# AGENDA

## COLORADO SUPREME COURT ADVISORY COMMITTEE ON RULES OF CRIMINAL PROCEDURE

**Friday, January 16, 2026, 12:45 p.m.**
**Ralph L. Carr Colorado Judicial Center**
**2 E. 14th Ave., Denver, CO 80203**
**Fourth Floor, Supreme Court Conference Room**

I. Call to Order

II. Approval of Minutes from October 17, 2025, Meeting

III. Announcements from the Chair

IV. Business

A. Colorado Rules for Civil Infractions – Proposal from Grand County Attorney's Office (Judge Harris)

B. Crim. P. 37 and 37.1 Following Changes to C.A.R. 10 (Judge Harris)

C. Crim. P. 16 – Attorney Request to Update Language for Modern Forms of Communication and CDAC Request (Judge Malone, Magdalena Rosa, and Kevin McReynolds)

D. Vote on Removal of Gendered Language (Judge VanGilder)

V. Future Meetings: **April 17, July 17, October 16**

VI. Adjourn

**NOTICE**
**ANYONE WISHING TO INQUIRE ABOUT AN AGENDA ITEM MAY CONTACT THE CHAIRPERSON OF THE COMMITTEE, JUDGE ELIZABETH L. HARRIS, AT 720-625-5330.**

**COLORADO SUPREME COURT**
**ADVISORY COMMITTEE ON THE RULES OF CRIMINAL PROCEDURE**
**Minutes of Meeting**

**Friday, October 17, 2025**

A quorum being present, the Colorado Supreme Court's Advisory Committee on the Rules of Criminal Procedure was called to order by Judge Elizabeth Harris at 12:45 pm in the Supreme Court Conference Room. Members present at or excused from the meeting were:

| Name | Present | Excused |
|---|---|---|
| Judge Elizabeth Harris, Chair | X | |
| Christian Champagne | X | |
| Johanna Coats | X | |
| Judge Kandace Gerdes | | X |
| Abe Hutt | X | |
| Judge Chelsea Malone | X | |
| Kevin McGreevy | | X |
| Kevin McReynolds | | |
| Judge Dana Nichols | X | |
| John Lee | | |
| Magdalena Rosa | X | |
| Karen Taylor | | X |
| Judge Lindsay VanGilder | X | |
| Judge Vincente Vigil | X | |
| Karen Yacuzzo (non-voting participant) | X | |

## I. Attachments & Handouts

- **A.** October 17, 2025 agenda
- **B.** July 18, 2025 draft minutes
- **C.** HB23-1187 memo
- **D.** Draft Rule 37.1 materials
- **E.** Rule 16 supplement

## II. Approval of Minutes

July 18, 2025 minutes were approved as submitted.

## III. Announcements from the Chair

Chair Judge Harris stated that several members' terms will be up at the end of the year. Members wishing to remain on the committee should let Judge Harris know.

## IV. Business

### A. Legislative Subcommittees

#### i. HB23-1187 (Judge Vigil, Karen Taylor, and Kevin McReynolds)

The subcommittee proposed amending Rule 35(b) to allow a person to seek reconsideration of their sentence within 126 days of the expiration of a stay granted pursuant to HB23-1187. The subcommittee explained that this would give the court an opportunity to consider whether the sentence is still appropriate in light of the person's status as a pregnant or postpartum defendant. After the term *granted* was substituted for the term *issued* in the proposed language, the committee unanimously approved the proposed language. Judge Vigil will prepare a letter to send to the court.

**B. Crim. P. 37 and 37.1 (Judge Harris and Johanna Coats)**

Judge Harris presented a proposal for the committee's consideration following a request from various clerks to amend Rule 37 to align more closely with C.A.R. 10. Judge Harris's updated draft responds to the committee's feedback, modernizes the language, and considers the clerks' requests. The committee discussed who should pay for transcripts and determined that the group ordering the transcripts should pay. The committee voted to have a 35-page word limit for briefs, with an ability to file a motion for an extension. Judge Harris will add the committee's suggestions and send the proposals out for a vote.

**C. Gendered Language in the Rules**

Judge VanGilder removed gendered language from the rules. Because it was such a large task, the rest of the committee will fully consider the proposal and send in edits, if necessary. The committee will consider this by email prior to the January meeting.

**D. Crim. P. 16 – Attorney Request to Update Language for Modern Forms of Communication (Judge Malone, Magdalena Rosa, and Kevin McReynolds)**

The committee received a request for an amendment to Crim. P. 16 to expand the definition of "statements" and "documents" to include electronic forms of communication. This subcommittee also considered a proposal from CDAC. The subcommittee met twice and split 2 (in favor) to 1 (against) on whether an amendment to the rule is necessary to clarify that statements, documents and electronic surveillance in the form of electronic communications, such as text and e-mails are discoverable pursuant to Rule 16. If a change is made, the members are split 2 to 1 on the proposed language of the change. Proponents of the amendment point out that clarification would eliminate confusion which currently exists, as well as standardize practices across the state. Opponents point out that the amendment should not expand the scope of discovery and could be interpreted to require production of the same statement or evidence in multiple forms, rather than focusing on the substance of the disclosures. Following a robust discussion, Judge Harris tabled this item of business for the next meeting, and the subcommittee will clarify the language considering the committee's feedback. Regarding the CDAC request, the subcommittee unanimously agreed not to propose a rule change extending discovery deadlines.

**E. Crim. P. 35(c) (Judge Gerdes, Johanna Coats, and Karen Taylor)**

The subcommittee will provide an update at the next meeting.

The committee adjourned at 3:04 pm.

