

AGENDA

COLORADO SUPREME COURT ADVISORY COMMITTEE ON RULES OF CRIMINAL PROCEDURE

**Friday, October 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 July 17, 2026, Meeting
- III. Announcements from the Chair
- IV. Business
 - A. Rules for Traffic Infractions – (Kevin McGreevy, Christian Champagne, John Lee)
 - B. Rule 16 – (Magdalena Rosa, Judge Chelsea Malone, and Kevin McReynolds)
 - C. Rule 35(c) – (Judge Gerdes, Johanna Coats, Karen Taylor)
 - D. Gendered Language Rules – Final Approval (Judge Harris)
 - E. Crim. P. 45 – Final Approval (Judge Harris)
- V. Future Meetings:
- 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, July 17, 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 Joshua Lehman	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. July 17, 2026, agenda packet
- B. April 17, 2026, draft minutes

II. Approval of Minutes

The April 16, 2026, minutes were approved as submitted.

III. Announcements from the Chair

Judge Josh Lehman (Larimer County Court) is joining the committee to replace Judge Dana Nichols. Pursuant to HB 26-1288, the legislature has created a Jury Selection Working Group – the group is seeking feedback via its website, coloradojudicial.gov/jury-selection-working-group

IV. Business

- A. Rules for Traffic Infractions (Kevin McGreevy, Christian Champagne, John Lee)

Traffic Infractions Subcommittee distributed memo outlining possible changes to Rule 3 and Rule 7. After discussion with the full Committee, the subcommittee decided to continue working on proposed changes and reach out to resources.

B. Rule 45 – Updating State Holidays (Judge VanGilder)

Amendments to Crim. P. 45(a) – Judge VanGilder distributed draft amendments; the Committee discussed and provided editing suggestions; the Committee voted unanimously to approve the final amendments.

C. Rule 41 – Requests for Document Production (Judge Harris)

Request for possible amendment to Crim. P. 41 – Judge Vigil provided some background about the request; Judges Harris and Malone will work on proposed amendments to distribute to the Committee.

The committee adjourned at 2:30 pm.

V. Future Meetings

October 16

A M E N D E D M E M O R A N D U M

TO: Judge Harris and the Criminal Rules of Procedure Committee

FROM: Kevin McGreevy, Christian Champagne, and John T. Lee

RE: Possible Changes to The Colorado Rules For Traffic Infractions

DATE: September 3, 2026

RULE 3

Rule 3 states:

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,” “VIOLATOR,” 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.

QUESTION 1: Should subsection (D)’s reference to “the entry of default judgment as used in section 42-4-1709(7)” be amended?

SHORT ANSWER: Yes. The statutory reference should be deleted.

(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.

DISCUSSION:

Rule 3(D)’s reference to section 42-4-1709(7) is incorrect. That statute instead sets forth the situations in which a “person is not allowed or permitted to obtain or renew a permanent driver’s, minor driver’s, or probationary license if such person has, at the time of making application for obtaining or renewing such driver’s license.” Nothing in the Rules for Traffic Infractions provides a definition for “default judgment,” nor does Title 42. The closest source we could find for “default judgment” is C.R.C.P. 55, which sets forth the procedure for obtaining a default judgment in civil cases. However, it does not provide an express definition of “default judgment.”

Default judgment has a common meaning that courts appear to apply without difficulty. Given that Rule 3(D)’s reference applies to an inapplicable statute and there is no directly helpful definition to cite, we recommend amending the rule to delete the reference to section 42-4-1709(7).

We do not recall any substantive concerns being raised during our presentation at the last meeting to this suggestion.

QUESTION 2 (raised by the sub-committee): Should the Committee review the other statutory references in Rule 3, namely, “Docket Fee,” “Penalty,” and “Referee,” to confirm whether those statutory citations are accurate, and, if not, attempt to correct them as well?

SHORT ANSWER: Fix one and leave the other two alone. The reference to “Penalty” is correct. “Docket Fee” should be corrected. “Referee” could be left alone for now.

DISCUSSION:

PENALTY. That part of the rule appears correct. The statutes it references set forth penalties that apply.

DOCKET FEE. The rule appears to correctly cite sections 42-4-1710(2) and (3), both of which set forth when a court may order a docket fee (following a guilty plea, a default judgment, or a finding of guilt). However, although the rule also cites subsection (4), that subsection sets forth the amount of the docket fee. Thus, the use of “or” in that sentence feels a bit off. The rule could be simplified to go from:

(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.

REFEREE. The current definition includes both “Referee” and “Judicial Officer.” Although a quick search shows that “Referees” sit in municipal courts, we are unable to verify that there are no such “Referees” in state courts hearing traffic offenses. Accordingly, as no concerns have been raised to the Committee at this time, we recommend leaving this language unchanged for now unless and until an issue is raised.

RULE 7

Rule 7 states:

- (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: the defendant shall be advised 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.

QUESTION: Is there a statutory or constitutional requirement that a Judge provide a rights advisement in “open court,” or should the Rule reflect the practice of allowing a clerk to provide a written rights advisement to a person charged with a traffic infraction.

SHORT ANSWER:

The language should be amended to omit the “open court” requirement and include “designee”:

- (c)** If the defendant appears in person, ~~the referee shall advise him in open court of the following~~ “the referee or designee shall advise the defendant of the following:

DISCUSSION.

We are unaware of any statutory authority or constitutional provision that requires a Judge to advise a person charged with a traffic offense of their rights in open court. Instead, many traffic citations allow a person to pay online or at a clerk's office without ever receiving a rights advisement in open court. Additionally, the Committee has received a comment from Judge Lane indicating that it is common for a clerk to provide a written advisement of rights to a person charged with a traffic infraction.

Since our last meeting, we have confirmed that (1) jurisdictions generally advise defendants of their rights in writing rather than in open court; and (2) there is significant divergence across jurisdictions regarding how and from whom defendants receive that advisement. Based on that, we suggest rewording the rule to ensure that defendants who appear in person still receive full advisements of their rights, while also broadening how those rights are provided and who can give them to better align with common practice:

(c) If the defendant appears in person, ~~the referee shall advise him in open court of the following~~ the defendant shall be advised of the following:

Colorado District Attorneys' Council

3600 South Yosemite Street, Suite 200

Denver, Colorado 80237

(303) 830-9115

FAX (303) 830-8378

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

Travis Sides
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Tuan Nguyen
CHIEF INFORMATION
OFFICER

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 "T. Raynes", with a horizontal line extending to the right.

