ADVANCE SHEET HEADNOTE
June 15, 2026

2026 CO 45

No. 25SA362, *People v. Roberts*—Postconviction Motions—Court-Appointed Counsel—Supplementation of Claims.

The supreme court considers whether, under Crim. P. 35(c)(3)(V), a defendant is entitled to have a public defender or court-appointed counsel potentially supplement the defendant's Crim. P. 35(c) motion when the defendant's private attorney filed the motion and subsequently withdrew from the case.

After a Crim. P. 35(c) motion passes summary review, Crim. P. 35(c)(3)(V) instructs the court to simultaneously (1) serve the motion on the public defender for potential supplementation, "[i]f the defendant has requested counsel," and (2) "immediately" direct the prosecution to respond, "if the defendant already has counsel." In this case, the supreme court determines that Crim. P. 35(c)(3)(V) is ambiguous because it is susceptible to two reasonable interpretations and it directs a postconviction court to two conflicting, but reasonable, courses of action—appointing and serving the motion on the public defender while also

immediately directing the prosecution to respond without appointing a public defender.

Considering the overall purpose of the criminal procedure rules under Crim. P. 2 and our case law articulating Crim. P. 35(c)(3)(V)'s purpose, the supreme court concludes that the drafters' intent is that the defendant should have counsel's help in filing and reviewing the motion. Thus, the court holds that where a defendant's private attorney filed a Crim. P. 35(c) motion, the defendant "already ha[d] counsel" under Crim. P. 35(c)(3)(V), meaning the defendant was not entitled to have the public defender or other court-appointed counsel supplement the motion. Accordingly, the court makes its order to show cause absolute and remands the case to the district court for an order directing the People to respond to the defendant's motion.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2026 CO 45

Supreme Court Case No. 25SA362
Original Proceeding Pursuant to C.A.R. 21
District Court, City and County of Denver, Case No. 18CR20011
Honorable Alex C. Myers, Judge

In Re
Plaintiff:

The People of the State of Colorado,

v.

Defendant:

Clemente Roberts.

Order Made Absolute
en banc
June 15, 2026

Attorneys for Plaintiff:
John Walsh, District Attorney, Second Judicial District
Johanna G. Coats, Senior Deputy District Attorney
Denver, Colorado

Attorneys for Defendant:
The Noble Law Firm, LLC
Antony Noble
Tara Jorfald
Kayla Armbrust
Lakewood, Colorado

JUSTICE BOATRIGHT delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE HOOD**, **JUSTICE GABRIEL, JUSTICE BERKENKOTTER**, and **JUSTICE BLANCO** joined.
JUSTICE SAMOUR concurred in the judgment.

JUSTICE BOATRIGHT delivered the Opinion of the Court.

¶1 In this original proceeding, the People challenge a district court order appointing counsel to potentially supplement Clemente Roberts's motion for postconviction relief under Crim. P. 35(c) ("35(c) motion") after his private attorney filed the motion and then withdrew from the case.

¶2 We hold that because Roberts's private attorney filed the 35(c) motion on his behalf, Roberts "already ha[d] counsel" under Crim. P. 35(c)(3)(V), meaning he was not entitled to have the public defender or other court-appointed counsel supplement the motion.[1] Accordingly, we make our order to show cause absolute and remand the case to the district court for an order directing the People to respond to Roberts's 35(c) motion.

I. Facts and Procedural History

¶3 Roberts pleaded guilty to second degree murder, and the district court sentenced him to thirty-eight years in prison. Through his private attorney, Roberts timely filed a 35(c) motion, alleging ineffective assistance of counsel.

[1] Our holding bears no impact on Roberts's right to be represented by court-appointed counsel for the rest of the 35(c) motion proceedings but only concerns the right to court-appointed counsel for the supplementation of his claims. Roberts retains the right to a public defender or other court-appointed counsel for the purposes of a reply brief and any future hearings.

