

AGENDA
COLORADO SUPREME COURT
MUNICIPAL COURT RULES OF PROCEDURE COMMITTEE

Friday, March 31, 2023, 1:00 p.m.
Ralph L. Carr Colorado Judicial Center
2 East 14th Avenue
Denver, CO 80203
Fourth Floor, Supreme Conference Room

- I. Call to Order
- II. Welcome
- III. Introductions
- IV. Announcements from the Chair
- V. Old Business
 - A. None
- VI. New Business
 - A. Scheduling of future meetings
 - B. Appointment of Subcommittee(s)
 - i. CMCR 216 Subcommittee – Judge Billy Stiggers
 - ii. CMCR 248 Subcommittee -
 - iii. Other subcommittee(s)?
 - C. Consideration of proposed CMCR 254
 - D. Consideration of proposed changes to CMCR 241
 - E. Consideration of proposed changes to CMCR 204
 - F. Consideration of proposed changes to CMCR 210

G. Consideration of proposed changes to CMCR 223

H. Consideration of proposed changes to CMCR 243

I. Consideration of proposed changes to CMCR 212

J. Consideration of proposed changes to CMCR 237

VII. Adjourn

**Rule 237– Proposed Revisions
Version March 1, 2023**

[REDLINE VERSION]

Rule 237. Appeals

- (a) Appeals From Courts Not of Record.** Appeals from courts not of record shall be in accordance with sections 13-10-116 to 13-10-125, C.R.S. Rulings on motions in such courts are not appealable.
- (b) Appeals from Courts of Record.** Appeals from courts of record shall be in accordance with Rule 37 and Rule 37.1 of the Colorado Rules of Criminal Procedure.

[CLEAN VERSION]

Rule 237. Appeals

- (c) Appeals From Courts Not of Record.** Appeals from courts not of record shall be in accordance with sections 13-10-116 to 13-10-125, C.R.S. Rulings on motions in such courts are not appealable.
- (d) Appeals from Courts of Record.** Appeals from courts of record shall be in accordance with Rule 37 and Rule 37.1 of the Colorado Rules of Criminal Procedure.

Rule 204 – Proposed Revisions
Version March 1, 2023

[REDLINE VERSION]

Rule 204

...

(e) Service of Summons and Complaint. A copy of a summons or summons and complaint issued pursuant to these rules shall be served personally upon the defendant. In lieu of personal service, service may be made by leaving a copy of the summons or summons and complaint at the defendant's usual place of abode with some person over the age of eighteen years residing therein or by mailing a copy to the defendant's last known address by certified mail, return receipt requested, not less than ~~7~~ 14 days prior to the time the defendant is required to appear. Service by mail shall be complete upon the return of the receipt signed by the defendant or signed on behalf of the defendant by one authorized by law to do so. Personal service shall be made by a peace officer or any disinterested party over the age of eighteen years.

...

(No other proposed changes to this Rule)

[CLEAN VERSION]

Rule 204

...

(e) Service of Summons and Complaint. A copy of a summons or summons and complaint issued pursuant to these rules shall be served personally upon the defendant. In lieu of personal service, service may be made by leaving a copy of the summons or summons and complaint at the defendant's usual place of abode with some person over the age of eighteen years residing therein, or by mailing a copy to the defendant's last known address by registered mail with return receipt requested or certified mail with return receipt requested, not less than 14 days prior to the time the defendant is required to appear. Service by mail shall be complete upon the return of the receipt signed by the defendant or signed on behalf of the defendant by one authorized by law to do so. Personal service shall be made by a peace officer or any disinterested party over the age of eighteen years.

...

(No other proposed changes to this Rule)

Rule 210 – Proposed Revisions
Version March 1, 2023

[REDLINE VERSION]

Rule 210. Arraignment.

...