**II. Future Meetings**

January 16, April 17, July 17, October 16

| | |
|---|---|
| **From:** | Shira Cohen |
| **To:** | michaels, kathryn; scanlon, terry; |
| **Cc:** | 'Maxine LaBarre-Krostue' |
| **Subject:** | [EXTERNAL] Proposed Changes to Colorado Rules for Civil Infractions |
| **Attachments:** | Rules for Civil Infractions Changes.docx;CRCI Changes Cover Letter.docx; |
| **Sent:** | 10/20/2025 3:02:31 PM |

Good afternoon,

I was given your contact information by Terry Scanlon while getting feedback from interested stakeholders on a legislative priority of Colorado Counties Inc. to clean up statutory enforcement of zoning and building codes that I am involved in drafting and advancing. The primary issues that would be addressed by this clean-up are the procedural conflicts between the enforcement statutes and the Colorado Rules for Civil Infractions. Terry recommended I reach out to you with my proposed changes to those Rules, which might be easier than seeking statutory changes.

In addition to the procedural conflicts between the Rules and various statutes, there are some discrepancies within the Rules themselves that might (and have, at least for me) create confusion. My proposed changes address these internal consistency issues as well.

Attached to this email is a cover letter, which deals primarily with the conflicts between the Rules and statutes, and the proposed changes themselves. Please reach out with any questions, comments, or requests for further information that might be helpful.

Thank you,

**Shira Cohen**
**Assistant County Attorney**
Office: 970-725-3045
308 Byers Ave., P.O. Box 264
Hot Sulphur Springs, CO 80451

Grand County
Colorado

Grand County
Colorado

COUNTY ATTORNEY'S OFFICE

308 Byers Ave., P.O. Box 264, Hot Sulphur Springs, CO 80451

In Re: Statutory Conflicts with Colorado Rules for Civil Infractions

The Colorado Rules for Civil Infractions are intended to create a simple and efficient mechanism by which to adjudicate and enforce civil infractions. The vast majority of civil infractions involve conduct that, while not major enough to warrant a full criminal process, mirrors criminal conduct closely enough that the law enforcement-centric process set up by the C.R.C.I. applies seamlessly. There are, however, a small number of civil infractions that clash dramatically with the C.R.C.I. due to requirements set out in the statutes designating the proscribed conduct as a civil infraction. One notable example of a statute that clashes with the C.R.C.I. is C.R.S. § 30-28-124, the statute that prohibits violations of a county's zoning code.

Under C.R.S. § 30-28-124(1)(b)(I), zoning violations are considered civil infractions. Before the legislature's 2021-2022 update to Colorado's criminal code, zoning violations were misdemeanors. 2021 Colo. Legis. Serv. Ch. 462 (S.B. 21-271). The legislature's update to C.R.S. § 30-28-124 changed the classification of zoning violations, but did not alter the contents of this zoning enforcement statute. This reclassification presents a problem: civil infractions are governed by the procedures set out in the Colorado Rules for Civil Infractions (the "C.R.C.I."), but C.R.S. § 30-28-124 includes a specific set of procedures by which zoning violations are to be

prosecuted. These two sets of procedures often conflict, which raises the question of which set of procedures controls.

First, C.R.S. § 30-28-124 requires a departure from the C.R.C.I.-mandated process of initiating actions. The civil infraction process begins with a charging document issued by an officer, who must then appear to give testimony at the final hearing. C.R.C.I. 4, 11. C.R.S. § 30-28-124, on the other hand, requires that a written notice from a county zoning official be sent to a violator. C.R.S. § 30-28-124(1)(b)(III). Only then can the zoning official ask the sheriff to issue the statutorily required summons, which is to be served in the manner set out for criminal summonses. *Id*. The sheriff, who qualifies as an officer pursuant to C.R.C.I. 3, therefore does not have the requisite knowledge to "offer sworn testimony and evidence to the facts concerning the alleged infraction" at the final hearing as required by C.R.C.I 11(b)(2).

C.R.S. § 30-28-124 requires that the county attorney enforce the statute. C.R.S. § 30-28-124(1)(c). C.R.C.I. 11, on the other hand, requires the presiding judicial officer to call and question witnesses, allows the defendant—and not the government—to question witnesses and make legal arguments, and makes no mention whatsoever of the county attorney. C.R.C.I. 11(a), (b)(4). The county attorney and the zoning official, who can provide helpful testimony and argument, have no opportunity to even speak unless the presiding judicial officer calls them to testify. Given that the presiding judicial officer will often have little experience with C.R.S. § 30-28-124 actions and no knowledge of the county zoning regulations, the C.R.C.I.-mandated procedure stands firmly in the way of efficient and equitable administration of justice.

C.R.S. § 30-28-124 states that in the absence of a county attorney, the district attorney is responsible for "performing…enforcement duties." C.R.S. § 30-28-124(1)(c). The C.R.C.I. are clear that the district attorney "shall not represent the state" at civil infraction hearings. C.R.C.I.

5. In cases where a district attorney is appointed to enforce C.R.S. § 30-28-124, the statute actively requires what the rule expressly forbids.

C.R.C.I. 4 states that in "alleging a civil infraction in combination with a criminal offense, the Rules of Criminal Procedure shall apply to the commencement of actions." C.R.C.I. 4(e). And C.R.S. § 30-28-124 directly invokes criminal procedure in setting out the method for beginning a case—a method that requires specific actions by specific parties, none of which are contemplated in the C.R.C.I. process. Neither the statute nor the C.R.C.I. provide guidance on what to do when multiple sets of procedural rules are implicated by a statute, or when the criminal process is required for a civil infraction unconnected to a criminal offense. In sum, county attorneys cannot simultaneously comply with the procedure set out in C.R.S. § 30-28-124 and the C.R.C.I.

This problem is not unique to zoning. C.R.S. § 30-28-209, which governs building code enforcement, tracks C.R.S. § 30-28-124 almost word-for-word and accordingly faces the same enforceability problems outlined above. C.R.S. § 35-5.5-118.5, which governs noxious weeds, also directs county attorneys to enforce civil infractions, and C.R.S. § 25-10-113, which governs on-site wastewater treatment systems, makes violating that statute a civil infraction but requires local boards of health to make findings and assess penalties. The civil infraction process was created to be a procedurally simple way to decriminalize certain conduct while still proscribing it, but the process has evolved into a dysfunctional procedural nightmare that prevents enforcement of laws as crucial to public safety as human waste disposal and building construction. A few simple edits to the C.R.C.I. would remedy these problems and restore the civil infraction process to the efficient arbiter of justice it was meant to be.