¶4 Simultaneously, Roberts's attorney filed a motion to withdraw from the case, explaining that the engagement agreement with Roberts limited the scope of representation to filing the 35(c) motion and requesting service of it on the public defender. In the motion to withdraw, Roberts's attorney asserted that if the postconviction court did not summarily deny the 35(c) motion under Crim. P. 35(c)(3)(IV), it should serve the motion on the public defender pursuant to Crim. P. 35(c)(3)(V).

¶5 The court found that summary denial would be inappropriate; accordingly, it served a copy of the 35(c) motion on the public defender after granting Roberts's attorney's motion to withdraw. Tracking the language of Crim. P. 35(c)(3)(V), the court instructed the public defender to identify any potential conflict, request any time needed to investigate, and "add any claims the Public Defender finds to have arguable merit" to the 35(c) motion.

¶6 The People filed a motion to reconsider. They argued that because Roberts's private counsel had prepared the 35(c) motion, the court's appointment of the public defender violated Crim. P. 35(c)(3)(V), which contemplates appointment of counsel to supplement claims only if a defendant is not already represented. They contended that the logic of the rule is to give meritorious *pro se* defendants an opportunity for professional supplementation, not a chance for a second set of claims. They thus asked that the court appoint new counsel only for purposes of

a reply brief and any future hearings—not to supplement the 35(c) motion with additional claims.

¶7 The court denied the People's motion to reconsider, reasoning that Roberts became unrepresented when his private attorney withdrew, and his request for counsel "trigger[ed]" service of the 35(c) motion on the public defender for supplementation. The court also rejected the People's argument that this course of action was contrary to the logic of Crim. P. 35(c)(3)(V), stating that "the rule does not include any express prohibition limiting supplementation once counsel is appointed." Finally, the court thought it "problematic" to control appointed counsel's independent judgment regarding whether to supplement the 35(c) motion or maintain the issues and arguments already raised by prior counsel.

¶8 Subsequently, the 35(c) motion was served on the public defender, who determined that Roberts qualified for court-appointed representation. The public defender's office accepted appointment, but upon finding that it had a conflict of interest, moved to withdraw and asked the court to appoint alternate defense counsel. The court granted the motion, and Roberts's former private attorney reentered their appearance as alternate defense counsel.

¶9 The People sought relief under C.A.R. 21, and we issued an order to show cause.

II. Analysis

¶10 We begin by establishing our jurisdiction under C.A.R. 21 and our standard of review, noting that, despite any implication of mootness, we decide this case on the merits because it is capable of repetition yet evading review. Next, we lay out the principles of statutory interpretation and apply them to interpret Crim. P. 35(c)(3)(V) as a whole and its specific clause, "if the defendant already has counsel." We hold that because Roberts's private attorney filed the 35(c) motion on his behalf, Roberts "already ha[d] counsel" under Crim. P. 35(c)(3)(V), meaning he was not entitled to have the public defender or other court-appointed counsel supplement the motion.

A. Jurisdiction and Standard of Review

¶11 Under C.A.R. 21, the exercise of our jurisdiction is wholly within our discretion. *People v. Tafoya*, 2019 CO 13, ¶ 13, 434 P.3d 1193, 1195. Relief under C.A.R. 21 is extraordinary and limited in purpose and availability. *Id.* In exercising our C.A.R. 21 jurisdiction, we may consider "the nature of the rights implicated and the potential irreparable harm," *Ortega v. Colo. Permanente Med. Grp., P.C.*, 265 P.3d 444, 447 (Colo. 2011), or whether "a petition raises 'issues of significant public importance that we have not yet considered,'" *People v. Kilgore*, 2020 CO 6, ¶ 8, 455 P.3d 746, 748 (quoting *Wesp v. Everson*, 33 P.3d 191, 194 (Colo. 2001)).

¶12 The People seek review of an order implicating Roberts's right to have counsel supplement his 35(c) motion to ensure that the motion survives summary denial. The exercise of our jurisdiction is sufficiently warranted by the importance of protecting Roberts's right to postconviction counsel and guiding postconviction courts on the proper process under Crim. P. 35(c)(3)(V).