(4) ~~A defendant appearing without counsel at arraignment shall be advised by the court of the nature of the charges contained in the complaint and of the maximum penalty which the court may impose in the event of a conviction; in addition, the court shall inform the defendant of the following rights: At the first appearance of the defendant in court or upon arraignment, whichever is first in time, it is the duty of the judge to inform the defendant and make certain that the defendant understands the following:~~

(I) ~~To bail;~~ The defendant need make no statement, and any statement made can and may be used against him or her.

(II) ~~To make no statement, and that any statement made can and may be used against the defendant;~~ The defendant has a right to counsel.

(III) ~~To be represented by counsel, and, if indigent, the right to appointed counsel as applicable; If the defendant is an indigent person, he or she may make application for a court-appointed attorney, and, upon payment of the application fee, he or she will be assigned counsel as provided by law or applicable rule of criminal procedure.~~

(IV) ~~To have process issued by the court, without expense to the defendant, to compel the attendance of witnesses in defendant's behalf; Any plea the defendant makes must be voluntary on his or her part and not the result of undue influence or coercion on the part of anyone.~~

(V) ~~To testify or not to testify in defendant's own behalf;~~ The defendant has a right to bail, if the offense is bailable, and the amount of bail that has been set by the court.

(VI) ~~To a trial by jury where such right is granted by statute or ordinance, together with the requirement that the defendant, if desiring a jury trial, demand such trial by jury in writing within 21 days after arraignment or entry of a plea; also the number of jurors allowed by law, and of the requirement that the defendant, if desiring a jury trial, tender to the court within 21 days after arraignment or entry of a plea a jury fee of \$25 unless the fee be waived by the judge because of the indigence of the defendant or by the court pursuant to C.M.C.R. 223.~~

(VII) ~~To appeal.~~ The nature of the charges against the defendant and the maximum possible penalties.

...

(No other proposed changes to this Rule)

[CLEAN VERSION]

Rule 210. Arraignment.

....

(4) At the first appearance of the defendant in court or upon arraignment, whichever is first in time, it is the duty of the judge to inform the defendant and make certain that the defendant understands the following:

(I) The defendant need make no statement, and any statement made can and may be used against him or her.

(II) The defendant has a right to counsel.

(III) If the defendant is an indigent person, he or she may make application for a court-appointed attorney, and, upon payment of the application fee, he or she will be assigned counsel as provided by law or applicable rule of criminal procedure.

(IV) Any plea the defendant makes must be voluntary on his or her part and not the result of undue influence or coercion on the part of anyone.

(V) The defendant has a right to bail, if the offense is bailable, and the amount of bail that has been set by the court.

(VI) To a trial by jury or by the court pursuant to C.M.C.R. 223.

(VII) The nature of the charges against the defendant and the maximum possible penalties.

...

(No other proposed changes to this Rule)

COMMENT:

The court's duty to inform on first appearance in court and on pleas of guilty pursuant to 16-7-207, C.R.S., is now applicable to municipal courts as of July 1, 2018. See H.B. 17-1083 ((Note: The effective date of H.B. 17-1083 changed from May 1, 2017 to July 1, 2018, by H.B. 17-1316. See L. 2017, p. 607)).

A defendant's right to trial by jury or by the court is detailed in C.M.C.R. 223.

Rule 212 – Proposed Revisions
Version March 1, 2023

[REDLINE VERSION]

Rule 212. Pleadings and Motions Before Trial.

...

(b) ~~Oral or Written~~ Motions. All motions shall be ~~oral~~written unless otherwise ordered or permitted by the court.

...

(e) Time for Making Motion. Motions shall be made before a plea is entered, ~~but the court may permit it to be made within a reasonable time thereafter~~ within 21 days of the date of entry of a plea, or within such other time frame as is established by the court. If a party wishes to file a brief in support of a Motion, such brief shall be filed with the Motion.

...

(No other proposed changes to this Rule)

[CLEAN VERSION]

Rule 212. Pleadings and Motions Before Trial.

...