**Proposed Changes to the Colorado Rules for Civil Infractions**

As the law currently stands, many civil infractions are impossible to prosecute due to the language of the Colorado Rules for Civil Infractions. A number of Colorado statutes, including C.R.S. §§ 30-28-145, 30-28-209, and 35-4-114, prohibit conduct that, if committed, constitutes a civil infraction. These statutes must, by their own terms, be enforced by government attorneys. But, as displayed below, government attorneys have no place in civil infraction proceedings and cannot fulfill their statutory duties. The text highlighted in *gray and italicized* amends the Rules in cases prosecuted by government attorneys, allowing government attorneys to fulfill their statutorily-mandated duties without running afoul of the Rules. These changes

The other proposed changes are necessary to provide clarity and consistency within the Rules. For example, all charging documents (including summons and complaints, summonses, and notices) must include a statement informing defendants that payment can be made prior to hearing, but only penalty assessments are allowed to be paid prior to hearing as set out in Rule 6. Rule 4 requires the amount of the fine and applicable surcharges to be listed on the charging document, but has no provisions for cases when the governing statute sets the fine within a range and not as a specific amount, which is the case for all civil infractions that constitute violations of county ordinances. These general changes are relatively minor and would clean up the Rules without altering the process by which civil infractions are litigated and resolved.

These proposed changes would remedy the procedural conflicts between the Rules and all statutes but one: C.R.S. § 25-10-113, the Penalties section of the On-Site Wastewater Treatment Systems Act. This statute designates violations of the Act as civil infractions, and requires that the local board of health determine violations and assess penalties instead of a judicial officer. This misalignment between the Rules and the statute cannot be repaired by merely substituting an appropriate official, like a county director of public health, for a peace officer and otherwise adhering to the process set out in the Rules. The statute should instead be amended to make violations of the Act punishable by civil penalties, which is outside the scope of the proposed changes to these Rules.

**Proposed Changes:**

**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.

**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.

(2) Minor. The charging document issued to a person under the age of 18 shall include all matters cited in Rule 4(c)(1)(a-h) and must also include: (a) a declaration that the minor's parent or legal guardian has reviewed the contents of the penalty assessment for the minor, (b) a signature line following the declaration for the minor's parent or legal guardian, (c) a signature line for a notary public to duly acknowledge the parent or legal guardian's signature, (d) an advisement that (i) the minor shall, within seventy-two hours of being served, inform the minor's parent or legal guardian of the charging document, (ii) the parent or legal guardian is required by law to review and sign the charging document and to have the person's signature duly acknowledged by a notary public, and (iii) non-compliance of this subsection will require the minor and minor's parent or legal guardian to appear in court.

(d) The time specified in the summons portion of the charging document must be at least thirty days, but not more than ninety days after the date the charging document is served.

(e) In matters alleging a civil infraction in combination with a criminal offense, the Rules of Criminal Procedure shall apply to the commencement of actions.

**Rule 5. Plea Bargain**

(a) 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.

**Rule 6. Payment Before Appearance**

(a) ~~T~~*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.*

**Commented [SC1]:** This change is intended to ensure that civil infractions like building code violations cannot be dealt with by simply paying a fine and not remedying the violation. The civil infractions that government attorneys prosecute are ones that involve continuing violations, including building, zoning, noxious weed, and pest control violations. If a defendant is permitted to close out a case without any hearing, she may not be aware of the building violation at the core of the case. Requiring defendants to proceed to a hearing where the government official is present ensures that defendants are not taken by surprise when, after paying the required fine, they are served with another charging document because they have not remedied the underlying violation.

**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.

(b) The defendant may appear in person or by counsel, who shall enter an appearance in the case. However, if an admission of guilt or liability is entered, the Judicial Officer may require the presence of the defendant for the assessment of the penalty.

(c) If the defendant appears in person, the Judicial Officer shall advise the defendant in open court of the following:

(1) The nature of the infraction alleged in the charging document;

(2) The penalty and docket fee that may be assessed;

(3) The consequence of a failure to appear at any subsequent hearing is the entry of default judgment;

(4) The right to be represented by an attorney at the defendant's expense;

(5) The right to deny the allegations and to have a hearing before the Judicial Officer.

(6) The right to remain silent because any statement made by the defendant may be used against the defendant;

(7) Guilt or liability must be proven beyond a reasonable doubt;

(8) The right to testify, subpoena witnesses, present evidence, and cross-examine any witnesses for the state;

(9) Any answer must be voluntary and not the result of undue influence or coercion on the part of anyone; and

(10) An admission of guilt or liability constitutes a waiver of the foregoing rights and right to appeal.

(d) The defendant personally or by counsel shall answer the allegations in the charging document either by admitting guilt or liability or by denying the allegations.

(e) If the defendant admits guilt or liability, the Judicial Officer shall enter judgment and assess the appropriate penalty and docket fee after determining that the defendant understood the matters set forth in Rule 7(c) and has made a voluntary, knowing, and intelligent waiver of rights.

(f) If the defendant denies the allegations, the matter shall be set for final hearing, and the defendant and Officer shall be notified.

*(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. 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.*

(b) The charges shall be dismissed with prejudice if the final hearing is not held within six months from the defendant's answer, pursuant to section 16-2.3-106(4).

**Rule 11. Final Hearing**

(a) The final hearing of all cases shall be informal, the object being to dispense justice promptly and economically. The Judicial Officer shall ensure that evidence shall be offered and questioning shall be conducted in an orderly and expeditious manner and according to basic notions of fairness. Those basic notions of fairness illustrated by the Colorado Rules of Evidence shall serve as a guide to the Judicial Officer and parties, but those rules shall not be strictly applied. The Judicial Officer may call and question any witness consistent with the Judicial Officer's obligation to be an impartial fact finder favoring neither party.

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

(1) Before commencement of the hearing, the Judicial Officer shall briefly describe and explain the purposes and procedures of the hearing.