¶13 Moreover, we generally exercise jurisdiction and issue relief for "a live case or controversy," not for a moot case. *Davidson v. Comm. for Gail Schoettler, Inc.*, 24 P.3d 621, 623 (Colo. 2001). Roberts implies that this case is moot because he does not object to the relief sought—serving the 35(c) motion directly on the People. But mootness does not bar our review when the case is capable of repetition yet evading review. *E.g., Diehl v. Weiser*, 2019 CO 70, ¶ 10, 444 P.3d 313, 316. In light of several cases which have presented a similar issue, we deem this case capable of repetition yet evading review,[2] so we proceed to decide it on the merits.

---

[2] The People have cited several district court cases in which the defendant's postconviction counsel filed a 35(c) motion, withdrew from the case, and subsequently, the defendant requested court-appointed counsel. *See, e.g.*, *People v. Villanueva*, No. 06CR10408 (Dist. Ct., City & Cnty. of Denver, Sep. 26, 2023) (unpublished order); *People v. Shaffer*, No. 10CR420 (Dist. Ct., City & Cnty. of Denver) (motion filed on Aug. 22, 2023); *People v. Adem*, No. 18CR5757 (Dist. Ct., City & Cnty. of Denver, June 23, 2025) (unpublished order). Moreover, in *People v. Pellouchoud*, No. 24CA144, ¶ 26 (Nov. 20, 2025), a division of the court of appeals considered this issue and concluded that service on "the public defender is only triggered when the defendant has filed the motion pro se." Thus, the significant

¶14 "We review questions of statutory interpretation de novo," *People v. Cali*, 2020 CO 20, ¶ 14, 459 P.3d 516, 519, and we likewise apply de novo review to interpretations of the rules of criminal procedure, *People v. Segura*, 2024 CO 70, ¶ 21, 558 P.3d 234, 239. Because the district court denied the People's motion to reconsider based on its interpretation of Crim. P. 35(c)(3)(V), our review here is de novo.

B. Meaning of Crim. P. 35(c)(3)(V)

¶15 When interpreting rules, we follow the same principle of statutory interpretation requiring us to first construe unambiguous words plainly, giving them their ordinary meaning. *Segura*, ¶¶ 1, 21, 558 P.3d at 236, 239. Thus, we apply this canon of statutory interpretation to rules of criminal procedure and presume that a rule "says . . . what it means and means . . . what it says." *People v. Weeks*, 2021 CO 75, ¶ 25, 498 P.3d 142, 151 (quoting *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992)); *see also Segura*, ¶ 21, 558 P.3d at 239 ("[W]e apply the rule as written." (quoting *People v. Steen*, 2014 CO 9, ¶ 10, 318 P.3d 487, 490)). Even so, the words of a rule are not construed in vacuum; we interpret the rule "as a whole, giving consistent, harmonious and sensible effect to all of its parts." *Pineda-Liberato v. People*, 2017 CO 95, ¶ 22, 403 P.3d 160, 164 (stating this principle

---

likelihood that this scenario will repeat itself sanctions our determination of the question presented.

in the context of statutory interpretation). In so doing, we generally avoid interpretations that "lead to illogical or absurd results." *Id.*

¶16 If a rule is ambiguous, we may look beyond its words to extrinsic aids of construction such as the history and purpose of the rule. *See Weeks*, ¶ 27, 498 P.3d at 152. In the context of statutory interpretation, this exercise would ordinarily involve an examination of the legislative history and records and the purpose behind a statute's enactment to decipher the legislative intent. *Carrera v. People*, 2019 CO 83, ¶ 10, 449 P.3d 725, 728. But *we* have the plenary authority to promulgate and interpret the Colorado Rules of Criminal Procedure (the "Rules"). *Steen*, ¶ 10, 318 P.3d at 490. Thus, our past cases guide us to the Rules' intended meaning and purpose, in addition to any expressed purpose in the Rules themselves.