(b) Motions. All motions shall be written unless otherwise ordered or permitted by the court.

...

(e) Time for Making Motion. Motions shall be made before a plea is entered, within 21 days of the date of entry of a plea, or within such other time frame as is established by the court. If a party wishes to file a brief in support of a Motion, such brief shall be filed with the Motion.

...

(No other proposed changes to this Rule)

[FULL TEXT]

Rule 212. Pleadings and Motions Before Trial.

(a) Pleadings and Motions. Pleadings shall consist of the complaint or summons and complaint and pleas of guilty, not guilty, or nolo contendere. All other pleas, demurrers, and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, or as provided in these rules.

(b) Oral or Written Motions. All motions shall be written unless otherwise ordered by the court.

(c) Defenses and Objections Which May be Raised. Any defense or objection which is capable of determination without the trial of the general issue may be raised by motion.

(d) Defenses and Objections Which Must Be Raised. Defenses and objections based on defects in the institution of the prosecution or in the complaint or summons and complaint other than that it fails to show jurisdiction in the Court or to charge an offense may be raised only by motion. The motion shall include all such defenses and objections then available to the defendant. Failure thus to present any such defense or objection constitutes a waiver of it, but the Court, for good cause shown, may grant relief from the waiver. Lack of jurisdiction or the failure of the complaint or summons and complaint to charge an offense shall be noticed by the Court at any time during the proceeding.

(e) Time for Making Motion. Motions shall be made before a plea is entered, or within 21 days of the date of entry of a plea, or within such other time frame as is established by the court. If a party wishes to file a brief in support of a Motion, such brief shall be filed with the Motion.

(f) Hearing on Motion. A motion before trial raising defenses or objections under section (c) or (d) shall be determined before the day of trial unless the Court orders that it be deferred for determination at or after the trial of the general issue.

(g) Effect of Determination. If a motion is determined adversely to the defendant, the defendant shall be permitted to plead if no plea has previously been made. A plea previously entered shall stand.

Notes of subcommittee on CMCR 212:

The subcommittee recommends amending the Rule to require motions to be in writing unless otherwise ordered by the court and to impose a deadline for filing.

The subcommittee made the following considerations **in favor** of motions in writing and imposing a filing deadline:

- CMCR 202 regarding purpose and construction encourages simplicity in procedure. Arguably requiring written motions unless otherwise ordered by the court streamlines procedure, allows for better preparation by the attorneys and the judicial officer, encourages resolution with focus on the law prior to trial.
- CMCR 202 regarding purpose and construction the elimination of unjustifiable expense and delay. In many jurisdictions jury trials in particular are delayed or even continued unnecessarily on the day of trial due to oral motions that are sufficiently convoluted to have required briefing by both sides.

The subcommittee made the following considerations **against** motions in writing and imposing a filing deadline:

- CMCR 202 regarding purpose and construction encourages simplicity in procedure and such an amendment could be over burdensome, particularly for pro se defendants.
- Expense.

Rule 223 – Proposed Revisions
Version March 1, 2023

[REDLINE VERSION]

Rule 223. Trial by Jury or by the Court.

(a) Trial by Jury. Trial shall be to the court, unless the defendant is entitled to a jury trial under the constitution, ordinance, charter, ~~or~~ general laws of the state, or the offense carries the possible penalty of imprisonment, in which case the defendant shall have a jury, if, within 21 days after arraignment or entry of a plea, the defendant files with the court a written jury demand and at the same time tenders to that court a jury fee of \$25, unless the fee is waived by the judge because of the indigence of the defendant. If the action is dismissed or the defendant is acquitted of the charge, or if the defendant, having paid the jury fee, files with the court at least 7 days before the scheduled trial date a written waiver of jury trial, the jury fee shall be refunded. A defendant who fails to file with the court the written jury demand as provided above waives the right to a jury trial unless good cause is shown.

...

(No other proposed changes to this Rule)

[CLEAN VERSION]

Rule 223. Trial by Jury or by the Court.