(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. Judgment After Final Hearing**

(a) If all elements of a civil infraction are proven beyond a reasonable doubt, the Judicial Officer shall find the defendant guilty or liable and enter appropriate judgment.

(b) If any element of a civil infraction is not proven beyond a reasonable doubt, the Judicial Officer shall dismiss the charge and enter appropriate judgment, provided, however, that the Judicial Officer may find the defendant guilty of or liable for a lesser included civil infraction, if based on the evidence offered every element of the lesser infraction has been proven beyond a reasonable doubt, and enter appropriate judgment.

**Commented [SC2]:** If civil infractions are in fact civil matters, should the standard of proof not be preponderance of the evidence?

(c) If the defendant is found guilty or liable, the Judicial Officer shall assess the appropriate penalty and any applicable fees, costs, surcharges, and restitution.

(d) The judgment shall be satisfied upon payment to the clerk of the total amount assessed as set forth above.

(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.

**Commented [SC3]:** Section 16-2.3-105(4) reads as follows:
(4) 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.

**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.

**RULE 37 (proposed amendments)**

**(a) Filing Notice of Appeal and Docketing Appeal.** The district attorney may appeal a question of law, and the defendant may appeal a judgment of the county court in a criminal action, under a simplified procedure to the district court of the county. To appeal, the appellant must, within 35 days after the date the county court enters judgment or denies any post-trial motions, whichever is later, (1) file a notice of appeal in the county court; (2) pay any advance costs as may be required or ordered by the court; (3) serve a copy of the notice of appeal on the appellee; and (4) file the notice of appeal in the district court and pay the docket fee. No motion for new trial or other post-trial relief is required as a prerequisite to an appeal, but if any post-trial motion is filed, it must be filed pursuant to Crim. P. 33(b).

**(b) Contents of Notice of Appeal and Designation of Transcripts.** The notice of appeal must state with particularity the alleged errors of the county court or other grounds relied on for the appeal. Within the time for filing the notice of appeal, the appellant must designate on Form 5 (Designation of Transcripts) all transcripts necessary for resolution of the issues raised on appeal. The appellee has 14 days after service of the notice of appeal to file with the clerk of the county court and serve on the appellant a designation of any additional transcripts that the appellee deems necessary. The appellee must pay the cost of those additional transcripts, but if the court finds that any transcript designated by the appellee should have been designated by the appellant because the transcript was necessary for resolution of the issues raised on appeal, the court may order the appellant to reimburse the appellee for the cost ~~The court may order the appellant to post the advance cost of any additional transcript designated by the appellee, and, if it does so, the appellant must post the cost within 7 days of the court's order, or the appeal will be dismissed. If the district court later determines that any additional transcript (or severable part thereof) designated by the appellee was unnecessary to resolve the issues on appeal, the appellee must reimburse the appellant for any cost advanced for the preparation~~ of that transcript ~~(or severable part)~~ without regard to the outcome of the appeal.

**(c) Contents of Record on Appeal.** After the appellant has filed the notice of appeal and the parties have posted any advance costs as required for the preparation of any transcripts, the clerk of the county court will prepare the record on appeal. The record on appeal in all cases consists of (1) all documents, including all exhibits offered and/or accepted and all demonstrative exhibits, filed in the county court case as of the date of filing of a notice of appeal or any amended notice of appeal; (2) transcripts designated in accordance with section (b); and (3) any timely filed post-trial motions, responses to those motions, and orders on those motions. In the event any part of the record, including a designated transcript, is unavailable, the parties may file a statement of the evidence or proceedings with the county court, and the county court must certify a statement of evidence or proceedings in lieu of that portion of the record ~~a transcript~~.

**(d) Filing of Record.** Within 42 days after the filing of the notice of appeal or within such additional time as may be granted by the county court, and after any additional fees have been paid, the clerk of the county court must certify and electronically transmit the record on appeal to the clerk of the district court. The parties will be notified by the clerk of the county court when the record on appeal is transmitted to the district court.

**(e) Briefs.** Within 21 days after the certified record is transmitted to the district court, the appellant must file in the district court, and serve on the appellee, a written brief setting out contentions of error and supporting arguments. The appellee may file an answer brief within 21 days after such service and, if filed, the answer brief must be served on the appellant. A reply brief may be filed within 14 days after service of the answer brief and, if filed, the reply brief must be served on the appellee. In the discretion of the district court, the time for filing any brief may be extended. A brief may not exceed thirty-five pages (excluding the caption, table of contents, signature block, and certificate of service), unless the court grants a motion to exceed the page limit.

**(f) Supplementing the Record on Appeal**. After the record on appeal is transmitted, the district court, on motion by a party or of its own initiative, may

order that a supplemental record be certified and transmitted if any material part of the county court record is missing or has been mistakenly omitted from the record on appeal. A party seeking to supplement the record on appeal must file a motion in the district court specifying the name or title of the document, the date the document was submitted to the county court, and the reason the document is necessary to decide the appeal.

**(g) Stay of Execution.** Pending the filing of the appeal, a stay of execution must~~will~~ be granted by the county court upon request. If a sentence of imprisonment has been imposed, the defendant may be required to post bail, and if a fine and costs have been imposed, a deposit of the amount thereof may be required by the county court. After the filing of the appeal, a request for stay of execution must be considered and resolved by the district court. Stays of execution granted by the county court or district court and, with the written consent of the sureties if any, bonds posted with such courts, will remain in effect until after final disposition of the appeal, unless modified by the district court.

**(h) Trials de Novo; Penalty Not Increased.** If for any reason an adequate record cannot be certified to the district court, the case must be tried de novo in that court. No action on appeal will result in an increase in penalty.

**(i) Judgment; How Enforced.** Unless the supreme court grants certiorari review under its rules, the judgment on appeal entered by the district court will be certified to the county court for action as directed by the district court. But in cases tried de novo by the district court or in cases in which the district court modifies the county court judgment, the judgment on appeal is that of the district court and so enforceable.