¶17 An ambiguous rule is "reasonably susceptible of multiple interpretations." *Sentinel Colo. v. Rodriguez*, 2025 CO 58, ¶ 20, 577 P.3d 48, 53 (quoting *Elder v. Williams*, 2020 CO 88, ¶ 18, 477 P.3d 694, 698). Likewise, ambiguity exists if parties offer "contrasting interpretations [which] are both reasonable." *Carrera*, ¶ 15, 449 P.3d at 729.

¶18 To begin, Crim. P. 35(c)(3)(IV) directs a court to summarily review a 35(c) motion for adequate factual or legal grounds supporting the relief sought. If the motion survives summary denial, the court proceeds to apply Crim. P. 35(c)(3)(V).

This rule guides the court on how to proceed if the defendant is unrepresented versus if the defendant "already has counsel." If the defendant is unrepresented and requests counsel, the court must serve the motion on the public defender; on the other hand, if the defendant already has counsel, the court must serve the attorney-filed motion directly on the prosecution:

> 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 [forty-nine] days, the Public Defender shall respond as to whether the Public Defender's Office intends to enter on behalf of the defendant . . . . 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*. Upon receipt of the 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 . . . .

Crim. P. 35(c)(3)(V) (emphases added).

¶19 The issue here implicates two ostensibly contradictory clauses in Crim. P. 35(c)(3)(V). First, the rule provides that "[*i*]*f* the defendant has requested counsel be appointed in the motion, the court *shall* cause a complete copy of said motion to the served on the Public Defender." *Id.* (emphases added). This suggests, as the district court stated, and as Roberts argues, that a defendant's request for court-appointed counsel immediately "trigger[s]" appointment and

"service on the Public Defender" for potential supplementation, regardless of whether the defendant was a *pro se* defendant throughout or became one after "ha[ving] counsel" file the motion. But second, the rule states that "[u]pon receipt of the 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*." *Id.* (emphasis added). This implies that when a represented defendant files a 35(c) motion that is not summarily denied, the court should direct the prosecution to respond immediately—without appointing a public defender let alone giving them an opportunity to supplement the motion—even if the represented defendant requests court-appointed counsel.

¶20 Both interpretations are reasonable. And Crim. P. 35(c)(3)(V) leaves some uncertainty about the proper course of action when a defendant like Roberts requests court-appointed counsel but already had private counsel file his 35(c) motion. Accordingly, Crim. P. 35(c)(3)(V) is ambiguous, and we turn to extrinsic aids of interpretation—namely, the purpose and context underlying the rule.

¶21 The overall purpose and construction of the Rules are spelled out in Crim. P. 2: "These Rules are intended to provide for the just determination of criminal proceedings. They shall be construed to secure *simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay*." (Emphasis added.) In tandem with Crim. P. 2, we have had both procedural

fairness and judicial economy in mind when interpreting a defendant's right to postconviction counsel and relief under the Rules. *See People v. Hampton*, 528 P.2d 1311, 1312 (Colo. 1974). In *Hampton*, we observed that postconviction proceedings in Colorado are aimed at preventing injustices arising from conviction or sentencing, rather than providing "a perpetual right of review" to a defendant. *Id.* The postconviction court is also afforded "one opportunity to reconsider" the sentence "in timely fashion" while remaining cognizant of the finality of conviction and sentencing. *People v. Fuqua*, 764 P.2d 56, 60 (Colo. 1988). Importantly, postconviction proceedings are not intended to allow defendants to present their claims in piecemeal and successive fashion. *See People v. Hubbard*, 519 P.2d 945, 947 (Colo. 1974); Crim. P. 35(c)(3)(VI)–(VIII) (requiring the postconviction court to deny any claim that was raised in a prior appeal or proceeding, barring certain exceptions).

