

Rule Change 2002(6)

The Colorado Rules of Criminal Procedure
Chapter 29. Colorado Rules of Criminal Procedure
For All Courts of Record In Colorado

The following rules are amended as of July 1, 2002:

Rule 5
Rule 38
Rule 39
Rule 40
Rule 48

Amended and Adopted by the Court, En Banc, June 27, 2002,
effective July 1, 2002.

BY THE COURT:

Alex J. Martinez
Justice, Colorado Supreme Court

Rule 5. Preliminary Proceedings.

(a) Felony Proceedings.

(1) [*** NO CHANGE]

(2) [*** NO CHANGE]

(3) [*** NO CHANGE]

(4) **Preliminary Hearing - County Court Procedures.** Every person accused of a class 1, 2, or 3 felony in a felony complaint has the right to demand and receive a preliminary hearing to determine whether probable cause exists to believe that the offense charged in the felony complaint was committed by the defendant. In addition, only those persons accused of a class 4, 5, or 6 felony by felony complaint which felony requires mandatory sentencing or is a crime of violence as defined in section 16-11-309 or is a sexual offense under part 4 of article 3 of title 18, C.R.S., shall have the right to demand and receive a preliminary hearing to determine whether probable cause exists to believe that the offense charged in the felony complaint was committed by the defendant. However, any defendant accused of a class 4, 5, or 6 felony who is not otherwise entitled to a preliminary hearing may request a preliminary hearing if the defendant is in custody for the offense for which the preliminary hearing is requested; except that, upon motion of either party, the court shall vacate the preliminary hearing if there is a reasonable showing that the defendant has been released from custody prior to the preliminary hearing. Any person accused of a class 4, 5, or 6 felony who is not entitled to a preliminary hearing shall, unless otherwise waived, participate in a dispositional hearing for the purposes of case evaluation and potential resolution. The following procedures shall govern the holding of a preliminary hearing:

(I) [*** NO CHANGE]

(II) [*** NO CHANGE]

(III) [*** NO CHANGE]

(IV) If from the evidence it appears to the county court that there is not probable cause to believe that the offense charged has been committed by the defendant, the county court shall dismiss the complaint and discharge the defendant. If the prosecutor believes the court erred in its finding of no probable cause, the prosecutor may appeal the ruling to the district court. The appeal of such final order shall be conducted pursuant to the procedures for interlocutory appeals in Rule 37.1 of these rules. Such error, if any, shall not constitute good cause for

refiling.

(V) [*** NO CHANGE]

(4.5) [*** NO CHANGE]

(5) [*** NO CHANGE]

(b) [*** NO CHANGE]

(c) [*** NO CHANGE]

~~Rules 38 to 40. Appeals from the District Court~~ Rule 38.

Appeals from the District Court

Appeals from the district court shall be conducted pursuant to the Colorado Appellate Rules.

Rule 39. Stays

The filing of an interlocutory appeal or an appeal from an order that dismisses one or more counts of a charging document prior to trial automatically stays all proceedings until final determination of the appeal, unless the appellate court lifts such stay in whole or in part.

Rule 40. (reserved)

Rule 48. Dismissal

(a) [*** NO CHANGE]

(b) **By the Court.**

(1) [*** NO CHANGE]

(2) [*** NO CHANGE]

(3) [*** NO CHANGE]

(3.5) [*** NO CHANGE]

(4) [*** NO CHANGE]

(5) [*** NO CHANGE]

(5.1) [*** NO CHANGE]

(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) [*** NO CHANGE]

(II) The period of delay caused by an interlocutory appeal, an appeal from an order that dismisses one or more counts of a charging document prior to trial, or after issuance of a rule to show cause in an original action brought under Colorado Appellate Rule 21, whether commenced by the defendant or by the prosecution;