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

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 unanimous that an amendment to the rule clarifying 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).

Revision Proposed by Members

Crim. P. 16 (l)(a)(1)(IX): If evidence is subject to mandatory discovery under this rule, that the evidence is in digital format (e.g., electronic mail, text message or other form of electronic written communication) does not change the party's discovery obligation.

DISCUSSION REGARDING ISSUE II

One committee member supports amending Rule 16 (III)(g) to require a duty to confer prior to seeking sanctions or court intervention. One committee member does not support amending Rule 16 to require a duty to confer, but if the larger committee supports this rule change, the member adopts the proposed rule change language outlined below. One committee member opposes the rule change.

Proponents of the Amendment: Point out that a change to the rule would eliminate unnecessary litigation, case continuance, and encourage the parties to communicate in good faith to resolve discovery disputes without court intervention.

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 Member in Favor of the Amendment

Current Reading of the Rule:

(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)

Revision Proposed:

(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.

1) Form 4

- Problem: The form is confusing and uses language like “briefly,” which might cause pro se petitioners to unwisely omit facts necessary to support their claim.
- Proposal: See amended Form 4.
- Subcommittee notes:
 - All three committee members agree to the amended form.
 - All three committee members agree to include a simple language formulation of the *Strickland* standard at the bottom of page 3, because this is the most common claim. JC and KG agree contingent on omitting suggestions for facts that might support the claim and not attempting to summarize the legal standard for all potential claims.

2) Page Limits:

- Problem: Currently, no limits.
- Proposal: Amend 35(c)(3) to mirror CAR 28(g), deleting any requirements that are irrelevant to postconviction motions (such as references to table of contents) and replacing “opening brief” with “petition” and/or “supplemental petition” where appropriate.

(II) Any motion filed ~~shall substantially comply with the format of Form 4 and~~ shall substantially contain the information identified in Form 4, ~~Petition~~ Motion for Postconviction Relief Pursuant to Crim. P. 35(c). See Appendix to Chapter 29. ~~(III) If the motion fails to comply with Subsection (II)~~ INCLUDE THIS INFORMATION, the court shall return to the defense a copy of the document filed along with a blank copy of Form 4 and direct that a motion in substantial compliance with the form be filed within 49 days.

(III) LENGTH OF BRIEFS

(a) A MOTION FILED BY COUNSEL, A SUPPLEMENTAL MOTION, AND THE PROSECUTION'S RESPONSE BRIEF MUST CONTAIN NO MORE THAN 9,500 WORDS. A REPLY BRIEF FILED BY COUNSEL MUST CONTAIN NO MORE THAN 5,700 WORDS. HEADINGS, FOOTNOTES, AND QUOTATIONS COUNT TOWARD THE WORD LIMITATIONS. THE CAPTION, CERTIFICATE OF SERVICE, AND SIGNATURE BLOCK DO NOT COUNT TOWARD THE WORD LIMIT. THESE WORD LIMITS DO NOT APPLY TO PLEADINGS FILED BY SELF REPRESENTED PARTIES.

~~(b) A SELF REPRESENTED PARTY WHO DOES NOT HAVE ACCESS TO A WORD PROCESSING SYSTEM MUST FILE A TYPEWRITTEN OR LEGIBLY HANDWRITTEN PETITION OF NOT MORE THAN 30 DOUBLE-SPACED AND SINGLE-SIDED PAGES, OR A REPLY BRIEF OF NO MORE THAN 18 DOUBLE-SPACED AND SINGLE-SIDED PAGES.~~

(c) A PARTY MAY FILE A MOTION TO EXCEED THE WORD LIMITATION EXPLAINING THE REASONS WHY ADDITIONAL WORDS ARE NECESSARY.

- **Subcommittee notes:**

- KT does not view this as a widespread problem and is not in favor of dictating page limits in the rule.
 - KT notes that the procedural bar against successive claims means that defendants must raise any claims in this proceeding or lose them. She believes that, in light of this requirement and the different nature of a 35(c) vs. an appeal, there should be no limit to the number of pages, to ensure that the defendant is able to raise *all* potential claims. The claims raised in a 35(c) motion can be expansive and include ineffective assistance of counsel issues involving both trial and appellate counsel.

- KG and JC would adopt all of the non-struck through amendments, above.
 - KG and JC believe that these limits are reasonable and that, on appeal, it is good policy to require defense counsel to select their most compelling claims rather than list any and all potential claims. First for judicial efficiency, and second because it's usually in the defendant's interest that counsel select the best claims rather than dilute them with any and all potential claims. See *People v. Rodriguez*, 914 P.2d 230, 303 (Colo. 1996) (“[C]ounsel’s duty to render effective advocacy requires prioritizing issues on appeal based upon their strength so as to avoid ‘burying good arguments . . . in a verbal mound made up of strong and weak contentions.’” (quoting *Jones v. Barnes*, 463 U.S. 745, 754 (1983))); *People v. Galimanis*, 728 P.2d 761, 763 (Colo. App.1986) (“Effective advocacy requires the recognition that if there are one or two strong arguments for reversal, these should be presented forcefully and others of less merit eliminated.”).
- Re subsection (b), struck through, above:
 - KT would generally vote against any page limits. But, if the committee chooses to recommend page limits, KT would vote to exclude pro se litigants.
 - She observes that defendants need to allege the facts necessary to support a claim, and that they are less likely to know which facts are relevant. Given this, she is concerned that page limits will cause defendants to accidentally omit the facts necessary to make a claim. In particular, she notes the need to allege facts necessary to establish prejudice in a *Strickland* claim, particularly in light of *Townsell v. People*, 585 P.3d 838 (Colo. 2026).
 - KG and JC are neutral on question of whether pro se litigants should be subject to page limits and would like to hear the input of the committee.
 - KG surveyed Denver District Court judges on the question and found that the majority believe page limits for all parties

is necessary, but two judges prefer to exclude pro se litigants from the requirement, for the same reason cited by KT.

