

# Colorado District Attorneys' Council

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July 18, 2025

The Honorable Judge Harris  
Chair, Criminal Rules Committee  
[Elizabeth.harris@judicial.state.co.us](mailto:Elizabeth.harris@judicial.state.co.us)

## **Re: Proposed Amendments to Crim. P. Rule 16: Duty to Confer and Disclosure Deadline**

Dear Judge Harris:

On behalf of the Colorado District Attorney's Council (CDAC), we respectfully submit two proposed amendments to Colorado Criminal Procedure Rule 16 for the Committee's consideration. These changes are intended to improve the efficiency, fairness, and practical administration of the criminal discovery process.

### **1. Duty to Confer Prior to Seeking Sanctions**

We propose amending Rule 16(III)(g) to require the parties to confer before seeking court intervention or sanctions for any alleged discovery violation. The purpose of this amendment is to reduce unnecessary adversarial conflict and encourage professional collaboration between parties. As the primary goal of Rule 16 is to ensure that criminal cases are resolved on the facts and the merits, this conferral requirement supports that mission by promoting resolution of discovery disputes outside of court when possible.

This proposed language is modeled on similar requirements found in the Colorado Rules of Civil Procedure (C.R.C.P. 121 §§ 1-12 and 1-15) and Federal Rules of Criminal Procedure, which have proven effective in streamlining discovery and helping reduce litigation over procedural issues. The attached draft amendment reflects this approach and includes a reasonable time window for conferral and a requirement to explain any failure to confer.

This change should reduce attorney and court time spent on discovery disputes because the parties will have an opportunity to identify and locate any missed items and correct any such issues more efficiently than the current process, which draws heavily on judicial resources.

### **2. Extension of Disclosure Deadline to 35 Days**

We also propose amending Rule 16(I)(b)(1) to extend the deadline for the prosecution's initial mandatory discovery disclosures from 21 days to 35 days following the defendant's first appearance. In recent years, the volume and

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complexity of discoverable materials—particularly digital evidence such as body-worn camera footage—have increased substantially. Collecting, processing, reviewing, and organizing this data for disclosure often requires technical expertise and substantial time to ensure compliance and completeness.

Extending this deadline will allow prosecutors to provide more thorough and accurate disclosures while still preserving defendants' rights to timely discovery. We believe this modest change reflects the evolving realities of modern law enforcement and prosecution practices and will ultimately serve the interests of justice.

We appreciate the Committee's attention to these proposed amendments and would welcome the opportunity to discuss them further. Thank you for your continued service to Colorado's legal system.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Thomas R. Raynes', is written over a horizontal line.

Thomas R Raynes  
Executive Director  
Colorado District Attorneys Council  
(Attachment – Draft Amendment)

DRAFT AMENDMENT – conferral prior to motions

**(g) Failure to Comply; Sanctions.** If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this rule or with an order issued pursuant to this rule, the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed or enter such other order as it deems just under the circumstances.

Crim. P. Rule 16(III)(g)

**(g) Failure to Comply; Duty to Confer; Sanctions.** If at any time during the course of the proceedings ~~it is brought to the attention of the court that~~ a party has failed to comply with this rule or with an order issued pursuant to this rule, **the parties shall confer about the alleged failure to comply in a good faith effort to agree on a reasonable resolution of the issue. If the parties are unable to resolve the alleged failure to comply within 14 days, the issue may be brought to the attention of the court to determine if a party failed to comply with this rule or with an order issued pursuant to this rule and, if so,** the court may order such party to permit the discovery or inspection of materials not previously disclosed, grant a continuance, prohibit the party from introducing in evidence the material not disclosed or enter such other order as it deems just under the circumstances. **If no conference has occurred prior to the issue being presented to the court, the reason why, including all efforts to confer, shall be stated.**

[Based on C.R.C.P. 121 confer provision and Fed. Crim. Rule discovery confer requirements]

**Source materials for this amendment proposal from C.R.C.P. 121**

**5.** Unless otherwise ordered, the court will not entertain any motion under Rule 37(a), C.R.C.P., unless counsel for the moving party has conferred or made reasonable effort to confer with opposing counsel concerning the matter in dispute before the filing of the motion. Counsel for the moving party shall file a certificate of compliance with this rule at the time the motion under Rule 37(a), C.R.C.P., is filed. If the court requires that any discovery motion be made orally, then movant must make a reasonable effort to confer with opposing counsel before requesting a hearing from the court.

C.R.C.P. 121, 1-12 [Matters related to discovery]

\*For context – C.R.C.P. 37 is the discovery motions/sanctions provision of civil rules

**8. Duty to Confer.** Unless a statute or rule governing the motion provides that it may be filed without notice, moving counsel and any self-represented party shall confer with opposing counsel and any self-represented parties before filing a motion. The requirement of self-represented parties to confer and the requirement to confer with self-represented parties shall not apply to any incarcerated person, or any self-represented party as to whom the requirement is contrary to court order or statute, including, but not limited to, any person as to whom contact would or precipitate a violation of a protection or restraining order. The motion shall, at the beginning, contain a certification that the movant in good faith has conferred with opposing counsel and any self-represented parties about the motion. If the relief sought by the motion has been agreed to by the parties or will not be opposed, the court shall be so advised in the motion. If no conference has occurred, the reason why, including all efforts to confer, shall be stated.

C.R.C.P. 121, 1-15 [Determination of motions]