

AGENDA

COLORADO SUPREME COURT ADVISORY COMMITTEE ON RULES OF CRIMINAL PROCEDURE

Friday, April 17, 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 January 16, 2026, Meeting
- III. Announcements from the Chair
- IV. Business
 - A. Rule 35(c) – Proposed Changes to Form 4 and Comments vs. Amendments (Judge Gerdes)
 - B. Colorado Rules for Civil Infractions – Proposal from Grand County Attorney’s Office (Judge Harris)
 - C. Rules for Traffic Infractions – Justice Blanco’s Email
 - D. Rules for Traffic Infractions – Judge Lane’s Email
 - E. Rule 16 – Attorney Request to Update Language for Modern Forms of Communication and CDAC Request (Magdalena Rosa)
- V. Future Meetings: **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, January 16, 2026

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	
Judge Chelsea Malone		X
Kevin McGreevy	X	
Kevin McReynolds	X	
Kristen Nelson	X	
John Lee	X	
Magdalena Rosa	X	
Karen Taylor	X	
Judge Lindsay VanGilder	X	
Judge Vincente Vigil	X	
Karen Yacuzzo (non-voting participant)	X	

I. Attachments & Handouts

- A. January 16, 2026 agenda
- B. October 17, 2025 draft minutes
- C. HB23-1187 memo
- D. Draft Rule 37.1 materials

II. Approval of Minutes

The October 17, 2025, minutes were approved as submitted with the correction of deleting an inaccurate sentence and marking two members present.

III. Announcements from the Chair

Chair Judge Harris thanked Abe Hutt for his decades of distinguished service on the committee and contributions to the practice of law in general. Judge Harris then welcomed new member Kristen Nelson, Mr. Hutt’s replacement. The committee discussed proxy voting, which was not allowed under the last chair. Members noted that being present for the committee’s conversation can be vital in forming an opinion and that not allowing proxy voting has long been the custom of the committee. A few members who assigned their proxy vote to a member for this meeting are not present to weigh in, so the committee will consider this at the next meeting.

IV. Business

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

Shira Cohen, Grand County Assistant County Attorney, sent a request to the committee to address procedural conflicts between enforcement statutes and the Colorado Rules for Civil Infractions. Members of the committee do not believe they are knowledgeable enough in this area of law to provide practical advice. The committee voted to decline to consider this issue.

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. The committee voted unanimously to approve the proposed changes.

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

After some discussion of the requests, the committee voted to table this item of business.

D. Gendered Language in the Rules

The committee voted unanimously to approve the proposed rule changes following some group edits.

The committee adjourned at 3:34 pm.

V. Future Meetings

April 17, July 17, October 16

Memorandum

TO: CRIMINAL RULES COMMITTEE
FROM: RULE 35 SUBCOMMITTEE
DATE: APRIL 8, 2026
RE: REPORT FOR APRIL 17, 2026 MEETING

The subcommittee submits the following topics for consideration by the Committee:

1. Modification to Form 4 (attached) to be more “user friendly.”
2. Changing the language of Rule 35(c) to “motion” ((c)(3)(I)) instead of “petition” ((c)(3)(II) - (IV)) for consistency.
3. Permission to have Rule 35 contain Committee Comments and/or Annotation (similar to the Civil Rules Committee). For the past year, the subcommittee has been working to revise Rule 35(c). In particular, when trying to reach a consensus as to language for the Committee’s consideration, we continue to struggle with the proper level of detail.

In lieu of modifying Rule 35(c), the Subcommittee thinks it would be more advantageous to add “Committee Comments” and/or “Annotation” to alert and educate people as to Rule 35(c) motions practice. Such comments might include drawing the readers’ attention to the recent decisions of *People v. Townsell*, 2026 CO 11; *People v. Silva-Jaquez*, 2025 CO 11; *People v. Crabtree*, 2024 CO 40M; *People v. Segura*, 2024 CO 70; *People v. Cortes-Gonzalez*, 2022 CO 14.