# COLORADO RULES OF CRIMINAL PROCEDURE

## Rules 4.1, 6, 6.2, 6.8, 6.9, 9, 10, 11, 12, 15, 17, 21, 23, 25, 30, 31, 32, 41.1, 43, 48, 49, and 51

**Rule 4.1. County Court Procedure--Misdemeanor and Petty Offense--Warrant or Summons Upon Complaint**

Where the offense charged is a misdemeanor or petty offense, the action may be commenced in the county court as provided below in this Rule. This Rule shall have no application to misdemeanors or petty offenses prosecuted in other courts or to felonies.

**(a) Definitions.**

(1) "Complaint" means a written statement charging the commission of a crime by an alleged offender filed in the county court.

(2) Repealed eff. July 1, 2004.

(3) "Summons" means a written order or notice directing that a person appear before a designated county court at a stated time and place and answer to a charge against ~~him~~them.

(4) "Summons and complaint" means a document combining the functions of both a summons and a complaint.

**(b) – (c) [NO CHANGE]**

**(d) Arrest Followed by a Complaint.** If a peace officer makes an arrest without a warrant of a person for a misdemeanor or a petty offense, the arrested person shall be taken without unnecessary delay before the nearest available county or district judge. Thereafter, a complaint shall be filed immediately in the county court having jurisdiction of the offense and a copy thereof given to the defendant at or before the time ~~he~~ the defendant is arraigned. The provisions of this Rule are subject to the right of the arresting authority to release the arrested person pursuant to section 16-3-105.

**(e) Penalty Assessment Procedure.**

(1) When a person is arrested for a class 2 petty offense, the arresting officer may either give the person a penalty assessment notice and release ~~him~~ the person upon its terms, or take ~~him~~ the person before a judge of the county court in the county in which the alleged offense occurred. The choice of procedures shall be based upon circumstances which reasonably persuade the officer that the alleged offender is likely or unlikely to comply with the terms of the penalty assessment notice.

(2) – (3) [NO CHANGE]

(4) If the person given a penalty assessment notice chooses to acknowledge ~~his~~ guilt, ~~he~~ the person may pay the specified fine in person or by mail at the place and within the time specified in the notice. If ~~he~~ the person chooses not to acknowledge ~~his~~ guilt, ~~he~~ the person shall appear as required in the notice. Upon trial, if the alleged offender is found guilty, the fine imposed shall be

that specified in the notice for the offense of which ~~he~~ the offender was found guilty, but customary court costs may be assessed against ~~him~~ the offender in addition to such fine.

**(f) [NO CHANGE]**

## Rule 6. Grand Jury Rules

**(a)** The chief judge of the district court in each county or a judge designated by ~~him~~ the chief judge may order a grand jury summoned where authorized by law or required by the public interest.

**(b) [NO CHANGE]**

**(c)** The foreperson~~man~~ of the grand jury may swear or affirm all witnesses who may come before the grand jury.

## Rule 6.2. Secrecy of Proceedings--Witness Privacy--Representation by Counsel

**(a) [NO CHANGE]**

**(b)** Any witness subpoenaed to appear and testify before a grand jury or to produce books, papers, documents, or other objects before such grand jury shall be entitled to assistance of counsel during any time that such witness is being questioned in the presence of said grand jury. If the witness desires legal assistance during ~~his~~ testimony, counsel must be present in the grand jury room with ~~his~~ the client during such questioning. However, counsel for the witness shall be permitted only to counsel with the witness and shall not make objections, arguments, or address the grand jury. Such counsel may be retained by the witness or may, for any person financially unable to obtain adequate assistance, be appointed in the same manner as if that person were eligible for appointed counsel. An attorney present in the grand jury room shall take an oath of secrecy. If the court, at an *in camera* hearing, determines that counsel was disruptive, then the court may order counsel to remain outside the courtroom when advising ~~his~~ the client. No attorney shall be permitted to provide counsel in the grand jury room to more than one witness in the same criminal investigation, except with the permission of the grand jury.

## Rule 6.8. Indictment--Amendment

**(a) Matters of Form, Time, Place, Names.** At any time before or during trial, the court may, upon application of the people and with notice to the defendant and opportunity for the defendant to be heard, order the amendment of an indictment with respect to defects, errors, or variances from the proof relating to matters of form, time, place, and names of persons when such amendment does not change the substance of the charge, and does not prejudice the defendant on the merits. Upon ordering an amendment, the court, for good cause, may grant a continuance to accord the defendant adequate opportunity to prepare ~~his~~ a defense.

**(b) [NO CHANGE]**

## Rule 6.9. Testimony

**(a) [NO CHANGE]**

**(b) Release to Witness.** Upon application by the prosecutor, or by any witness after notice to the prosecutor, the court, for good cause, may enter an order to furnish to that witness a transcript of ~~his~~ the witness's own grand jury testimony, or minutes, reports, or exhibits relating to them.

**(c) - (d) [NO CHANGE]**

## Rule 10. Arraignment

Following preliminary proceedings pursuant to the provisions of Rules 5, 7, and 12, the arraignment shall be conducted in open court, informing the defendant of the offense ~~with which he is~~ charged, and requiring ~~him~~ the defendant to enter a plea to the charge. The defendant shall be arraigned in the court having trial jurisdiction in which the indictment, information, or complaint is filed, unless before arraignment the cause has been removed to another court, in which case ~~he~~ the defendant shall be arraigned in that court.

**(a) - (b) [NO CHANGE]**

**(c)** Upon arraignment, the defendant or ~~his~~ defendant's counsel shall be furnished with a copy of the indictment or information, complaint, or summons and complaint if one has not been previously served.

**(d) [NO CHANGE]**

**(e)** If the defendant appears without counsel at an arraignment, the information, indictment, or complaint shall be read to ~~him~~ the defendant by the court or the clerk thereof. If the defendant appears with counsel, the information or indictment need not be read and no waiver of said reading is necessary.

**(f)** As soon as the jury panel is drawn which will try the case, a list of the names and addresses of the jurors on the panel shall be made available by the clerk of the court to defendant's counsel, and if the defendant has no counsel, the list shall be served on ~~him~~ the defendant personally or by certified mail. It shall not be necessary to serve a list of jurors upon the defendant at the time of arraignment.