- JC believes that the page limits here are generous, and that it is unlikely that defendants would omit important facts because of those limits (these limits are significantly less than the federal rule). But, because the rule requires the court to review pro se petitions to determine whether to appoint counsel, and because counsel must then choose to adopt or waive the pro se claims, prosecutors will rarely address voluminous pro se petitions. For this reason, JC believes it is appropriate to defer to the judges as to whether it is worth exempting pro se petitioners from page limits and accepting the cost to judicial efficiency.
- For context, in Microsoft Word, 9500 words in 12-point Times New Roman font, double spaced, one inch margins is about 38 pages. These are the page limits in other Colorado rules:
 - CAR: 9500/5700 words (38 pages)
 - CRCP R. 12(b)(1), (2), and 56 briefs: 25 pages
 - CRCP all other briefs: 15 pages
 - Federal postconviction motions (under §§ 2254 and 2255): 30 pages

3) Discovery:

- Problem: The rule currently does not provide for any prehearing disclosures, and the CSC has held that, absent a specific authorization by constitution, statute, or rule, the trial court does not have authority to order disclosures. *See People v. Silva-Jaquez*, 2025 CO 11. There is no statute or rule addressing disclosures. *Id.* In *People v. Bell*, 2026 CO 28, the CSC recently held that an indigent defendant is entitled to duplicate pretrial discovery in certain circumstances. Specifically: (1) where a defendant has filed a postconviction motion and the court has determined that at least one of the claims has arguable merit, such that the petition cannot be summarily denied; (2) the defendant alleges that the record is likely to contain specific facts that would substantiate the errors alleged; and (3) the pretrial discovery is otherwise unavailable to postconviction counsel. This is obviously more narrow than

Crim. P. 16, and it does not apply to all parties or even all defendants. It is also likely to result in additional litigation, where parties debate whether the standard has been met. Re prehearing disclosures (witness lists and expert reports), the CSC has also held that, if one side is ambushed in the hearing with surprise testimony or evidence, the opposing side can ask for a continuance to prepare a rebuttal. *See Silva-Jaquez*, 2025 CO 11. But this is inefficient and time consuming.

- Proposal ONE: Add a requirement that the District Attorney's office provide the pretrial discovery in the case, to the extent it is still in the DA's possession. This will create a greater entitlement to discovery than defendants currently have under *Bell* and reduce complexity and unnecessary motions practice. Consistent with Rule 16 and § 16-12-309, the rule should also provide that a court may enter a protective order restricting discovery upon a showing of cause (e.g., a protective order limiting disclosure of sexually explicit photographs of a victim, or the home addresses of witnesses in a case where there is a higher risk of witness retaliation).
- Proposal TWO: Add a new provision requiring advance disclosure of witness lists, expert reports, and exhibits for both parties, using Crim. P. 16 as a model.

35(c)(4) MANDATORY DISCLOSURES.

- I. IF A POSTCONVICTION MOTION IS NOT DENIED IN THE INITIAL REVIEW SET FORTH IN SECTION (C)(3)(IV) OF THIS RULE, THE PROSECUTION SHALL PROVIDE AN ELECTRONIC COPY OF ANY PRETRIAL DISCOVERY THAT IS EXTANT AND IDENTIFIABLE. SUCH DISCOVERY SHALL BE PROVIDED WITHIN 35 DAYS OF A REQUEST FROM THE DEFENSE, FOLLOWING A COURT ORDER EITHER APPOINTING COUNSEL OR REQUIRING THE PROSECUTION'S RESPONSE UNDER SECTION (C)(3)(V) OF THIS RULE, WHICHEVER IS EARLIER. UPON A SHOWING OF CAUSE, THE COURT MAY ENTER A PROTECTIVE

ORDER THAT REQUIRES SPECIFIC DISCLOSURES BE RESTRICTED OR DEFERRED, OR MAKE SUCH OTHER ORDER AS IS APPROPRIATE.

II. SUBJECT TO CONSTITUTIONAL LIMITATIONS, EACH PARTY WILL PROVIDE THE FOLLOWING TO OPPOSING COUNSEL NO LATER THAN 35 DAYS BEFORE A POSTCONVICTION EVIDENTIARY HEARING:

- (a) THE NAME AND CONTACT INFORMATION OF ANY WITNESS THAT THE PARTY INTENDS TO CALL AT THE HEARING;
- (b) ANY EXHIBIT THAT THE PARTY INTENDS TO INTRODUCE AT THE HEARING;
- (c) FOR ANY EXPERT WITNESS WHO WILL BE CALLED TO TESTIFY:
 - (1) A WRITTEN STATEMENT OF THE OPINIONS THAT THE WITNESS WILL EXPRESS, AND THE BASIS AND REASONS FOR THOSE OPINIONS, INCLUDING ANY SUPPORTING FACTS OR DATA;
 - (2) THE WITNESS'S RESUME, WHICH WILL LIST THE WITNESS'S EDUCATIONAL AND PROFESSIONAL HISTORY AND IDENTIFY ANY PUBLICATIONS AUTHORED WITHIN THE PAST TEN YEARS.
- (d) IF EITHER PARTY INTENDS TO CALL AN ADDITIONAL WITNESS TO REBUT THE TESTIMONY OF ONE OF THE WITNESSES LISTED IN OPPOSING COUNSEL'S DISCLOSURE, THE NAME AND CONTACT INFORMATION OF THAT ADDITIONAL

Commented [JC1]: We use this language in R. 16 with regard to the defendant's discovery obligations. The Colorado Supreme Court has interpreted the phrase as limiting the defendant's discovery obligations to witnesses and evidence that the defense intends to present (rather than all information in the defendant's possession) and reports or statements that address the subject matter of that testimony. See *People v. Martinez*, 970 P.2d 469 (Colo. 1998). It is the committee's expectation that these same principles will apply to this rule.

WITNESS MUST BE DISCLOSED 14 DAYS BEFORE THE POSTCONVICTION EVIDENTIARY HEARING. IF THAT ADDITIONAL WITNESS IS AN EXPERT, THE PARTY WILL ALSO PROVIDE THE STATEMENT AND RESUME REQUIRED IN SUBSECTION (I)(C).

- **Subcommittee notes for proposals ONE and TWO:**

- ONE/TWO: All three committee members would vote to adopt the DA's obligation to produce the pretrial discovery and the reciprocal disclosure of witness lists and contact information.
- TWO: As to the reciprocal disclosure of exhibits and expert reports, JC would vote yes, KT would vote no, and KG takes no position.
 - KT has several concerns, noting that this rule would require more than R. 16 (which does not require that the defense disclose exhibits at all, requires disclosure of expert reports only upon a court order, and allows a court to order the prosecution to disclose underlying data and facts of an expert's opinion only where the interests of justice are served). First, she thinks that requiring advance disclosure of exhibits may infringe on the defendant's constitutional right to effective assistance of counsel. Second, she raises a question as to whether the CSC has the authority to require defense disclosures in a rule without statutory authority (noting that the requirement that defendants disclose defenses in advance is authorized by statute). And third, KT thinks these disclosures are too burdensome to the defense, as the defense may not make final decisions as to which exhibits or evidence to present until the morning of the hearing or even mid-hearing. She also thinks that these disclosures are unnecessary for the prosecution to be prepared for a hearing, because the prosecutor should have a general idea of what will be presented from the petition and supplemental brief, any information disclosed pursuant to § 18-1-417, C.R.S., and can use the witness list to attempt to interview the expert where necessary.