¶22 The same rationale guides how we construe a defendant's right to postconviction counsel in the context of Crim. P. 35(c)(3)(V). In Colorado, "there exists a *limited* statutory right to post-conviction counsel for meritorious Crim. P. 35(c) motions." *Silva v. People*, 156 P.3d 1164, 1168 (Colo. 2007) (emphasis added). This right to postconviction counsel stems from the long-standing right of indigent persons to representation. *Id.* In fact, in postconviction proceedings, including 35(c) motion proceedings, an indigent defendant is entitled to the same

effective representation as in a substantive suit, to be judged under the *Strickland* standard. *Id.* at 1169; *see Strickland v. Washington*, 466 U.S. 668, 687 (1984) ("[T]he proper standard for attorney performance is that of reasonably effective assistance."). That said, this right is "not automatic or unlimited," and "[a] district court is not required to appoint counsel for all Crim. P. 35(c) motions 'when the asserted claim is wholly unfounded.'" *Silva*, 156 P.3d at 1168 (quoting *Duran v. Price*, 868 P.2d 375, 379 (Colo. 1994)). Both the court and the public defender "must find that a defendant's Crim. P. 35(c) motion has arguable merit before the statutory right to post-conviction counsel is triggered." *Id.*

¶23 To effectuate a defendant's right to postconviction counsel, Crim. P. 35(c)(3)(V) mandates the court to serve a viable 35(c) motion on the public defender if the defendant has requested counsel. Upon receipt, the public defender "shall respond as to *whether* [it] intends to enter on behalf of the defendant . . . and add any claims [it] *finds to have arguable merit*" —i.e., supplement the motion. *Id.* (emphases added). Thus, although indigent defendants have a limited right to postconviction counsel, the public defender retains discretion over whether to enter an appearance and, notably, whether to pursue any additional claims.

¶24 Against this background, Crim. P. 35(c)(3)(V) states that "[u]pon receipt of the 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." (Emphasis added.) It is well established that the word "or" is disjunctive. *Hobbs v. City of Salida*, 2025 CO 50, ¶ 19, 576 P.3d 164, 168. "[O]r" is deemed "together with the commas that set [it] off, as creating a separate series." *Id.* at ¶ 23, 576 P.3d at 169. Interpreting "or" this way in Crim. P. 35(c)(3)(V), we see that the two clauses it separates are mutually exclusive. Therefore, Crim. P. 35(c)(3)(V) contemplates the court directing the prosecution to respond either (1) after the public defender has filed a response, *or* (2) "immediately" when the defendant did not request counsel or "already has counsel." That is, "if the defendant already has counsel," then the court must direct the prosecution to respond immediately.

¶25 To reiterate, we begin our interpretation of a rule by giving its words their plain and ordinary meaning. *Segura*, ¶¶ 1, 21, 558 P.3d at 236, 239. In doing so here, however, giving the two competing clauses of the rule their plain meanings directs a postconviction court to two conflicting, but reasonable, courses of action. Thus, the two clauses of Crim. P. 35(c)(3)(V) lend the rule, as a whole, to ambiguous meaning. Simply put, it appears that the drafters of the rule did not envision an attorney drafting and filing a 35(c) motion and then immediately withdrawing. Now we are left with ascertaining the drafters' intent by going outside the plain words of Crim. P. 35(c)(3)(V). We do so by considering the

overall purpose of the Rules stated under Crim. P. 2—ensuring procedural fairness while eliminating unjustifiable expense and delay. And we take into account our consistent articulation of Crim. P. 35(c)(3)(V)'s purpose—protecting the right to postconviction counsel while preventing piecemeal representation. As a result of our analysis, the intent of the rule becomes evident: the defendant should have counsel's help in filing and reviewing the 35(c) motion.

¶26 Roberts emphasized that he retained counsel "for the limited purpose of filing a petition for postconviction relief" and that his attorney moved to withdraw upon such filing, implying that Roberts no longer "ha[d] counsel." But it is of no moment whether a represented defendant had counsel for a limited purpose or more comprehensive representation. Either way, Roberts had counsel file the 35(c) motion. That satisfied the purpose of Crim. P. 35(c)(3)(V), that is, having counsel review the case and notify the court of any potential defects on its face. And this is why the rule provides that if the defendant availed themselves of counsel in filing a 35(c) motion that passes summary review, then "the court shall direct the prosecution to respond" under Crim. P. 35(c)(3)(V).

