Officer fails to appear at the final hearing. In cases prosecuted by government attorneys, the charges shall be dismissed with prejudice if the appropriate government official, as specified in any applicable statute, fails to appear at the final hearing.

(No other proposed changes to this Rule)

Rule 11 Proposed Revisions

[REDLINE VERSION]

Rule 11. Final Hearing

...

(b) The order of proceedings at the hearing shall be as follows:

...

(2) The Officer shall offer sworn testimony and evidence to the facts concerning the alleged infraction. After such testimony, the defendant or counsel may cross-examine the Officer, and the Judicial Officer may also question the Officer. *In cases prosecuted by government attorneys, the government attorney shall present the sworn testimony of the appropriate government official as specified in any applicable statute. After such testimony, the defendant or counsel may cross-examine the official, and the Judicial Officer may also question the official.*

(3) Thereafter, the defendant may offer sworn testimony and evidence and shall answer questions, if such testimony is offered, as may be asked by the Judicial Officer *and the government attorney.* The defendant is not required to testify and the fact that the defendant does not testify may not be considered or used in any way by the Judicial Officer.

(4) If the testimony of additional witnesses is offered, the order of testimony and the extent of questioning shall be within the discretion of the Judicial Officer. No Officer or other testifying witness, with the exception of the defendant, may question any other witness. *In cases prosecuted by government attorneys, the government attorney may call, question, and cross-examine additional witnesses, and may introduce additional evidence.*

(5) Upon the conclusion of such testimony and examination, the Judicial Officer may further examine or allow examination and rebuttal testimony and evidence as deemed appropriate. *In cases prosecuted by government attorneys, the government attorney shall have the opportunity to present rebuttal testimony and evidence.*

(6) At the conclusion of all testimony and examination, the defendant or counsel shall be permitted to make a closing argument. *In cases prosecuted by government attorneys, the government attorney shall be permitted to make a closing argument.*

[CLEAN VERSION]

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(2) The Officer shall offer sworn testimony and evidence to the facts concerning the alleged infraction. After such testimony, the defendant or counsel may cross-examine the Officer, and the Judicial Officer may also question the Officer. In cases prosecuted by government attorneys, the government attorney shall present the sworn testimony of the appropriate government official as specified in any applicable statute. After such testimony, the defendant or counsel may cross-examine the official, and the Judicial Officer may also question the official.

(3) Thereafter, the defendant may offer sworn testimony and evidence and shall answer questions, if such testimony is offered, as may be asked by the Judicial Officer and the government attorney. The defendant is not required to testify and the fact that the defendant does not testify may not be considered or used in any way by the Judicial Officer.

(4) If the testimony of additional witnesses is offered, the order of testimony and the extent of questioning shall be within the discretion of the Judicial Officer. No Officer or other testifying witness, with the exception of the defendant, may question any other witness. In cases prosecuted by government attorneys, the government attorney may call, question, and cross-examine additional witnesses, and may introduce additional evidence.

(5) Upon the conclusion of such testimony and examination, the Judicial Officer may further examine or allow examination and rebuttal testimony and evidence as deemed appropriate. In cases prosecuted by government attorneys, the government attorney shall have the opportunity to present rebuttal testimony and evidence.

(6) At the conclusion of all testimony and examination, the defendant or counsel shall be permitted to make a closing argument. In cases prosecuted by government attorneys, the government attorney shall be permitted to make a closing argument.

Rule 12 Proposed Revisions

[REDLINE VERSION]

Rule 12. Judgment After Final Hearing

...

(e) If the defendant fails to satisfy the judgment in the time allowed, such failure shall be treated as a default ~~under section 16-2.3-105(4)~~. The provisions of Rule 16(d) and (e) shall apply to a default under this rule.

[CLEAN VERSION]

Rule 12. Judgment After Final Hearing

...

(e) If the defendant fails to satisfy the judgment in the time allowed, such failure shall be treated as a default. The provisions of Rule 16(d) and (e) shall apply to a default under this rule.

Rule 15 Proposed Revisions

[REDLINE VERSION]

Rule 15. Continuances

Continuances may be granted upon a showing of good cause by the Officer, the Officer's supervisor, *the government attorney*, or the defendant.

[CLEAN VERSION]

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Continuances may be granted upon a showing of good cause by the Officer, the Officer's supervisor, the government attorney, or the defendant.