- JC believes that disclosure of expert reports is necessary for the prosecution to prepare for the hearing and is concerned that some experts will not cooperate with an extensive pre-hearing interview. It is nearly impossible to prepare a cross-examination of a technical expert (e.g. ballistics, DNA, forensic psychology, SBI/medical) without knowing the specifics of the expert's opinions and basis for opinions in advance, because this usually requires consultation with a different expert. JC also believes that both parties sharing exhibits in advance is beneficial for both sides; it eliminates surprise, permits investigation and preparation, and results in a smoother and more orderly hearing. JC notes that the federal courts permit reciprocal discovery in postconviction beyond that which is being proposed here. *See* Rule 6(a) of the Rules Governing Section 2254 Cases in the U.S. District Courts. The ABA Standards also recommend reciprocal discovery beyond that which is proposed here. *See* ABA Criminal Justice Standard 22-4.5. And the SCOTUS and CSC have both ruled that there is no constitutional bar to requiring the defense to disclose in advance the evidence it plans to present at trial or hearing. *See Williams v. Florida*, 399 U.S. 78 (1970); *People v. Dye*, 2024 CO 2.
- Problem: § 18-1-417 provides that, when a defendant makes a claim alleging ineffective assistance of counsel, the defendant automatically waives attorney client and work product privilege for information related to the claim. In *People v. Cortes-Gonzalez*, 506 P.3d 835 (2022), the Colorado Supreme Court clarified the obligations and procedures required by the statute. There is still unnecessary motions practice addressing this issue, as allegedly ineffective attorneys are often unwilling to disclose previously privileged documents without an explicit court order.
- Proposal THREE: While the case speaks for itself, it would be valuable to include its holding in the rule, to eliminate unnecessary litigation when the allegedly ineffective counsel refuses to make disclosures without a court order. And to list discovery procedures but exclude the discovery procedures mandated by *Cortes-Gonzalez* could be unintentionally misleading.

35(c)(4) MANDATORY DISCLOSURES.

III. WHENEVER A DEFENDANT ALLEGES INEFFECTIVE ASSISTANCE OF COUNSEL, THE DEFENDANT AUTOMATICALLY WAIVES ATTORNEY-CLIENT PRIVILEGE, ATTORNEY WORK PRODUCT PRIVILEGE, AND ANY OTHER CONFIDENTIALITY, BETWEEN THE ALLEGEDLY INEFFECTIVE COUNSEL AND THE DEFENDANT, BUT ONLY WITH RESPECT TO THE INFORMATION THAT IS RELATED TO THE INEFFECTIVE ASSISTANCE CLAIM, PURSUANT TO § 18-1-417, C.R.S. IF THE COURT ORDERS AN EVIDENTIARY HEARING ON THE POSTCONVICTION MOTION, PARTIES SHOULD USE THE FOLLOWING PROCEDURES FOR DISCLOSURE:

(1) AT THE PROSECUTION'S REQUEST, THE ALLEGEDLY INEFFECTIVE COUNSEL MUST PRODUCE ANY INFORMATION RELATED TO THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS WITHOUT UNDUE DELAY.

(2) IF THE ALLEGEDLY INEFFECTIVE COUNSEL OR AN EXPERT WITNESS HAS RELEASED INFORMATION TO THE DEFENDANT OR THE DEFENDANT'S POSTCONVICTION COUNSEL, THE DEFENDANT OR THE DEFENDANT'S POSTCONVICTION COUNSEL SHALL PERMIT THE PROSECUTOR TO INSPECT AND COPY ANY OF THIS MATERIAL THAT IS RELATED TO THE DEFENDANT'S CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL UPON REQUEST FROM THE PROSECUTION, WITHOUT UNDUE DELAY.

Commented [JC2]: This is partially quoting and partially summarizing *People v. Cortes-Gonzalez*, 506 P.3d 835 (2022).

Commented [JC3]: This is partially quoting and partially summarizing *People v. Cortes-Gonzalez*, 506 P.3d 835 (2022).

Commented [JC4]: This is a direct quote from 18-1-417(2); the only modification is replacing the term "current counsel" with "postconviction counsel," for clarity, and adding the term "without undue delay" to mirror (1).

- **Subcommittee notes for THREE:**

- JC would vote to adopt the amendment above.
- KT and KG agree that this is an accurate statement of the law but would prefer to end this section with the citation to section 18-1-417, in the interest of brevity and simplicity. Rather than the following language, they would vote to include a short committee note citing *Cortes-Gonzalez*.
 - For example: [3] It is expected that the parties will refer to *People v. Cortes-Gonzalez*, 506 P.3d 835 (2022) for the procedures governing disclosures and requests for disclosures, if an evidentiary hearing is ordered by the court.

4) Amend 35(c)(3)(V) to: (1) more accurately reflect the process of appointing PD/ADC, (2) include realistic deadlines for both appointed counsel and the court, (3) and reflect appointed counsel's duty to waive or adopt the claims raised in the pro se motion

- Problem: The procedures for appointing postconviction counsel do not accurately reflect the realities of this process. The subcommittee is not aware of any legal problems caused by this discrepancy, but if we are amending the subsection for other reasons, we can adjust this as well.
- Problem: The deadlines currently provided for both appointed counsel and the court are unrealistic. The result is extensions that continue for years. Average length of time between appointment and the filing of a supplemental brief for the last 30 cases in Denver (excluding cases where delay is the result of appeal): 520 days. The majority are filed in about a year, but there are a number of outliers that are filed after 1000 days. Most extreme examples: *People v. Gone*, 95CR0907 (22 years between the initial appointment of counsel and the filing of the defendant's amended petition), *People v. Ramirez*, 06CR4246 (14 years between the initial appointment and the filing of the supplemental petition).
- Problem: Recent court opinions have clarified that appointed counsel must expressly adopt claims from the pro se petition, or they may be deemed

abandoned, and also that appointed counsel must either adopt arguably meritorious claims or abandon claims that lack arguable merit. *See People v. Smith*, 2024 CO 3, ¶ 22 (“We likewise are unpersuaded by Smith’s argument that a defendant’s pro se claims are automatically preserved—even if the claims are not pursued—because the language of Crim. P. 35(c)(3)(V) simply requires counsel ‘to add’ to, not to replace or to winnow, the defendant’s pro se claims. . . . Smith’s reading of Crim. P. 35(c)(3)(V) also overlooks the role of counsel, who, as we discuss more fully below, is tasked with determining which postconviction claims to pursue and which to abandon.”); *People v. Segura*, 2024 CO 70, ¶ 26 (“The OPD must then decide which claims (if any) lack arguable merit and should be abandoned, which arguably meritorious claims (if any) should be supplemented, and which new claims (if any) have arguable merit and should be added”); Colo. RPC 3.1 (“A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous....”). Neither of these principles are expressed in the rule, and not all practitioners are aware of them.