¶27 Accordingly, we hold that because Roberts's private attorney filed the 35(c) motion on his behalf, Roberts "already ha[d] counsel" under Crim. P. 35(c)(3)(V), meaning he was not entitled to have the public defender or other court-appointed counsel supplement the motion.

III. Conclusion

¶28 For the foregoing reasons, we make our order to show cause absolute, and we remand the case to the district court for an order directing the People to respond to Roberts's 35(c) motion.

JUSTICE SAMOUR concurred in the judgment.

JUSTICE SAMOUR, concurring in the judgment only.

¶29 Interpreting a statute or rule can sometimes feel like an Indiana Jones expedition: When an adventurer fixes his gaze on a single clue instead of the whole map, danger looms in the form of an unseen trap. Today, the majority tumbles into such a trap—it spots supposed ambiguity because it examines a sentence in isolation rather than considering the rule's full design. But it then dispels that purported ambiguity by doing nothing more than reading the rule's words and phrases together and in context.

¶30 Because the path is straightforward from the start—there is no ambiguity trap—and the majority never actually applies the extrinsic interpretive aids it says are necessary, I respectfully concur in the judgment only. I fully agree with the majority's holding; I part ways only with the zig-zagging analytical road the majority follows to get there. This matters because today's decision could unwittingly distort our statutory- and rule-interpretation jurisprudence.

¶31 Having set the stage, I now turn to the majority's reasoning. The majority concludes that the rule, Crim. P. 35(c)(3)(V), is ambiguous. As it acknowledges, that determination requires us to "look beyond its words to extrinsic aids of construction such as the history and purpose of the rule" to resolve the alleged ambiguity. Maj. op. ¶ 16.

¶32 Tellingly, though, the majority turns to no extrinsic aids *in resolving the claimed ambiguity*. Instead, after declaring the rule ambiguous—thus requiring recourse to extrinsic aids—the majority resolves the supposed ambiguity simply "by giving its words their plain and ordinary meaning" and by reading the rule as a whole and in context. *Id.* at ¶ 25.

¶33 Nowhere does the majority discuss the rule's history or explain how the rule's purpose removes the perceived ambiguity—nor can it, because there is no ambiguity. And to the extent the majority hangs its hat on the "context underlying the rule," *id.* at ¶ 20—a notion the majority leaves unexplained—that is not an extrinsic aid of statutory construction. If the majority means that we must read the sentence it believes creates ambiguity in context, it is spot-on. But we must *always* read statutory or rule language in context. Cases supporting this proposition are plentiful. *See, e.g.*, *People v. Sprinkle*, 2021 CO 60, ¶ 22, 489 P.3d 1242, 1246 ("We read [statutory] words and phrases in context . . . ."); *McCulley v. People*, 2020 CO 40, ¶ 10, 463 P.3d 254, 257 ("We read statutory words and phrases in context . . . .") (quoting *Doubleday v. People*, 2016 CO 3, ¶ 19, 364 P.3d 193, 196); *People v. Bonvicini*, 2016 CO 11, ¶ 12, 366 P.3d 151, 155 (noting that in ascertaining and effectuating the legislature's intent, "we first look to the plain meaning of the statutory language, reading words and phrases in context"); *People v. Diaz*, 2015 CO 28, ¶ 12, 347 P.3d 621, 624 ("We construe the statute as a whole . . . and we read

the words and phrases in context . . . ."); *Snow v. People*, 2025 CO 32, ¶ 18, 569 P.3d 835, 840 ("The same principles that apply to statutory interpretation apply when we construe our rules of criminal procedure . . . ."). This necessarily includes consideration of both "the specific context in which that language is used, and the broader context of the statute as a whole." *People v. Hill*, 228 P.3d 171, 173–74 (Colo. App. 2009) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)).

