

Change # 1988 (2)

Crim. P. 5, Preliminary Proceedings. Amended and adopted by the Court, En Banc, on March 31, 1988, effective January 1, 1989.

FILED IN THE
SUPREME COURT
OF THE STATE OF COLORADO

APR 4 1988

Mac V. Danford, Clerk

O R D E R

Crim. P. 5, Preliminary Proceedings, is hereby amended as follows:

(a) Felony Proceedings.

(1) Procedure Following Arrest. If a peace officer or any other person makes an arrest, either with or without a warrant, the arrested person shall be taken without unnecessary delay before the nearest available county or district ~~judge~~ COURT. Thereafter, a felony complaint, information, or indictment shall be filed, if it has not already been filed, without unnecessary delay in the proper court and a copy thereof given to the defendant.

(2) Appearance Before the Court. At the first appearance of the defendant in court, it is the duty of the ~~judge~~ COURT to inform the ~~accused/of~~ DEFENDANT and make certain that ~~he~~ THE DEFENDANT understands the following:

(I) ~~He~~ THE DEFENDANT need make no statement and any statement made can and may be used against ~~him~~ THE DEFENDANT.

(II) ~~He/his/a~~ THE right to counsel;

(III) If ~~he/is/an~~ indigent ~~person~~, ~~he~~ THE DEFENDANT has the right to request the appointment of counsel or consult with the public defender before any further proceedings are held;

(IV) Any plea ~~he~~ THE DEFENDANT makes must be voluntary ~~on/his/part~~ and not the result of undue influence or coercion; ~~on/his/part/of/anyone~~

(V) ~~He/his/~~The right to bail, if the offense is bailable, and the amount of bail that has been set by the court;

(VI) The nature of the charges; ~~against/him~~

(VII) ~~He/his/~~The right to a jury trial;

(VIII) ~~He/his/~~The right to demand and receive a preliminary hearing within a reasonable time to determine whether probable cause exists to believe that the offense charged was committed by the defendant.

(3) Appearance in the Court not Issuing the Warrant. If the defendant is taken before a court which did not issue the ARREST warrant ~~for/his/arrest~~, the ~~judge~~ COURT shall inform ~~him~~ THE DEFENDANT of the matters set out in subsection (a)(2) of this Rule and, allowing time for

travel, set bail returnable not less than ten days thereafter before the court which issued the arrest warrant, and shall transmit forthwith a transcript of the proceedings and all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

(4) Preliminary Hearing -- COUNTY COURT Procedures. Every person accused of a felony in a felony complaint has the right to demand and receive a preliminary hearing to determine whether probable cause exists to believe that the offense charged in the felony complaint was committed by the defendant. The following procedures shall govern the holding of a preliminary hearing:

(I) Within ten days after the defendant is brought before the county court, either the ~~prosecuting/attorney~~ PROSECUTOR or the defendant may ~~file/a/written/motion/for~~ REQUEST a preliminary hearing. Upon ~~the/filing/of~~ such a ~~motion~~ REQUEST, the ~~judge~~ COURT forthwith shall set the hearing. The hearing shall be held within thirty days of the day of setting, unless good cause for continuing the hearing beyond that time ~~is~~ IS shown to the court. The clerk of the court shall prepare and give notice of the hearing, or any continuance thereof, to all parties and their counsel.

(II) The preliminary hearing shall be held before a judge of the county court in which the criminal action has been filed. The defendant shall not be called upon to plead/. ~~although/he~~ THE DEFENDANT may cross-examine the PROSECUTOR'S witnesses ~~called/to/testify/against/him~~ and may introduce evidence ~~in/his/own/benefit~~. The ~~prosecuting~~ ~~officer~~ PROSECUTOR shall have the burden of establishing probable cause. The judge presiding at the preliminary hearing may temper the rules of evidence in the exercise of sound judicial discretion.

(III) If the county ~~judge~~ COURT determines such probable cause ~~does~~ exists, ~~he~~ IT shall order the defendant bound over to the appropriate court of record for trial. In appropriate cases, the defendant may be admitted to or continued on bail by the county ~~judge~~ COURT, but bond shall be made returnable in the trial court and at a day and time certain. All county court records, except the reporter's transcript notes, or recording, shall be transferred forthwith by the clerk of the county court to the clerk of the appropriate court of record.