- Proposal: Amend 35(c)(3)(V) to: (1) more accurately reflect the process of appointing PD/ADC, (2) include realistic deadlines for both appointed counsel and the court, (3) and clarify appointed counsel’s duty to waive or adopt the claims raised in the pro se motion

(V) If the court does not deny the motion under (IV) above, the court shall cause a complete copy of said motion to be served on the prosecuting attorney if one has not yet been served by counsel for the defendant. If the defendant has requested counsel be appointed in the motion, the court shall cause a complete copy of said motion to be served on the Public Defender. Within 35~~49~~ days, the Public Defender shall respond as to whether the Public Defender’s Office intends to enter on behalf of the defendant pursuant to § 21-1-104(1)(b), 6 C.R.S. ~~In such response, the Public Defender shall identify whether any conflict exists, request any additional time needed to investigate, and add any claims the Public Defender finds to have arguable merit.~~ IF THE PUBLIC DEFENDER IDENTIFIES A CONFLICT, THE COURT SHALL APPOINT ALTERNATIVE DEFENSE COUNSEL.

WITHIN 126 DAYS OF CONFLICT-FREE COUNSEL'S ENTRY OF APPEARANCE, POSTCONVICTION COUNSEL SHALL FILE A SUPPLEMENTAL BRIEF ADDING ANY NEW CLAIMS COUNSEL FINDS TO HAVE ARGUABLE MERIT, ENDORSING AND, IF APPROPRIATE, SUPPLEMENTING ANY OF THE ORIGINAL CLAIMS COUNSEL FINDS TO HAVE ARGUABLE MERIT, AND ABANDONING ANY OF THE ORIGINAL CLAIMS APPOINTED COUNSEL FINDS TO LACK ARGUABLE MERIT. COUNSEL MAY REQUEST EXTENSIONS OF TIME FOR GOOD CAUSE, BUT ANY SUPPLEMENTAL BRIEF MUST BE FILED WITHIN 365 DAYS OF APPOINTMENT.

Upon receipt of the SUPPLEMENTAL BRIEF ~~response of the Public Defender~~, or immediately if no counsel was requested by the defendant or if the defendant already has counsel, the court shall direct the prosecution to respond to the defendant's claims or request additional time to respond within 35 days and the defendant to reply to the prosecution's response OR REQUEST ADDITIONAL TIME TO RESPOND within 21 days. The prosecution has no duty to respond until so directed by the court. Thereafter, the court shall grant a prompt hearing on the motion unless, based on the pleadings, the court finds that it is appropriate to enter a ruling containing written findings of fact and conclusions of law. At the hearing, the court shall take whatever evidence is necessary for the disposition of the motion. The court shall enter written or oral findings either granting or denying relief within 126 days (18 weeks) of the conclusion of the hearing or provide the parties a notice of the date by which the ruling will be issued.

If the court finds that defendant is entitled to postconviction relief, the court shall make such orders as may appear appropriate to restore a right which was violated, such as vacating and setting aside the judgment, imposing a new sentence, granting a new trial, or discharging the defendant. The court may stay its order for discharge of the defendant pending appellate court review of the order. If the court orders a new trial, and there are witnesses who have died or otherwise become

unavailable, the transcript of testimony of such witnesses at the trial which resulted in the vacated sentence may be used at the new trial.

- **Subcommittee notes:**

- All three committee members would vote to adopt these amendments.
- Re time for the PD's Office to conduct a conflict check:
 - KT surveyed colleagues at the PD's Office and believes that amending 49 days to 35 days is reasonable.
- Re requirement that counsel expressly adopt or waive claims:
 - This language taken from *People v. Segura*, 558 P.3d 234 (Colo. 2024) (counsel "must then determine which claims (if any) lack arguable merit and should be abandoned, which arguably meritorious claims (if any) should be supplemented, and which new claims (if any) have arguable merit and should be added.").
- Re deadline for appointed counsel's supplemental brief:
 - Feedback from postconviction defense practitioners suggests that 12 months is sufficient for a case that went to trial.
 - Phrasing copied from Crim. P. 32.2, which requires that "any postconviction review motions be filed within 154 days (22 weeks) of the advisement date" in death penalty cases.
 - The subcommittee agrees that this should not be a jurisdictional deadline.
 - It is possible for a court rule to create a jurisdictional deadline. *See, e.g., Brown v. Walker*, 521 P.3d 1014 (Colo. 2022). However, we can avoid courts reading this as jurisdictional by: (1) avoiding any reference to jurisdiction; (2) using positive language ("must" and "within") rather than negative language (e.g. "no later than" or "may not"); and (3) not specifying a consequence for violating the deadline. *See Babcock v. People*, 569 P.3d 850, 855-56 (Colo. 2025).
 - If committee notes are adopted, consider a statement that the committee does not understand this deadline to be jurisdictional and a citation to *Babcock v. People*, 569 P.3d 850 (Colo. 2025).

- If there is any concern that the court will consider this jurisdictional, KT opposes this change.
- Re court's deadline:
 - Judge Gerdes surveyed colleagues and there seems to be consensus that 126 days is more reasonable than 63 days for the court to issue a written ruling.