If the Rules Committee accepts this proposal, then approval by the Supreme Court would be requested. If the Supreme Court grants the request, this Rule 35(c) Subcommittee would offer to author Committee Comments/Annotations for the Rules Committee’s consideration.

This is a sample taken from the Civil Rules:

conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

(C) Objections to the form of written questions submitted under Rule 31 are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions and within 7 days after service of the last questions authorized.

(4) **As to Completion and Return of Deposition.** Errors and irregularities in the manner in which the testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Rules 30 and 31 are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been ascertained.

Source: IP(a) and (a)(3) amended and adopted April 14, 1994, effective January 1, 1995, for all cases filed on or after that date; committee comment approved June 10, 1994; (a)(5) added and adopted June 25, 1998, effective January 1, 1999; (d)(3)(C) amended and adopted December 14, 2011, effective January 1, 2012, for all cases pending on or filed on or after January 1, 2012, pursuant to C.R.C.P. 1(b).

Cross references: For substitution of parties, see C.R.C.P. 25; for deposition of party who is an officer, director, or managing agent of a public or private corporation, partnership, association, or other entity, see C.R.C.P. 30(b)(6) and 31(a); for notice requirement, see C.R.C.P. 30(b) and 31(a); for responsibilities of officer, see C.R.C.P. 30(f) and 31(b); for depositions upon oral examination, see C.R.C.P. 30; for depositions upon written questions, see C.R.C.P. 31.

COMMITTEE COMMENT

Revised C.R.C.P. 32 is patterned after Fed.R.Civ.P. 32 as amended in 1993 with several exceptions: (1) there is no State Rule 32(i)(D) [pertaining to use of depositions of experts whether or not unavailable]; (2) there is

a difference in what constitutes "reasonable notice," which is instead contained in C.R.C.P. 121 section 1-12; and (3) there is no State Rule 32(e) [pertaining to offering of non-stenographic depositions].

ANNOTATION

- I. General Consideration.
- II. Use.
- III. Objections.
- IV. Effect of Taking or Using.
- V. Errors and Irregularities.
 - A. Taking.
 - B. Completion and Return.

I. GENERAL CONSIDERATION.

Law reviews. For article, "Depositions and Discovery, Rules 26 to 37", see 28 *Dicta* 375 (1951). For article, "Depositions and Discovery: Rules 26-37", see 23 *Rocky Mt. L. Rev.* 562 (1951). For article, "Plaintiff's Advantageous Use of Discovery, Pre-Trial and Summary Judgment", see 40 *Den. L. Ctr. J.* 192 (1963). For article, "A Deposition Primer, Part I: Setting Up the Deposition", see 11 *Colo. Law.* 938 (1982). For article, "A Deposition Primer, Part II: At the Deposition", see 11 *Colo. Law.* 1215 (1982). For article, "Using Depositions in the Courtroom", see 39 *Colo. Law.* 49 (Apr. 2010).

C.R.C.P. 26 to 37 must be construed together along with the requirement that plaintiff establish a prima facie case for punitive damages, as a condition precedent to the plaintiff's right to discovery of defendant's financial information. *Leidholt v. District Court*, 619 P.2d 768 (Colo. 1980).

Applied in *Hamilton v. Hardy*, 37 *Colo. App.* 375, 549 P.2d 1099 (1976); *Ricci v. Davis*, 627 P.2d 1111 (Colo. 1981).

II. USE.

Annotator's note. Since section (a) of this rule is similar to §§ 378 and 379 of the former Code of Civil Procedure, which was supplanted by the Rules of Civil Procedure in 1941, and to C.R.C.P. 26(d) as it existed prior to the revision of Rules of Civil Procedure in 1970, relevant cases construing those sections and former rule 26 (d) have also been included in the annotations to this rule.

Section (a) is identical to Fed. R. Civ. P. 32(a). *Schafer v. Nat'l Tea Co.*, 32 *Colo. App.* 372, 511 P.2d 949 (1973).