(IV) If from the evidence it appears to the county ~~judge~~ COURT that there is not probable cause to believe that the offense charged has been committed by the defendant, the county ~~judge~~ COURT shall dismiss the complaint and discharge the defendant. IF THE PROSECUTOR BELIEVES THE COURT ERRED IN ITS FINDING OF NO PROBABLE CAUSE, THE PROSECUTOR MAY APPEAL THE RULING TO THE DISTRICT COURT. SUCH ERROR, IF ANY, SHALL NOT CONSTITUTE GOOD CAUSE FOR REILING.

(V) Dismissal of a felony complaint following a preliminary hearing OR DISMISSAL WITHOUT A PRELIMINARY HEARING BEING HELD shall not be a bar to a subsequent filing of a direct information in the district court charging the defendant with the same offense. IF THE PROSECUTOR STATES AN INTENTION TO REFILE, THE BOND EXECUTED BY THE DEFENDANT SHALL BE CONTINUED AND RETURNABLE IN THE DISTRICT COURT AT A DAY AND TIME CERTAIN. IF A BOND HAS NOT BEEN CONTINUED, THE DEFENDANT SHALL BE SUMMONED INTO COURT WITHOUT THE NECESSITY OF MAKING A NEW BOND. THE INFORMATION SHALL BE ACCOMPANIED BY A WRITTEN STATEMENT FROM THE PROSECUTOR ALLEGING FACTS WHICH ESTABLISH THAT EVIDENCE EXISTS WHICH FOR GOOD CAUSE WAS NOT PRESENTED BY THE PROSECUTOR AT THE PRELIMINARY HEARING. WITHIN TWENTY DAYS OF DEFENDANT'S FIRST APPEARANCE FOLLOWING THE DIRECT FILING THE DEFENDANT MAY REQUEST AN EVIDENTIARY HEARING AT WHICH THE PROSECUTOR SHALL ESTABLISH THE EXISTENCE OF GOOD CAUSE FOR THE FILING OF THE DIRECT INFORMATION.

(5) Procedure Upon Failure to *File/Motion/for* REQUEST Preliminary Hearing.

If the defendant or *prosecuting/attorney* PROSECUTOR fails to *file/a/motion/request* REQUEST a preliminary hearing within ten days after the defendant has come before the court, the county *judge* COURT shall forthwith order the defendant bound over to the appropriate court of record for trial. In no case shall the defendant be bound over for trial to another court until the preliminary hearing has been held, or until the ten day period for *filing/a/motion* requesting a preliminary hearing has expired. In appropriate cases, the defendant may be admitted to, or continued upon bail by the county *judge* COURT, but bond shall be made returnable in the trial court at a day and time certain. All court records in the case, except the reporter's transcript, notes, or recording shall be transferred forthwith by the clerk to the appropriate court of record.

(b) Bail in Absence of a County Judge. (No change.)

(c) Misdemeanor and Petty Offense Proceedings.

(1) Procedure Following Arrest. If a peace officer or any other person makes an arrest, either with or without a warrant, the arrested person shall be taken without unnecessary delay before the nearest available county *judge* COURT. Thereafter a complaint or summons and complaint shall be filed, if it has not already been filed, immediately in the proper court and a copy thereof given to the defendant at or before *the/this/he/is/arraignd* ARRAIGNMENT. Trial may be held forthwith if the court calendar permits, immediate trial appears proper, and the parties do not request a continuance for good cause. Otherwise the case shall be set for trial as soon as possible.

(2) Appearance Before the Court. At the first appearance *of/the/defendant* in the county court *is* THE DEFENDANT shall be advised in accordance with the provisions

set forth in subparagraphs (a)(2)(I) through (VII) of this Rule. and in the event that the accused is charged with a class I misdemeanor, he has the right to demand and receive a preliminary hearing with a reasonable time to prepare the defense or to waive the right to a preliminary hearing.

(3) Appearance in the County Court not Issuing the Warrant. If the defendant is taken before a county court which did not issue the ARREST warrant for his arrest, the Judge COURT shall inform him THE DEFENDANT of the matters set out in subsection (a)(2)(I THROUGH VII) of this Rule and, allowing time for travel, set bail returnable not less than ten days thereafter before the court which issued the arrest warrant, and shall transmit forthwith a transcript of the proceedings and all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

(4) Preliminary Hearing + Proceures + Failure to File Motion for Preliminary Hearing. In the event that a person is accused of a class I misdemeanor, he has the right to demand and receive a preliminary hearing with the proper time to prepare the defense or to waive the right to a preliminary hearing. Failure to file a motion for preliminary hearing shall be deemed a waiver of the right to a preliminary hearing. Dismissal of a preliminary hearing or a preliminary hearing shall not be a bar to a subsequent filing of a motion for preliminary hearing with the same offense.