## Rule 11. Pleas

**(a) [NO CHANGE]**

**(b) Pleas of Guilty and Nolo Contendere.** The court shall not accept a plea of guilty or a plea of nolo contendere without first determining that the defendant has been advised of all the rights set forth in Rule 5(a)(2) and also determining:

(1) That the defendant understands the nature of the charge and the elements of the offense to which ~~he~~ the defendant is pleading and the effect of ~~his~~ the plea;

(2) That the plea is voluntary on defendant's part and is not the result of undue influence or coercion on the part of anyone;

(3) That ~~he~~ the defendant understands the right to trial by jury and ~~that he waives his~~the waiver of the right to trial by jury on all issues;

(4) That ~~he~~ the defendant understands the possible penalty or penalties;

(5) That the defendant understands that the court will not be bound by any representations made to the defendant by anyone concerning the penalty to be imposed or the granting or the denial of probation, unless such representations are included in a formal plea agreement approved by the court and supported by the findings of the presentence report, if any;

(6) That there is a factual basis for the plea. If the plea is entered as a result of a plea agreement, the court shall explain to the defendant, and satisfy itself that the defendant understands, the basis for the plea agreement, and the defendant may then waive the establishment of a factual basis for the particular charge to which ~~he~~ the defendant pleads;

(7) That in class 1 felonies, or where the plea of guilty is to a lesser included offense, a written consent shall have been filed with the court by the district attorney.

**(c) Misdemeanor Cases.** In all misdemeanor cases except class 1, the court may accept, in the absence of the defendant, any plea entered in writing by the defendant or orally made by ~~his~~ counsel.

**(d) [NO CHANGE]**

**(e) Defense of Insanity.**

(1) The defense of insanity must be pleaded at the time of arraignment, except that the court for good cause shown may permit such plea to be entered at any time before trial. It must be pleaded orally, either by the defendant or by ~~his~~ counsel, in the form, “not guilty by reason of insanity”. A defendant who does not thus plead not guilty by reason of insanity shall not be permitted to rely on insanity as a defense as to any accusation of any crime; provided, however, that evidence of mental condition may be offered in a proper case as bearing upon the capacity of the accused to form specific intent essential to the commission of a crime. The plea of not guilty by reason of insanity includes the plea of not guilty.

(2) If counsel for the defendant believes that a plea of not guilty by reason of insanity should be entered on behalf of the defendant, but the defendant refuses to permit the entry of such plea, counsel may so inform the court. The court shall then conduct such investigation as it deems proper, which may include the appointment of psychiatrists or psychologists to assist a psychiatrist to examine the defendant and advise the court. After its investigation the court shall conduct a hearing to determine whether the plea should be entered. If the court finds that the entry of a plea of not guilty by reason of insanity is necessary for a just determination of the charge against the defendant, it shall enter such plea on behalf of the defendant, and the plea so entered shall have the same effect as though it had been voluntarily entered by the defendant ~~himself~~personally.

(3) [NO CHANGE]

**(f) Plea Discussions and Plea Agreements.**

(1) Where it appears that the effective administration of criminal justice will thereby be served, the district attorney may engage in plea discussions for the purpose of reaching a plea agreement. ~~He~~ The district attorney should engage in plea discussions or reach plea agreements with the defendant only through or in the presence of defense counsel except where the defendant is not eligible for or refuses appointment of counsel and has not retained counsel.

(2) – (5) [NO CHANGE]

(6) Except as to proceedings resulting from a plea of guilty or nolo contendere which is not withdrawn, the fact that the defendant or ~~his~~ defense counsel and the district attorney engaged in plea discussions or made a plea agreement shall not be received in evidence against or in favor of the defendant in any criminal or civil action or administrative proceeding.

## Rule 12. Pleadings, Motions Before Trial, Defenses, and Objections

**(a) [NO CHANGE]**

**(b) The Motion Raising Defenses and Objections.**

(1) – (4) [NO CHANGE]

(5) *Effect of Determination.* If a motion is determined adversely to the defendant, ~~he~~ the defendant shall be permitted to plead if ~~he~~ the defendant has not previously pleaded. A plea previously entered shall stand.

## Rule 15. Depositions

**(a) – (a.5) [NO CHANGE]**

**(b) Subpoena of Witness.** Upon entering an order for the taking of a deposition, the court shall direct that a subpoena issue for each person named in the order and may require that any designated books, papers, documents, photographs, or other tangible objects, not privileged, be produced at the deposition. If it appears, however, that the witness will disregard a subpoena, the court may direct the sheriff to produce the prospective witness in court where the witness may be released upon personal recognizance or upon reasonable bail conditioned upon the witness's appearance at the time and place fixed for the taking of deposition. If the witness fails to give bail, the court shall remand ~~him~~ the witness to custody until the deposition can be taken but in no event for longer than forty-eight hours. If the deposition ~~be~~is not taken within forty-eight hours, the witness shall be discharged.

**(c) – (f) [NO CHANGE]**

## Rule 17. Subpoena

In every criminal case, the prosecuting attorneys and the defendant have the right to compel the attendance of witnesses and the production of tangible evidence by service upon them of a subpoena to appear for examination as a witness upon the trial or other hearing.

**(a) – (d) [NO CHANGE]**

**(e) Service.** Unless service is admitted or waived, a subpoena may be served by the sheriff, by ~~his~~ the sheriff's deputy, or by any other person who is not a party and who is not less than eighteen years of age. Service of a subpoena may be made by delivering a copy thereof to the person named. Service may also be made in accordance with Section 24-30-2104(3), C.R.S. Service is also valid if the person named has signed a written admission or waiver of personal service, including an admission or waiver signed using a scanned or electronic signature. If ordered by the court, a fee for one day's attendance and mileage allowed by law shall be tendered to the person named if the person named resides outside the county of trial.