¶34 Sensing this gap, the majority attempts to patch it by invoking Crim. P. 2—the rules' general purposes clause. But that reference is no treasure map. The majority fails to explain in any meaningful way how the broad, overarching purposes animating the criminal procedural rules as a whole aid its resolution of the perceived ambiguity in the language of Crim. P. 35(c)(3)(V). In other words, how do "procedural fairness" and "judicial economy"—concepts the majority plucks from Crim. P. 2 and our case law—compel today's decision? More specifically, why isn't the defense's reading of the rule—that all motions requesting court-appointed counsel should be forwarded to the Public Defender—more consistent with procedural fairness than the majority's interpretation? Isn't affording court-appointed counsel to all defendants who clear the Crim. P. 35(c)(3)(IV) hurdle more procedurally fair than limiting that protection to only some? And shouldn't procedural fairness carry the day over judicial economy? Does the majority privately balance these competing interests?

The majority opinion leaves those questions unanswered. Offering little more than lip service to the purposes of our rules of criminal procedure does not amount to employing extrinsic aids of interpretation and cannot rescue the majority from the analytical corner into which it has painted itself.

¶35 The upshot is that Crim. P. 35(c)(3)(V) is not ambiguous. Indeed, neither party argued ambiguity in this case; the majority ventured down that path all on its own—the party presentation principle be damned.[1] It is unsurprising, then, that giving the rule's words their plain and ordinary meaning—while reading them together and in context—suffices to resolve this case. What the majority seems to mean is simply that one must read all the sentences in the rule together, as a whole and in context. But of course that is always true; otherwise, confusion might arise—as it does here, from the majority's own making.

¶36 Of particular relevance, if one reads, in isolation, the rule's second sentence—i.e., "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," Crim. P. 35(c)(3)(V)—one might infer that any request by a defendant "for court-appointed counsel immediately 'trigger[s]' appointment and 'service on

[1] Had the defense been on notice of any ambiguity to be resolved by considerations of procedural fairness and judicial economy, it might have advanced a forceful argument that its interpretation carried greater merit.

the Public Defender' for potential supplementation."[2] Maj. op. ¶ 19 (alteration in original) (quoting *People v. Roberts*, No. 18CR20011, at 1 (Dist. Ct., City & Cnty. of Denver, Dec. 3, 2025) (unpublished order)). In other words, read alone, the second sentence could be construed to mean that even where, as here, a Crim. P. 35(c) motion is filed through counsel, the court must nevertheless forward it to the Public Defender for possible supplementation. This is the sentence the majority muses on in isolation to find ambiguity.

¶37 But the rest of the rule provides much needed context. Read in context, it becomes clear that the drafters intended the second sentence as a general proposition modifying the immediately preceding sentence—the first sentence. The first sentence states that the court must serve the motion on the prosecuting attorney. In the next sentence—the second one—the drafters cautioned that if the defendant has requested counsel, the motion should *instead* be served on the Public Defender. This sentence has a single, straightforward job: to explain that, despite what the first sentence instructs, a motion requesting counsel should not be routed to the prosecuting attorney; it should instead generally be routed to the Public Defender.

[2] Crim. P. 35(c)(3)(V) applies only if the court does not deny the motion under Crim. P. 35(c)(3)(IV). To avoid repetition, I omit this qualifier when discussing Crim. P. 35(c)(3)(V) in this opinion.

¶38 As relevant here, the fifth sentence supplies the most context for the general statement in the second sentence: "Upon receipt of the 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 [thirty-five] days." Crim. P. 35(c)(3)(V). As the majority recognizes, the disjunctive "or" in this sentence creates "'a separate series'" of "mutually exclusive" scenarios. Maj. op. ¶ 24 (quoting *Hobbs v. City of Salida*, 2025 CO 50, ¶ 23, 576 P.3d 164, 169). Thus, although the second sentence provides that a motion requesting counsel should generally be served on the Public Defender rather than the prosecuting attorney, the fifth sentence—the more specific of the two—makes clear that this does not apply when the defendant already has counsel. In that circumstance, the motion should be sent to the prosecuting attorney, not the Public Defender, in accordance with the first sentence's directive.