4. The Subcommittee continues to work on simplifying (c)(3)(IV) and (c)(3)(V).

5. The Subcommittee continues to explore modifying (c)(3)(III) regarding the discovery process post-conviction.

Form 4 (CR)	Motion for Postconviction Review Under Criminal Procedure Rule 35(c)	
A. District Court Colorado County: Court Address:	<i>This box is for court use only.</i>	
B. Parties to the Case Plaintiff: People of the State of Colorado v. Defendant:		
C. My Information <i>(or attorney's if represented)</i> Name: Mailing Address: City, State, Zip: Phone: Email:	D. Case Details Number: Division/Courtroom:	

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1. Conviction Under Attack

- a) What was the date of your conviction? *(day/month/year)*
- b) Which of the following resulted in your conviction? *(select one)*
 Plea Jury Trial Court Trial
- c) Were you represented by an attorney? *(Yes or No)* YES NO

If yes, list the names and addresses of any attorney who has ever represented you in this case. *(Attach additional sheets if necessary.)*

What was the nature of the representation? *(For example: preliminary hearing, plea, trial.)*

2. Direct Appeal

- a) Was this case appealed? *(yes or no)*
 If yes, please provide the following:
 Appeal Case Number:
 Appellate Court:
 Result:
 Date:

3. Postconviction Proceedings

- a) Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal, such as Rule 35(a), Rule 35(c), or a Writ of Habeas Corpus?

(yes or no)

If no, proceed to Question 4.

If yes, give the following information for each petition filed:

1) First Petition, Application, or Motion

Name of court:

Nature of proceeding: *(for example, Rule 35(a), Rule 35(c), § 2254 Writ of Habeas Corpus)*

Claims raised

Name of attorney: *(if any)*

Did you receive an evidentiary hearing on your petition, application, or motion?

(yes or no)

Result:

Date of Result:

Did you appeal the result? *(yes or no)*

If yes, what was the result and date of the court's decision? *(or attach a copy of the court's opinion or order)*

If no, briefly explain why you did not appeal the result:

2) For a Second or Subsequent Petition or Motion

Please answer the same questions listed above. Attach a separate sheet of paper and state at the top that you are listing other motions or petitions filed in this case.

4. Request For Counsel

- a) Are you requesting that counsel be appointed to represent you on this motion?

(yes or no)

If yes, please attach an indigency application [JDF 208].

5. Claims for Relief & Grounds for Your Claims

- a) The court may grant postconviction review for certain types of claims. *(check all that apply)*



Please be aware that certain types of postconviction claims may waive the attorney-client privilege, under C.R.S. § 18-1-417.

The Defendant has sought appeal of a conviction within the time prescribed, and judgment on that conviction has not then been affirmed upon appeal, and there has been a significant change in the law which if applied to this conviction or sentence, the interests of justice allow the retroactive application of the changed legal standard. *(In other words, there was a change in the law and the Defendant is allowed the positive retroactive effect of the change.)*

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No review of a conviction of crime was sought by appeal within the time prescribed therefore, or a judgment of conviction was affirmed upon appeal. However, in good faith the Defendant alleges one or more of the following: *(check all that apply)*

- That the conviction was obtained or sentence imposed in violation of the Constitution or laws of the United States or the constitution or laws of this state.
 - That the Defendant was convicted under a statute that is in violation of the Constitution of the United States or the constitution of this state, or that the conduct for which the applicant was prosecuted is constitutionally protected.
 - That the court rendering judgment was without jurisdiction over the person of the applicant or the subject matter.
 - That there exists evidence of material facts, not theretofore presented and heard, which, by the exercise of reasonable diligence, could not have been known to or learned by the Defendant or his attorney prior to the submission of the issues to the court or jury, and which requires vacation of the conviction or sentence in the interest of justice.
 - Any other ground otherwise properly the basis for collateral attack upon a criminal judgment.
 - That the sentence imposed has been fully served or that there has been unlawful revocation of parole, probation, or conditional release.
- b) For this motion, for all claims related to the conviction or sentence under attack, state every ground on which you claim that you are being held unlawfully.



