

MEMORANDUM

To: Judge Harris and the Colorado Criminal Procedure Rules Committee

From: Magdalena Rosa, Judge Chelsea Malone, and Kevin McReynolds

Date: October 15, 2025

RE: Requests for Amendment to Colo. R. Crim. P. 16

Issues I: Should Rule 16 be amended to clarify that statements, documents, and electronic surveillance conversations must be produced even if they exist in an electronic format, such as an e-mail, text, or other electronic written communication?

Issue II: Should Rule 16 be amended to require the parties to confer prior to seeking sanctions?

Issue III: Should Rule 16 be amended to extend the prosecutions' disclosure deadlines?

DISCUSSION REGARDING ISSUE I

After reaching out to stakeholders, the subcommittee members were 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 R. 16 (1)(I)(a)(1). If a change is made, the members were split 2 to 1 on the proposed language of the change.

Proponents of the Amendment: Point out that clarification would eliminate any confusion which currently exists on this issue per feedback from stakeholders. An amendment would also standardize practices across the state.

Opponents to the Amendment: 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.

Revision Proposed by Members

Option 1: Voted on by two members of the subcommittee if the rule is to change

Crim. P. 16 (1)(I)(a)(IX) All witness statements, documentary evidence, and electronic surveillance as provided in subsections (IV), and (VI), not otherwise produced, that are contained in any text, email, or other form of electronic written communication.

Option 2: Voted on by one member of the subcommittee

“Crim. P. 16 (1)(I)(a)(1)(IX) Statements, documents, and electronic surveillance of conversations under subsection (a)(1)(I), (a)(1)(IV), and (a)(1)(VI) *includes* emails, text messages, and other electronic communications unless not subject to disclosure pursuant to subsection Part I (e).”

DISCUSSION REGARDING ISSUE II

The subcommittee was split 2 (in favor) to 1 (against) on whether Rule 16 (III)(g) should be amended to require a duty to confer prior to seeking sanctions or court intervention.

Proponents of the Amendment: Point out that a change to the rule would eliminate unnecessary litigation and encourage the parties to communicate in good faith to resolve discovery disputes limiting court intervention. As in parallel areas, the only burden here is that a party provides notice when practicable and an opportunity to cure an issue before litigating it. Some parties do provide notice of missing discovery and work on a resolution before court intervention, however, judges have noticed increased litigation prior to any conference between the parties.

Opponents to the Amendment: Point out that the mandatory disclosure pursuant to R. 16 is limited. The proposed rule change would shift the burden to the defense to comb through discovery to locate what is potentially missing. This in turn may encourage lax practices on the part of prosecutors to learn what evidence is known to others acting on the government’s behalf. The rule change may also result in unnecessary delays.

Revision Proposed by Members in Favor of the Amendment

(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 agree on a reasonable resolution of the alleged failure to comply, 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 shall be stated.**

DISCUSSION REGARDING ISSUE III

The subcommittee unanimously agreed not to propose a rule change extending discovery deadlines.

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

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)