5) Issue raised by Judge Harris:

- Problem: Ordinarily, a procedural change in the law does not apply retroactively (in Colorado, this means once the conviction is entered, not once the appeals process is final). But Crim. P. 35(c)(1) provides that, if a person has timely appealed their conviction and the conviction has not yet been affirmed on appeal, that person can file a postconviction motion in the trial court on the ground that there has been a significant change in the law that should be applied to their case retroactively in the interest of justice. This means that, right now, there are pending appeals where the defendant received a habitual conviction before *Erlinger* was decided, and the COA is remanding those cases to the district court so that the defendant can file a postconviction motion under Crim. P. 35(c)(1). As the rule currently stands, the defendant cannot do this without also filing all other postconviction claims he has, or those claims will be barred as successive. This could delay the 35(c)(1) claim quite a bit (IAC claims often take more than a year for appointed counsel to prepare and file), and it might unnecessarily waste resources addressing IAC claims prematurely (if the defendant is actually granted relief under 35(c)(1), there is no need to address the highly resource-intensive IAC determination). In *People v. Crabtree*, 25SC165 the CSC has granted cert on a related question: the procedure that applies in the appellate court and district court when a defendant is on direct appeal and there is a change in the law that might justify relief under Crim. P. 35(c)(1). That opinion might address our question (or create procedure that affects our question), so we should discuss whether to wait or move forward.
- Proposal: pending.

- **Subcommittee notes:**

- The committee has agreed on language to address this and has also agreed to wait until the CSC has issued its opinion in *People v. Crabtree*, 25SC165.

6) Clarify claims:

- Problem: Not all pro se petitioners (or defense counsel) clearly and separately state “every ground” for relief, as required by Form 4. This sometimes results in decisions being reversed on appeal where the court of appeals interprets the claims being raised differently than the trial court, wasting time and resources.
- Proposal: Amend Form 4 and 35(c) to direct that the movant include a numbered list of the claims raised (a simpler and less demanding version of C.A.R. 28(a)), to ensure that it is clear what claims are actually being raised.

35(c)(3)(II):

Any motion filed shall substantially comply with the format of Form 4 and shall substantially contain the information identified in Form 4, Petition for Postconviction Relief Pursuant to Crim. P. 35(c), INCLUDING A NUMBERED LIST SPECIFYING EACH GROUND FOR RELIEF. See Appendix to Chapter 29.

- **Subcommittee notes:**

- All three committee members agree to this amendment to both the rule and to Form 4.

7) Committee notes:

- Problem: Because courts (and often practitioners) only address postconviction motions occasionally, they are less likely to be experienced and up to date regarding controlling caselaw. There are two possible solutions. The first is to

codify that caselaw in the rule. The second is to include committee notes citing the relevant caselaw.

- Proposal: The subcommittee proposes that the second option is more suited to areas of the rule that are subject to adjustment and change by appellate litigation. Put simply, it's easier and less controversial to add a cite to an obviously relevant case than it is to organize a change to the rule itself. This second option will also reduce confusion—when the committee attempts to reduce a complex opinion to one or two sentences in a rule, there is a risk of mistranslation. This option also has the benefit of brevity; a lengthy and unwieldy rule is more difficult for practitioners to use in practice.

TO: Judge Harris

FROM: Rule 35(c) Subcommittee (Johanna Coats, Kandace Gerdes, Karen Taylor)

DATE: October 9, 2026

RE: Revised Form 4 and revisions to Rule 35(c)

The subcommittee was asked to review whether Rule 35(c) should be modified to incorporate case law and be consistent in verbiage with other rules of criminal procedure.

The subcommittee has met virtually and in person, most recently on October 7, 2026. At that meeting, the following was discussed and the subcommittee presents this Memo to the Rules Committee for its consideration. (A comprehensive memo is attached for the members' review prior to the October 16, 2026 meeting.) This Memo summarizes the items for the Committee's consideration:

- **Revised Form 4.** The subcommittee seeks discussion and a vote on the updated Form 4 (red-line attached), with the hope that it can be submitted to the Supreme Court for its consideration.

The subcommittee is unanimous on revisions to Form 4.

- **Clarify Claims.** The subcommittee is unanimous that Form 4 and the Rule should provide guidance to the defendant/defense counsel.

- See Form 4
- Proposed amendment to 35(c)(3)(II) in all caps:

Any motion filed shall substantially comply with the format of Form 4 and shall substantially contain the information identified in Form 4, Petition for Postconviction Relief Pursuant to Crim. P. 35(c), INCLUDING A NUMBERED LIST SPECIFYING EACH GROUND FOR RELIEF. See Appendix to Chapter 29.

- **Word Limits.** If the Committee votes to adopt word limits, 35(c)(3) would be amended, to mirror the limits found at CAR 28(g).

The Committee is not unanimous on this issue.

- Ms. Taylor does not agree with word limits. However, if adopted, she would propose that word limits do not apply to *pro se* litigants.
- Ms. Coats and Judge Gerdes propose page limits, with permission to seek permission to exceed word limits.

- **Discovery.** The current rule does not provide guidance, and the Colorado Supreme Court has held that absent specific authorization, a trial court does not have the authority to require disclosure. See *People v. Silva-Jaquez*, 2025 CO 11.

The subcommittee proposed to add 35(c)(4):

- Proposal One: The subcommittee unanimously recommends to add a provision that the prosecutor's office provide pretrial discovery in the case, if it is still in the prosecution's possession.

I. IF A POSTCONVICTION MOTION IS NOT DENIED IN THE INITIAL REVIEW SET FORTH IN SECTION (C)(3)(IV) OF THIS RULE, THE PROSECUTION SHALL PROVIDE AN ELECTRONIC COPY OF ANY PRETRIAL DISCOVERY THAT IS EXTANT AND IDENTIFIABLE. SUCH DISCOVERY SHALL BE PROVIDED WITHIN 35 DAYS OF A REQUEST FROM THE DEFENSE, FOLLOWING A COURT ORDER EITHER APPOINTING COUNSEL OR REQUIRING THE PROSECUTION'S RESPONSE UNDER SECTION (C)(3)(V) OF THIS RULE, WHICHEVER IS EARLIER. UPON A SHOWING OF CAUSE, THE COURT MAY ENTER A PROTECTIVE ORDER THAT REQUIRES SPECIFIC DISCLOSURES BE RESTRICTED OR DEFERRED, OR MAKE SUCH OTHER ORDER AS IS APPROPRIATE.

- Proposal Two: The subcommittee is not unanimous as to whether to also add a new provision requiring advance disclosure of witness lists, expert reports, and exhibits (using Crim. P, 16 as a model).