Please be aware that If you do not raise all claims here, you may lose the opportunity to ask the court to review those claims in the future.

Attach separate sheets of paper. For each claim:

- 1) Number and title the claim (e.g., "Claim 1: The defendant's sentence violates the 8th Amendment").
- 2) State the specific facts that support your claim. Be as detailed as possible.
- 3) Explain why you believe these facts show that you are being held unlawfully. Include any legal authority that you think is relevant here.

6. Timelines

Colorado Revised Statutes §16-5-402(1) provides that a person who has been convicted under a criminal statute in Colorado or another state may collaterally attack the validity of that conviction

only if such attack is brought within a specified time period or completion of the direct appeal process for that conviction, unless one of the exceptions listed in §16-5-402(2), C.R.S. are applicable. The specified time periods are as follows:

All class 1 felonies:	No limit
All other felonies:	Three years
Misdemeanors:	Eighteen months
Petty offenses:	Six months

a) Was this motion filed within the time limits set forth in C.R.S. § 16-5-402(1), above? (yes or no)
 YES NO

Commented [JC2]: I think there was a box here before for yes and another for no. Probably a good idea?

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If no, check any applicable exceptions listed in C.R.S. § 16-5-402(2). Attach separate sheets of paper. List each ground for this motion not being filed within the statutory time limits and include every fact you feel supports this claim. Be specific and give details. **Do Not Make Legal Arguments.**

- The court entering judgment of conviction did not have jurisdiction over the subject matter of the alleged offense;
- The court entering judgment of conviction did not have jurisdiction over the person of the Defendant;
- The failure to seek relief within the applicable time period was caused by an adjudication of incompetence or by commitment of the Defendant to an institution for treatment as a mentally ill person; or
- The failure to seek relief within the applicable time period was the result of circumstances amounting to justifiable excuse or excusable neglect.

7. Successive Petitions

Important Notice Regarding Additional Petitions:

With specific exceptions provided for in Criminal Procedure Rule 35(c)(3)(VII), the court shall deny any claim that could have been presented in an appeal or postconviction proceeding previously brought.

Therefore, all claims related to the conviction under attack in this petition must be listed in this motion, or future motions may be denied.

Wherefore, petitioner prays that the Court grant relief to which petitioner may be entitled in this proceeding.

8. Sign & Date

Print Your Name:

Signature:

Dated:

Counsel Signature & Date: *(if any)*

From: blanco, susan <susan.blanco@judicial.state.co.us>
Sent: Wednesday, January 28, 2026 4:47 PM
To: beck, jeremy <jeremy.beck@judicial.state.co.us>
Subject: Smartest Person I Know

😊 How are you?

I could use some help or pass along something that I ran into that is odd. I am in the rules for traffic infractions. Rule 3 has definitions and I was looking for default judgment. It says to look at 42-4-1709(7) but when I go there it does not seem on point. Who works on these? I am not sure where to send it... and so here I am on your doorstep. Thank you my friend! I missed working with you all on Counterman. I learned a lot from the emails but did not weigh in as I was out of the discussion.

Susan Blanco

West's Colorado Revised Statutes Annotated
Colorado Court Rules
Chapter 29.7. Rules for Traffic Infractions

C.R.T.I. Rule 3

Rule 3. Definitions

Currentness

The following definitions shall apply in these rules:

(a) “Charging document” means the document commencing or initiating the traffic infraction matter, whether denoted as a complaint, summons and complaint, citation, penalty assessment notice, or other document charging the person with the commission of a traffic infraction or infractions.

(b) “Defendant” means any person charged with the commission of a traffic infraction, including but not limited to the following terms used in the implementing legislation: “cited person,” “cited party,” “individual,” “person charged with a traffic violation,” “violin,” or “accused.”

(c) “Docket fee” means a fee assessed according to the provisions of section 42-4-1710(2), (3), or (4), C.R.S., or a fee in the same amount as provided in these rules.

(d) “Judgment” means the admission of guilt or liability for any traffic infraction, the entry of judgment of guilt or liability, or the entry of default judgment as used in section 42-4-1709(7), C.R.S., against any person for the commission of a traffic infraction.