¶39 This clarification had to wait until the fifth sentence because the third and fourth sentences address what the Public Defender must do when—pursuant to the second sentence—a motion lands on her desk. But awkward drafting does not an ambiguity make.

¶40 Significantly, after declaring ambiguity based on its isolated reading of the second sentence, the majority resolves the case not by turning to the rule's history

or purpose—much less the broad, overarching purposes of all the rules as a whole—but simply by reading that sentence in harmony with the rest of Crim. P. 35(c)(3)(V). Doing so leads the majority to correctly discern three straightforward scenarios (only two of which involve a request for counsel): (1) a pro se motion requesting court-appointed counsel; (2) a pro se motion without such a request; and (3) a motion requesting court-appointed counsel filed by private counsel. *Id.* I agree with the majority that only in the first scenario must the court forward the motion to the Public Defender. *Id.* And that is precisely the clarification supplied by the fifth sentence *after* the three possible scenarios—including a motion requesting court-appointed counsel filed by private counsel—have been laid out. None of this is complicated, and none of it suggests the presence of ambiguity.

¶41 In the final analysis, although the majority invokes concepts from Crim. P. 2 and our jurisprudence—namely, "procedural fairness" and "judicial economy"—it never explains in any meaningful way how those principles support its conclusion that the fifth sentence of the rule prevails over the second. If, as the majority insists, those two sentences open the door to two "conflicting . . . courses of action," Maj. op. ¶ 25, what is it about procedural fairness and judicial economy that give the fifth sentence the nod over the second in the majority's eyes? And is the majority resolving the asserted-but-unfounded conflict by effectively relegating the second sentence to superfluous status? *See People v. Trupp*, 51 P.3d

985, 988 (Colo. 2002) (noting that we avoid interpretations that render language in a rule "redundant or superfluous"). Does the majority really believe that the drafters settled on one course of action in the second sentence only to contradict themselves three sentences later? Instead of grappling with these questions, the majority simply announces—without analysis—that it resolves the posited conflict "by considering the overall purpose of the [r]ules [as a whole]" and "tak[ing] into account" our case law's discussion of Crim. P. 35(c)(3)(V). Maj. op. ¶ 25.

¶42 The truth is that the majority reads the second and fifth sentences exactly as it should: in harmony with each other and with the rest of the rule, thereby resolving any tension that may exist. *See People v. Ross*, 2021 CO 9, ¶ 34, 479 P.3d 910, 917 (stating that while two statutory provisions were in tension, we recognized we were "duty-bound to interpret [them] harmoniously—that is, in a manner that gives consistent and sensible effect to all their parts and avoids rendering any words or phrases meaningless"). That is simply the plain-meaning rule of interpretation, which applies whenever a statute or rule is unambiguous—and which the majority applies here while stubbornly resisting saying so.

¶43 In the end, the majority properly holds that Clemente Roberts was not entitled to have the Public Defender, or other court-appointed counsel, supplement his motion because he already had counsel when he filed it. Maj. op.

¶ 27. And the majority also correctly determines that the fact that Roberts's counsel withdrew as soon as the motion was filed is neither here nor there. *Id.* at ¶ 26. As the majority notes, what matters is that he was represented when the motion was filed. *Id.*

¶44 I have no bone to pick with the outcome; my beef is with the rationale. I have not before seen an opinion from this court in which we pronounce a statute or rule ambiguous, announce that extrinsic interpretive aids are therefore warranted, and then proceed to resolve the case simply by reading the provision in context and giving its words their plain and ordinary meaning—precisely the analysis that renders any finding of ambiguity a misfit in the first place. I worry that it's only a matter of time before someone cites this case either for the proposition that reading a provision in a statute or rule in context and in harmony with other provisions constitutes an extrinsic aid available only when the provision is ambiguous or, equally concerning, for the proposition that an ambiguity can be found by reading a sentence in isolation.

¶45 Because I fear today's decision may sow unnecessary confusion in our jurisprudence on statutory and rule interpretation and may have unintended consequences, I felt compelled to say my piece. Having done so, I respectfully concur in the judgment only.