**(f) – (h) [NO CHANGE]**

## Rule 21. Change of Venue or Judge

**(a) Change of Venue.**

(1) – (2) [NO CHANGE]

(3) *Effect of Motions.* After a motion for a change of venue has been denied, the applicant may renew ~~his~~ the motion for good cause shown, if since denial ~~he~~ the applicant has learned of new grounds for a change of venue. All questions concerning the regularity of the proceedings in obtaining changes of venue or the right of the court to which the change is made to try the case and execute the judgment, and all grounds for a change of venue, shall be considered waived if not raised before trial.

(4) [NO CHANGE]

(5) *Disposition of Confined Defendant.* When the defendant is in custody, the court shall order the sheriff, or other officer having custody of the defendant, to remove ~~him~~ the defendant not less than 7 days before trial to the jail of the county to which the venue is changed and there deliver ~~him~~ the defendant together with the warrant under which ~~he~~ the defendant is held, to the jailer. The sheriff or other officers shall endorse on the warrant of commitment the reason for the change of custody, and deliver the warrant, with the prisoner, to the jailer of the proper county, who shall give the sheriff or other officer a receipt and keep the prisoner in the same manner as if ~~he~~ the defendant had originally been committed to ~~his~~ the jailer's custody.

(6) *Transcript of Record.* When a change of venue is granted, the clerk of the court from which the change is granted shall immediately make a full transcript of the record and proceedings in the case, and of the motion and order for the change of venue, and shall transmit the same, together with all papers filed in the case, including the indictment or information, complaint, or summons and complaint, and bonds of the defendant and of all witnesses, to the proper court. When the change is granted to one or more, but not of several defendants, a certified copy of the indictment or information, and of each other paper in the case, shall be transmitted to the court to which the change of venue is ordered. Such certified copies shall stand as the originals, and the defendant shall be tried upon them. The transcript and papers may be transmitted by mail, or in any other way the court may direct. The clerk of the court to which the venue is changed shall file the transcript and papers transmitted ~~to him~~, and docket the case; and the case shall proceed before and after judgment, as if it had originated in that court.

(7) *Imprisonment.* When after a change of venue the defendant is convicted and sentenced to imprisonment in the county jail, the sheriff shall transport ~~him~~ the defendant at once to the county where the crime was committed if that county has a jail or other place of confinement.

**(b) Substitution of Judges.**

(1) Within 14 days after a case has been assigned to a court, a motion, verified and supported by affidavits of at least two credible persons not related to the defendant, may be filed with the court and served on the opposing party to have a substitution of the judge. Said motion may be filed

after the 14-day period only if good cause is shown to the court why it was not filed within the original 14-day period. The motion shall be based on the following grounds:

(I) The judge is related to the defendant or to any attorney of record or attorney otherwise engaged in the case; or

(II) The offense charged is alleged to have been committed against the person or property of the judge, or of some person related to ~~him~~the judge; or

(III) The judge has been of counsel in the case; or

(IV) The judge is in any way interested or prejudiced with respect to the case, the parties, or counsel.

(2) Any judge who knows of circumstances which disqualify ~~him~~ the judge in a case shall, on ~~his~~ the judge's own motion, self-disqualify ~~himself~~.

(3) Upon the filing of a motion under this section (b), all other proceedings in the case shall be suspended until a ruling is made thereon. If the motion and supporting affidavits state facts showing grounds for disqualification, the judge shall immediately enter an order self disqualifying ~~himself or herself~~. Upon self-disqualifying ~~himself or herself~~, the judge shall notify forthwith the chief judge of the district, who shall assign another judge in the district to hear the action. If no other judge in the district is available or qualified, the chief judge shall notify forthwith the state court administrator, who shall obtain from the Chief Justice the assignment of a replacement judge.

## Rule 23. Trial by Jury or to the Court

**(a)**

(1) – (2) [NO CHANGE]

(3) Every person accused of a class 1 or class 2 petty offense has the right to be tried by a jury of three, if ~~he or she~~the accused:

(I) – (II) [NO CHANGE]

(4) – (8) [NO CHANGE]

**COMMITTEE COMMENT [NO CHANGE]**

## Rule 25. Disability of Judge

If by reason of absence from the district, death, sickness, or other disability, the judge before whom the defendant was tried is unable to perform the duties to be performed by the court after a verdict or finding, any other judge regularly sitting in or assigned to the court may perform those duties. If the substitute judge is satisfied that ~~he~~ the judge cannot perform those duties because ~~he~~ the judge did not preside at the trial, or for any other reason, ~~he~~ the judge may, in ~~his~~ the judge's discretion, grant a new trial.

## Rule 30. Instructions

A party who desires instructions shall tender ~~his~~ proposed instructions to the court in duplicate, the original being unsigned. All instructions shall be submitted to the parties, who shall make all objections thereto before they are given to the jury. Only the grounds so specified shall be considered on motion for a new trial or on review. Before argument the court shall read its instructions to the jury, but shall not comment upon the evidence. Such instructions may be read to the jury and commented upon by counsel during the argument, and they shall be taken by the jury when it retires. All instructions offered by the parties, or given by court, shall be filed with the clerk and, with the endorsement thereon indicating the action of the court, shall be taken as a part of the record of the case.

## Rule 31. Verdict

**(a) Submission and Finding.**

(1) *Forms of Verdict.* Before the jury retires the court shall submit to it written forms of verdict for its consideration.

(2) *Retirement of Jury.* When the jury retires to consider its verdict, the bailiff shall be sworn or affirmed to conduct the jury to some private and convenient place, and to the best of ~~his~~ the bailiff's ability to keep the jurors together until they have agreed upon a verdict. The bailiff shall not speak to any juror about the case except to ask if a verdict has been reached, nor shall ~~he~~ the bailiff allow others to speak to the jurors. When they have agreed upon a verdict, the bailiff shall return the jury into court. However, in any case except where the punishment may be death or life imprisonment, the court, upon stipulation of counsel for all parties, may order that if the jury should agree upon a verdict during the recess or adjournment of court for the day, it shall seal its verdict, to be retained by the foreperson~~man~~ and delivered by the jury to the judge at the opening of the court, and that thereupon the jury may separate, to meet in the jury box at the opening of court. Such a sealed verdict may be received by the court as the lawful verdict of the jury.