(e) “Officer” means a law enforcement agent who tenders or serves a charging document under these rules.

(f) “Penalty” means a fine pursuant to sections 42-4-1701(4)(a) and 42-4-1710, C.R.S., if the charging document is a penalty assessment notice; or a fine pursuant to sections 42-4-1701(3)(a)(I) and 42-4-1701(5)(c)(II), C.R.S., if the charging document is any document other than a penalty assessment notice.

(g) “Referee” means any person appointed as a referee under section 13-6-501, C.R.S., and any judge acting as a referee to hear traffic infractions.

Credits

Adopted effective January 1, 1983. Corrected effective November 12, 1999; November 30, 1999.

Traffic Infractions Rule 3, CO ST TRAF INFR Rule 3
Current with amendments received through March 15, 2026.

From: lane, timothy <timothy.lane@judicial.state.co.us>
Sent: Friday, April 3, 2026 9:18 AM
To: VanGilder, Lindsay <Lindsay.VanGilder@judicial.state.co.us>
Cc: zenisek, christopher <christopher.zenisek@judicial.state.co.us>
Subject: RE: Change to Traffic Infraction Rules

Rule 7 of the Rules for Traffic Infractions states for first hearings, “if the defendant appears in person, the referee shall advise him in **open court** of the following:...”

Despite most attorneys waive formal reading and advisement (even in homicides) I have a unique attorney for speeding cases (lots of high end cars like Ferraris like to drive the canyon fast) that comes in at the final hearing and complains that his client was not advised in open court per rule and asks me to do it and then demands a continuance. Due to the part time nature of my position, first hearings on infractions are set separate from all other cases and defendants are advised of their rights on paper in the clerk’s office. I don’t know of any district that actually does an advisement in open court by the judge or magistrate.

It would be nice if the rule simply stated something like, “if the defendant appears in person, the **referee or the court clerk**, shall advise them of the following...” This would simplify this greatly. Maybe include some language about the use of a standard advisement form such as the one in the appendix to the rules.

This change should also apply to Rule 7 of the Rules for Civil Infractions.

Thanks for looking. It’s obviously not a huge problem, but it would end some game-playing in my court.

- **Tim**

Timothy Lane
County Court Judge
Gilpin Combined Court
2960 Dory Hill Road; Suite 200
Black Hawk, CO 80422

West's Colorado Revised Statutes Annotated
Colorado Court Rules
Chapter 29.7. Rules for Traffic Infractions

C.R.T.I. Rule 7

Rule 7. First Hearing

Currentness

- (a) If the defendant has not previously acknowledged guilt or liability and satisfied the judgment, he shall appear before the referee at the time scheduled for first hearing.
- (b) The defendant may appear in person or by counsel, who shall enter appearance in the case, providing, however, if an admission of guilt or liability is entered, the referee may require the presence of the defendant for the assessment of the penalty.
- (c) If the defendant appears in person, the referee shall advise him in open court of the following:
- (1) The nature of the infractions alleged in the charging document;
 - (2) The penalty and docket fee that may be assessed and the penalty points that may be assessed against the driving privilege;
 - (3) The consequences of the failure to appear at any subsequent hearing including entry of judgment against the defendant and reporting the judgment to the state motor vehicle division, which may assess points against the driving privilege and may deny an application for a driver's license;
 - (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 referee;
 - (6) The right to remain silent, because any statement made by the defendant may be used against him;
 - (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 any 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 referee shall enter judgment and assess the appropriate penalty and the 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.

Credits

Adopted effective January 1, 1983.

Notes of Decisions (2)

Traffic Infractions Rule 7, CO ST TRAF INFR Rule 7
Current with amendments received through March 15, 2026.

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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 reports, 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)(l)(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 report 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)(l)(a)(1)(IX) All reports, including witness statements, documentary evidence, and electronic surveillance as defined in subsections (a)(1)(I), (a)(1)(IV), and (a)(1)(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.