II. SUBJECT TO CONSTITUTIONAL LIMITATIONS, EACH PARTY WILL PROVIDE THE FOLLOWING TO OPPOSING COUNSEL NO LATER THAN 35 DAYS BEFORE A POSTCONVICTION EVIDENTIARY HEARING:

- (a) THE NAME AND CONTACT INFORMATION OF ANY WITNESS THAT THE PARTY INTENDS TO CALL AT THE HEARING;
- (b) ANY EXHIBIT THAT THE PARTY INTENDS TO INTRODUCE AT THE HEARING;
- (c) FOR ANY EXPERT WITNESS WHO WILL BE CALLED TO TESTIFY:
 - (1) A WRITTEN STATEMENT OF THE OPINIONS THAT THE WITNESS WILL EXPRESS, AND THE BASIS AND REASONS FOR THOSE OPINIONS, INCLUDING ANY SUPPORTING FACTS OR DATA;
 - (2) THE WITNESS'S RESUME, WHICH WILL LIST THE WITNESS'S EDUCATIONAL AND PROFESSIONAL HISTORY AND IDENTIFY ANY PUBLICATIONS AUTHORED WITHIN THE PAST TEN YEARS.
- (d) IF EITHER PARTY INTENDS TO CALL AN ADDITIONAL WITNESS TO REBUT THE TESTIMONY OF

ONE OF THE WITNESSES LISTED IN OPPOSING COUNSEL'S DISCLOSURE, THE NAME AND CONTACT INFORMATION OF THAT ADDITIONAL WITNESS MUST BE DISCLOSED 14 DAYS BEFORE THE POSTCONVICTION EVIDENTIARY HEARING. IF THAT ADDITIONAL WITNESS IS AN EXPERT, THE PARTY WILL ALSO PROVIDE THE STATEMENT AND RESUME REQUIRED IN SUBSECTION (I)(C).

- Proposal Three: The subcommittee unanimously proposes to include a provision about obligations upon the allegedly ineffective counsel as to waiver of privilege when a defendant alleges ineffective assistance of counsel. The subcommittee is not unanimous on the language. (The italics smaller font is the disagreed upon language.) In lieu of the italicized language it is proposed to have a Comment, see below [6].

III. WHENEVER A DEFENDANT ALLEGES INEFFECTIVE ASSISTANCE OF COUNSEL, THE DEFENDANT AUTOMATICALLY WAIVES ATTORNEY-CLIENT PRIVILEGE, ATTORNEY WORK PRODUCT PRIVILEGE, AND ANY OTHER CONFIDENTIALITY, BETWEEN THE ALLEGEDLY INEFFECTIVE COUNSEL AND THE DEFENDANT, BUT ONLY WITH RESPECT TO THE INFORMATION THAT IS RELATED TO THE INEFFECTIVE ASSISTANCE CLAIM, PURSUANT TO § 18-1-417, C.R.S. IF THE COURT ORDERS AN EVIDENTIARY HEARING ON THE POSTCONVICTION MOTION, PARTIES SHOULD USE THE FOLLOWING PROCEDURES FOR DISCLOSURE:

- (1) *AT THE PROSECUTION'S REQUEST, THE ALLEGEDLY INEFFECTIVE COUNSEL MUST PRODUCE ANY INFORMATION RELATED TO THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS WITHOUT UNDUE DELAY.*
- (2) *IF THE ALLEGEDLY INEFFECTIVE COUNSEL OR AN EXPERT WITNESS HAS RELEASED INFORMATION TO THE DEFENDANT OR THE DEFENDANT'S POSTCONVICTION COUNSEL, THE DEFENDANT OR THE DEFENDANT'S POSTCONVICTION COUNSEL SHALL PERMIT THE PROSECUTOR TO INSPECT AND COPY ANY OF THIS MATERIAL THAT IS RELATED TO THE DEFENDANT'S CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL UPON REQUEST FROM THE PROSECUTION, WITHOUT UNDUE DELAY.*

- **Process to appoint post-conviction counsel, deadlines and duty to waive or adopt claims raised in a pro se motion.** The subcommittee is unanimous in this proposal to amend 35(c)(3)(V) (additions in all caps).

(V) If the court does not deny the motion under (IV) above, the court shall cause a complete copy of said motion to be served on the prosecuting attorney if one has not yet been served by counsel for the defendant. If the defendant has requested counsel be appointed in the motion, the court shall cause a complete copy of said motion to be served on the Public Defender. Within 3549 days, the Public Defender shall respond as to whether the Public Defender's Office intends to enter on behalf of the defendant pursuant to § 21-1-104(1)(b), 6 C.R.S. In such response, the Public Defender shall identify whether any conflict exists, request any additional time needed to investigate, and add any claims the Public Defender finds to have arguable merit. IF THE PUBLIC DEFENDER IDENTIFIES A CONFLICT, THE COURT SHALL APPOINT ALTERNATIVE DEFENSE COUNSEL. WITHIN 126 DAYS OF CONFLICT-FREE COUNSEL'S ENTRY OF APPEARANCE, POSTCONVICTION COUNSEL SHALL FILE A SUPPLEMENTAL BRIEF ADDING ANY NEW CLAIMS COUNSEL FINDS TO HAVE ARGUABLE MERIT, ENDORSING AND, IF APPROPRIATE, SUPPLEMENTING ANY OF THE ORIGINAL CLAIMS COUNSEL FINDS TO HAVE ARGUABLE MERIT, AND ABANDONING ANY OF THE ORIGINAL CLAIMS APPOINTED COUNSEL FINDS TO LACK ARGUABLE MERIT. COUNSEL MAY REQUEST EXTENSIONS OF TIME FOR GOOD CAUSE, BUT ANY SUPPLEMENTAL BRIEF MUST BE FILED WITHIN 365 DAYS OF APPOINTMENT. Upon receipt of the SUPPLEMENTAL BRIEF response of the Public Defender, or immediately if no counsel was requested by the defendant or if the defendant already has counsel, the court shall direct the prosecution to respond to the defendant's claims or request additional time to respond within 35 days and the defendant to reply to the prosecution's response OR REQUEST ADDITIONAL TIME TO RESPOND within 21 days. The prosecution has no duty to respond until so directed by the court. Thereafter, the court shall grant a prompt hearing on the motion unless, based on the pleadings, the court finds that it is appropriate to enter a ruling containing written findings of fact and conclusions of law. At the hearing, the court shall take whatever evidence is necessary for the disposition of the motion. The court shall enter written or oral findings either granting or denying relief within 126 DAYS (18 WEEKS) of the conclusion of the hearing or provide the parties a notice of the date by which the ruling will be issued.

- **Retroactive application (Judge Harris Issue).** The subcommittee proposes to address this issue after the opinion in *People v. Crabtree*, 25SC165.