(3) *Return.* The verdict shall be unanimous and signed by the foreperson~~man~~. It shall be returned by the jury to the judge in open court.

**(b) – (d) [NO CHANGE]**

## Rule 32. Sentence and Judgment

**(a)** [NO CHANGE]

**(b) Sentence and Judgment.**

(1) – (3) [NO CHANGE]

**(c) Advisement.**

(1) – (2) [NO CHANGE]

(3) When the court imposes a sentence, enters a judgment, or issues an order that obligates a defendant to pay any monetary amount, the court shall instruct the defendant as follows:

(I) If at any time the defendant is unable to pay the monetary amount due, the defendant must contact the court's designated official or appear before the court to explain why ~~he or she~~the defendant is unable to pay the monetary amount;

(II) – (III) [NO CHANGE]

**(d) – (g) [NO CHANGE]**

## Rule 41.1. Court Order for Nontestimonial Identification

**(a) – (d)** [NO CHANGE]

**(e) Contents of Order.** An order to take into custody for nontestimonial identification shall contain:

(1) – (4) [NO CHANGE]

(5) The typewritten or printed name of the judge issuing the order and ~~his~~ the judge's signature.

**(f) Execution and Return.**

(1) Nontestimonial identification procedures may be conducted by any peace officer or other person designated by the judge. Blood tests shall be conducted under medical supervision, and the judge may require medical supervision for any other test ordered pursuant to this section when ~~he~~ the judge deems such supervision necessary. No person who appears under an order of appearance issued pursuant to this section (f) shall be detained longer than is reasonably necessary to conduct the specified nontestimonial identification procedures unless ~~he~~ the person is arrested for an offense.

(2) – (7) [NO CHANGE]

**(g) – (i) [NO CHANGE]**

## Rule 43. Presence of the Defendant

**(a) Presence Required.** The defendant shall be present at the preliminary hearing, 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~~ the right to be present, whenever a defendant, initially present:

(1) Voluntarily self-absents ~~himself~~ after the trial has commenced, whether or not ~~he~~ the defendant has been informed by the court of ~~his~~ the obligation to remain during the trial, or

(2) After being warned by the court that disruptive conduct will cause ~~him~~ the defendant to be removed from the courtroom, persists in conduct which is such as to justify ~~his~~ being excluded from the courtroom.

**(c) [NO CHANGE]**

**(d) Waiver.** The voluntary failure of the defendant to appear at the preliminary hearing may be construed by the court as an implied waiver of ~~his~~ the right to a preliminary hearing.

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

(1) As used in this Rule 43:

(I) – (3) [NO CHANGE]

(4) The court shall advise the defendant of the following prior to any proceeding conducted pursuant to subsection (e)(3) of this rule:

(I) The defendant has the right to appear in person;

(II) The defendant has the right to have ~~his or her~~ counsel appear ~~with him or her~~ at the same physical location as the defendant;

(III) The defendant's decision to appear by use of an interactive audiovisual device or an interactive audio device must be voluntary and must not be the result of undue influence or coercion on the part of anyone; and

(IV) If the defendant is pro se, ~~he or she~~the defendant has the right to request that the identity and role of all individuals with whom ~~he or she~~the defendant may have contact during the proceeding be disclosed.

(5) [NO CHANGE]

**COMMENT [NO CHANGE]**

## Rule 48. Dismissal

**(a) By the State.** No criminal case pending in any court shall be dismissed or a nolle prosequi therein entered by any prosecuting attorney or ~~his~~ any deputy prosecuting attorney, unless upon a motion in open court, and with the court's consent and approval. Such a motion shall be supported or accompanied by a written statement concisely stating the reasons for the action. The statement shall be filed with the record of the particular case and be open to public inspection. Such a dismissal may not be filed during the trial without the defendant's consent.

**(b) By the Court.**

(1) If, after the filing of a complaint, there is unnecessary delay in finding an indictment or filing an information against a defendant who has been held to answer in a district court, the court may dismiss the prosecution. Except as otherwise provided in this Rule, if a defendant is not brought to trial on the issues raised by the complaint, information, or indictment within six months from the entry of a plea of not guilty, ~~he~~ the defendant shall be discharged from custody if ~~he~~ the defendant has not been admitted to bail, the pending charges shall be dismissed, whether ~~he~~ the defendant is in custody or on bail, and the defendant shall not again be indicted, informed against, or committed 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) – (3.5) [NO CHANGE]

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

(5.1) If a trial date is offered by the court to a defendant who is represented by counsel and neither the defendant nor ~~his~~ 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.

(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 incompetent to stand trial or 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, incompetency or impaired mental condition is raised;

**COMMITTEE COMMENT [NO CHANGE]**

(II) – (III) [NO CHANGE]

(IV) The period of delay resulting from the voluntary absence or unavailability of the defendant; however, a defendant shall be considered unavailable whenever ~~his~~ the defendant's whereabouts are known but ~~his~~ presence for trial cannot be obtained, or ~~he~~ the defendant resists being returned to the state for trial;

(V) – (IX) [NO CHANGE]

(7) If a trial date has been fixed by the court and the case is subsequently transferred to a court in another county, the period within which trial must be had is extended for an additional three months from the date of the first appearance of all of the parties in a court of appropriate jurisdiction in the county to which the case has been transferred.

## Rule 49. Service and Filing of Papers

**(a) [NO CHANGE]**

**(b)** Service -- How Made. Whenever under these Rules or by court order service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party ~~himself~~ is ordered by the court. Service upon the attorney or upon a party shall be made in the manner provided for civil actions unless otherwise ordered by the court.

**(c) [NO CHANGE]**

## Rule 51. Exceptions Unnecessary

Exceptions to ruling or orders of the court are unnecessary. For all purposes for which an exception has heretofore been necessary it is sufficient that a party, at the time the court ruling or order is made or sought, makes known to the court the action which ~~he~~ the party desires the court to take or ~~his~~ the objection to the court's action and the grounds therefor. But if a party has no opportunity to object to a ruling or order, the absence of an objection does not thereafter prejudice ~~him~~the party.