(a) Trial by Jury. Trial shall be to the court, unless the defendant is entitled to a jury trial under the constitution, ordinance, charter, general laws of the state, or the offense carries the possible penalty of imprisonment, in which case the defendant shall have a jury, if, within 21 days after arraignment or entry of a plea, the defendant files with the court a written jury demand and at the same time tenders to that court a jury fee of \$25, unless the fee is waived by the judge because of the indigence of the defendant. If the action is dismissed or the defendant is acquitted of the charge, or if the defendant, having paid the jury fee, files with the court at least 7 days before the scheduled trial date a written waiver of jury trial, the jury fee shall be refunded. A defendant who fails to file with the court the written jury demand as provided above waives the right to a jury trial unless good cause is shown.

...

(No other proposed changes to this Rule)

Rule 241 – Proposed Revisions
Version March 1, 2023

[REDLINE VERSION]

Rule 241. Search and Seizure

(a) Authority to Issue Warrant. A judge of any court shall have power to issue a search warrant under this Rule ~~only~~ when:

- ~~(1) It relates to a charter or ordinance violation involving a serious threat to public safety or order; and~~
- ~~(2) The violation is not also a violation prohibited by state statute for which a search warrant could be issued by a district or county court.~~

...

(No other proposed changes to this Rule)

[CLEAN VERSION]

Rule 241. Search and Seizure

- (a) Authority to Issue Warrant.** A judge of any court shall have power to issue a search warrant under this Rule when it relates to a charter or ordinance violation.

...

(No other proposed changes to this Rule)

Rule 243 – Proposed Revisions
Version March 1, 2023

[REDLINE VERSION]

Rules 242 and ~~243~~. No Colorado Rules.

Rule 243. Presence of the Defendant.

(a) Presence Required. The defendant shall be present 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 right to be present, whenever a defendant, initially present:

(1) Voluntarily absents himself after the trial has commenced, whether or not he has been informed by the court of his obligation to remain during the trial, or

(2) After being warned by the court that disruptive conduct will cause him to be removed from the courtroom, persists in conduct which is such as to justify his being excluded from the courtroom.

(c) Presence Not Required. A defendant need not be present in the following situations:

(1) A corporation may appear by counsel for all purposes.

(2) At a conference or argument upon a question of law.

(3) At a reduction of sentence under Rule 235.

(4) At a First Hearing, as authorized by Rule 7 of the Colorado Rules for Traffic Infractions.

(d) Presence of the Defendant by Interactive Audiovisual Device.

(1) Definitions. As used in this Rule 243:

(l) "Interactive audiovisual device" means a television, telephone, or computer based audiovisual system capable of two-way transmission and of sufficient audio and/or visual quality that persons using the system can converse with each other with a minimum of disruption.

(2) A defendant may be present within the meaning of this Rule 243 by the use of an interactive audiovisual device, in lieu of the defendant's physical presence, for the following hearings:

(I) First appearances for the purpose of advisement and setting of bail, including first appearances on probation or deferred sentence revocation complaints;

(II) Further appearances for the filing of charges;

(III) Hearings to modify bail;

(IV) Entry of pleas and associated sentencing or probation violation hearings in of municipal charter and ordinance violations.

(VI) Restitution hearings;

(VII) Appeal bond hearings;

(VIII) Any hearing to which the Court authorizes after motion and due consideration consistent with this rule.

(VIII) Rule 235 hearings.

(3) Minimum standards. Every use of an interactive audiovisual device must comply with the following minimum standards in addition to those set forth in Rule 243(e)(I):

(I) If defense counsel appears, such appearance may be done by interactive audiovisual device. If defense counsel does not appear in the same location as the defendant, a separate confidential communication line, such as a phone line, shall be provided to allow for private and confidential communication between the defendant and counsel.

