

MEMORANDUM

To: Colorado Municipal Court Rules Committee
The Honorable Robert Frick, Chairman

From: Paul Basso

Date: May 28, 2026

RE: Proposed Revisions to Rule 223, 210(4), 216(c)(1) & (2)

Upon review of the packet of rules changes submitted to the Colorado Supreme Court in November, recent decisions of the Colorado Supreme Court, and the U.S. Supreme Court I propose the Rules Committee discuss some potential C.M.C.R. changes.

1. Proposed amendment to Rule 223 I propose removing the provision for “good cause”. The recent case of *Enbridge Energy v. Nessel* ____ U.S. ____, April 22, 2026, copy attached, unanimously rejected a good cause exception for missing a filing deadline. The case addressed whether good cause or equitable tolling considerations should be considered for missing a filling deadline to remove a state case to federal court jurisdictional. They ruled that the filling deadline was jurisdictional and to be strictly applied since there is no good cause exception in the relevant federal code section that good cause should not be considered.

I argue that since our relevant statutes 16-10-109(3), and 13-10-114(4) (5) C.R.S. do not contain any allowance for good cause providing for one in the rule is not appropriate. For additional reference see *Christie v. People*, 837 P.2d 127 (Colo. 1992), *Roalstad v. City of Lafayette*, 2015 COA 146. Our Rules cannot change the statutes or relevant case law even if equitable.

2. Proposed Rule 210(4). We failed to include one of the criminal traffic charges that currently can't be payable at the violations bureau. Section 1903 School bus – stops – signs – passing (Illegally passing a school bus), 6 points. 42-4-1701 C.R.S. and the corresponding Model Traffic Code section lists the charge as a traffic M2 or a M1 if there is a recent prior conviction. Because the charge carries a possible jail sentence (criminal traffic), it should be a mandatory court appearance, excluded from the violations bureau and not be eligible for a penalty assessment.

I note that section (4) (VII) does contain a catch-all provision that states that any other traffic offense which jail may be a penalty.

3. I propose that the proposed Discovery Rule 216(5), witness list, needs clarification. It seems contradictory and duplicates the language of (a) VII requiring the prosecutor to

provide the defense with a list of witnesses. Section VII seems to make a witness list mandatory while section (5) seems to make it discretionary with the court.

4. Proposed Discovery Rule 216 (c) (1) and (c) (2) may need some clarifying language due to the recent Colorado Supreme Court case of *People v. Castorena*, 2026 CO 2, copy attached. The rule provides in part that material which would be discoverable if in the possession or control of the prosecutor or “other governmental personnel” the prosecutor shall use diligent good faith efforts to cause the material to be made available to the defense. This language is consistent with the seminal case of *Brady v. Maryland* 373 U.S. 83 (1963) and the many cases interpreting it.

The *Castorena* case interpreted CrimP. 216. A defendant in the 17th Judicial District case requested and was granted a discovery order from the trial court for the 1st Judicial District to provide the Missy Woods investigative case file. The defendant failed to subpoena the case file. The 1st JD District Attorney contested the order. The Court ruled that the 17th lacked personal jurisdiction over the non-party and voided the courts order to provide the case file. Apparently then “other governmental personnel” doesn’t include a police department or DA outside the courts judicial district unless they are a party.

Respectfully Submitted,

Paul Basso