- **Use of “COMMENTS”**. The subcommittee proposes that in lieu of codifying case law in the rule, to adopt “COMMENTS” to follow immediately follow the Rule.

By way of example only until amendments are adopted,

COMMENTS

2026 Amendments

[1] Effective administration of post-conviction relief to prevent injustices has been a long-term goal of the Bench, Bar, and Public. In the past several years, the Colorado Supreme Court and Colorado Court of Appeals have recognized the need for clear guidance for all stakeholders as to the parameters of subsection (c), including guidance for the judicial officer in their review of a post-conviction motion, post-conviction discovery, appointment of post-conviction counsel, the right to a post-conviction hearing, and successive claims.

[2] The Committee acknowledges the Rule is designed to describe, guide, and eliminate ambiguity for all stakeholders.

[3] It is expected that trial judges will review any motion for post-conviction relief under subsection (c), in light of current case law, including but not limited to *People v. Segura*, 558 P.3d 234 (Colo. 2024) and *People v. Roberts*, 591 P.3d 28 (Colo. 2026). It is expected that a trial judge shall determine whether the motion proceeds to (c)(3)(V) or is denied by written order under (c)(3)(IV). *People v. Evans*, 592 P.3d 170 (Colo. 2026); *People v. Martinez*, 588 P.3d 28 (Colo. App. 2026).

[4] It is expected that should a case be forwarded to the district attorney and post-conviction counsel for discovery and briefing, that they will be guided by *People v. Bell*, 589 P.3d 465 (Colo. 2026).

[5] Subsection (c)(3)(V), pertaining to the trial courts written or oral findings, was specifically amended to address a reasonable time for a ruling with consideration of a trial court’s other demands.

[6] Subsection (c)(4) is added with the expectation that the parties will refer to *People v. Cortes-Gonzalez*, 506 P.3d 835 (2022) for the procedures governing disclosures and requests for disclosures, if an evidentiary hearing is ordered by the court.

[6] Finally, in amending this subsection, the Committee seeks to provide guidance as to the limits of the Rule, as a vehicle to prevent injustice but not to provide perpetual review. *Ward v. People*, 560 P.3d 410 (Colo. 2024); *People v. Melendez*, 549 P.3d 1028 (Colo. App. 2024).

Form 4 (CR)	Motion for Postconviction Review Under Criminal Procedure Rule 35(c)	
A. District Court Colorado County: Court Address:		This box is for court use only.
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:

1. Conviction Under Attack

- What was the date of your conviction? *(day/month/year)*
- Which of the following resulted in your conviction? *(select one)*
 Plea Jury Trial Court Trial
- Were you represented by an attorney? *(Yes or 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

- 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.)*

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 under attack state every ground on which you claim that you are being held unlawfully state every claim that your conviction and/or sentence was unlawful.~~



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. Explain why you believe these facts support your claim.

- 2) If you are alleging ineffective assistance of counsel, please explain what you think your attorney did wrong and how this potential ineffectiveness might have affected the outcome of your case.

- 3) —

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~~4) Explain why you believe these facts show that you are being held unlawfully. Include any legal authority that you think is relevant here.~~

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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)

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 ~~Motions~~Petitions

Important Notice Regarding Additional ~~Motions~~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 ~~motion~~petition must be listed in this motion, or future motions may be denied.

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

8. Sign & Date

Print Your Name:

Signature:

Dated:

Counsel Signature & Date: *(if any)*

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~~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.

Rule 45. Time

(a) Computation. In computing any period of time prescribed or allowed by these rules, the day of the event from which the designated period of time begins to run is not to be included. Thereafter, every day shall be counted including holidays, Saturdays, and Sundays. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, ~~or a legal holiday, or any other day when the court is closed.~~ In this in-which event, the period runs until the end of the next day which is not a Saturday, a Sunday, ~~or a legal holiday, or any other day when the court is closed.~~ The “next day” is determined by continuing to count forward when the period is measured after an event and backward when measured before an event. As used in these Rules, “legal holiday” ~~includes~~ means the first day of January, observed as New Year's Day; the third Monday in January, observed as Martin Luther King Jr. Day; the third Monday in February, observed as ~~Washington-Lincoln~~ President's Day; the last Monday in May, observed as Memorial Day; the 19th day of June, observed as Juneteenth; the fourth day of July, observed as Independence Day; the first Monday in September, observed as Labor Day; the ~~second-first~~ Monday in October, observed as ~~Columbus Day~~ Frances Cabrini Day; the 11th day of November, observed as Veteran's Day; the fourth Thursday in November, observed as Thanksgiving Day; and the twenty-fifth 25th day of December, observed as Christmas Day, ~~and any other day except Saturday or Sunday when the court is closed.~~

(b) Enlargement. When an act is required or allowed to be performed at or within a specified time, the court for cause shown may at any time in its discretion:

- (1) With or without motion or notice, order the period enlarged if application therefor is made before expiration of the period originally prescribed or of that period as extended by a previous order; or,
- (2) Upon motion, permit the act to be done after expiration of the specified period if the failure to act on time was the result of excusable neglect.

(c) [Repealed].

(d) [Repealed].

(e) [Repealed].

(f) Inmate Filings. A document filed by an inmate confined in an institution is timely filed with the court if deposited in the institution's internal mailing system on or before the last day for filing. If an institution has a system designed for legal mail, the inmate must use that system to receive the benefit of this rule.

COMMENT

After the particular effective date, time computation in most situations is intended to incorporate the Rule of Seven. Under the Rule of Seven, a day is a day, and because calendars are divided into 7-day week intervals, groupings of days are in 7-day or multiples of 7-day intervals. Groupings of less than 7 days have been left as they were because such small numbers do not

interfere with the underlying concept. Details of the Rule of Seven reform are set forth in an article by Richard P. Holme, 41 Colo. Lawyer, Vol. 1, P 33 (January 2012).

Time computation is sometimes “forward,” meaning starting the count at a particular stated event [such as date of filing] and counting forward to the deadline date. Counting “backward” means counting backward from the event to reach the deadline date [such as a stated number of days being allowed before the commencement of trial]. In determining the effective date of the Rule of Seven time computation/time interval amendments having a statutory basis, said amendments take effect on July 1, 2012 and regardless of whether time intervals are counted forward or backward, both the time computation start date and deadline date must be after June 30, 2012. Further, the time computation/time interval amendments do not apply to modify the settings of any dates or time intervals set by an order of a court entered before July 1, 2012.