(II) Installation of the interactive audiovisual device in the courtroom shall be done in such a manner that members of the public are reasonably able to observe, and, where appropriate, participate in the hearing.

(4) Nothing in this rule shall require a court to use an interactive audiovisual device.

(5) In the event of inclement weather or other exceptional circumstances, which would otherwise prevent a hearing from occurring, the court may conduct the hearing by use of an interactive audiovisual procedure consistent with this rule.

[CLEAN VERSION]

Rule 242. No Colorado Rule.

Rule 243. Presence of the Defendant.

(a) Presence Required. The defendant shall be present 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 right to be present, whenever a defendant, initially present:

(1) Voluntarily absents himself after the trial has commenced, whether or not he has been informed by the court of his obligation to remain during the trial, or

(2) After being warned by the court that disruptive conduct will cause him to be removed from the courtroom, persists in conduct which is such as to justify his being excluded from the courtroom.

(c) Presence Not Required. A defendant need not be present in the following situations:

(1) A corporation may appear by counsel for all purposes.

(2) At a conference or argument upon a question of law.

(3) At a reduction of sentence under Rule 235.

(4) At a First Hearing, as authorized by Rule 7 of the Colorado Rules for Traffic Infractions.

(d) Presence of the Defendant by Interactive Audiovisual Device.

(1) Definitions. As used in this Rule 243:

(I) "Interactive audiovisual device" means a television, telephone, or computer based audiovisual system capable of two-way transmission and of sufficient audio and/or visual quality that persons using the system can converse with each other with a minimum of disruption.

(2) A defendant may be present within the meaning of this Rule 243 by the use of an interactive audiovisual device, in lieu of the defendant's physical presence, for the following hearings:

(I) First appearances for the purpose of advisement and setting of bail, including first appearances on probation or deferred sentence revocation complaints;

(II) Further appearances for the filing of charges;

(III) Hearings to modify bail;

(IV) Entry of pleas and associated sentencing or probation violation hearings in of municipal charter and ordinance violations.

(VI) Restitution hearings;

(VII) Appeal bond hearings;

(VIII) Any hearing to which the Court authorizes after motion and due consideration consistent with this rule.

(VIII) Rule 235 hearings.

(3) Minimum standards. Every use of an interactive audiovisual device must comply with the following minimum standards in addition to those set forth in Rule 243(e)(1):

(I) If defense counsel appears, such appearance may be done by interactive audiovisual device. If defense counsel does not appear in the same location as the defendant, a separate confidential communication line, such as a phone line, shall be provided to allow for private and confidential communication between the defendant and counsel.

(II) Installation of the interactive audiovisual device in the courtroom shall be done in such a manner that members of the public are reasonably able to observe, and, where appropriate, participate in the hearing.

(4) Nothing in this rule shall require a court to use an interactive audiovisual device.

(5) In the event of inclement weather or other exceptional circumstances, which would otherwise prevent a hearing from occurring, the court may conduct the hearing by use of an interactive audiovisual procedure consistent with this rule.

Rule 254– Proposed Revisions
Version March 1, 2023

[REDLINE VERSION]

Rule 254. ~~No Colorado Rule.~~ Application

These Rules apply to all proceedings in municipal courts in the state of Colorado. In the absence of a specific Rule, the court may look for guidance to the Colorado Rules of Criminal Procedure, the Colorado Rules of Civil Procedure, the Colorado Rules for Traffic Infractions, and any other rules or Chief Justice directives promulgated by the Colorado Supreme Court regarding the conduct of formal judicial proceedings.

[CLEAN VERSION]

Rule 254. Application

These Rules apply to all proceedings in municipal courts in the state of Colorado. In the absence of a specific Rule, the court may look for guidance to the Colorado Rules of Criminal Procedure, the Colorado Rules of Civil Procedure, the Colorado Rules for Traffic Infractions, and any other rules or Chief Justice directives promulgated by the Colorado Supreme Court regarding the conduct of formal judicial proceedings.