Amended and adopted by the Court, En Banc, this 31st day of March 1988, effective January 1, 1989.

BY THE COURT:

/s/ Luis D. Rovira

Luis D. Rovira, Chairman
Court Rules Committee

O R D E R

Crim. P. 5, Preliminary Proceedings, is hereby amended as follows:

(a) **Felony Proceedings.**

(1) **Procedure Following Arrest.** If a peace officer or any other person makes an arrest, either with or without a warrant, the arrested person shall be taken without unnecessary delay before the nearest available county or district court. Thereafter, a felony complaint, information, or indictment shall be filed, if it has not already been filed, without unnecessary delay in the proper court and a copy thereof given to the defendant.

(2) **Appearance Before the Court.** At the first appearance of the defendant in court, it is the duty of the court 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 the defendant.

(II) The right to counsel;

(III) If indigent, the defendant has the right to request the appointment of counsel or consult with the public defender before any further proceedings are held;

(IV) Any plea the defendant makes must be voluntary and not the result of undue influence or coercion;

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

(VI) The nature of the charges;

(VII) The right to a jury trial;

(VIII) The right to demand and receive a preliminary hearing within a reasonable time to determine whether probable cause exists to believe that the offense charged was committed by the defendant.

(3) **Appearance in the Court not Issuing the Warrant.** If the defendant is taken before a court which did not issue the arrest warrant, the court shall inform the defendant of the matters set out in subsection (a)(2) of this Rule and, allowing time for travel, set bail returnable not less than ten days thereafter before the court which issued the arrest warrant, and shall transmit forthwith a transcript of the proceedings and all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

(4) Preliminary Hearing -- County Court Procedures. Every person accused of a felony in a felony complaint has the right to demand and receive a preliminary hearing to determine whether probable cause exists to believe that the offense charged in the felony complaint was committed by the defendant. The following procedures shall govern the holding of a preliminary hearing:

(I) Within ten days after the defendant is brought before the county court, either the prosecutor or the defendant may request a preliminary hearing. Upon such request, the court forthwith shall set the hearing. The hearing shall be held within thirty days of the day of setting, unless good cause for continuing the hearing beyond that time is shown to the court. The clerk of the court shall prepare and give notice of the hearing, or any continuance thereof, to all parties and their counsel.

(II) The preliminary hearing shall be held before a judge of the county court in which the criminal action has been filed. The defendant shall not be called upon to plead. The defendant may cross-examine the prosecutor's witnesses and may introduce evidence. The prosecutor shall have the burden of establishing probable cause. The judge presiding at the preliminary hearing may temper the rules of evidence in the exercise of sound judicial discretion.

(III) If the county court determines such probable cause exists, it shall order the defendant bound over to the appropriate court of record for trial. In appropriate cases, the defendant may be admitted to or continued on bail by the county court, but bond shall be made returnable in the trial court and at a day and time certain. All county court records, except the reporter's transcript notes, or recording, shall be transferred forthwith by the clerk of the county court to the clerk of the appropriate court of record.

(IV) If from the evidence it appears to the county court that there is not probable cause to believe that the offense charged has been committed by the defendant, the county court shall dismiss the complaint and discharge the defendant. If the prosecutor believes the court erred in its finding of no probable cause, the prosecutor may appeal the ruling to the district court. Such error, if any, shall not constitute good cause for refileing.

(V) Dismissal of a felony complaint following a preliminary hearing or dismissal without a preliminary hearing being held shall not be a bar to a subsequent filing of a direct information in the district court charging the defendant with the same offense. If the prosecutor states an intention to refile, the bond executed by the defendant shall be continued and returnable in the district court at a day and time certain. If a bond has not been continued, the defendant shall be summoned into court without the necessity of making a

new bond. The information shall be accompanied by a written statement from the prosecutor alleging facts which establish that evidence exists which for good cause was not presented by the prosecutor at the preliminary hearing. Within twenty days of defendant's first appearance following the direct filing the defendant may request an evidentiary hearing at which the prosecutor shall establish the existence of good cause for the filing of the direct information.

(5) Procedure Upon Failure to Request Preliminary Hearing.

If the defendant or prosecutor fails to request a preliminary hearing within ten days after the defendant has come before the court, the county court shall forthwith order the defendant bound over to the appropriate court of record for trial. In no case shall the defendant be bound over for trial to another court until the preliminary hearing has been held, or until the ten day period for requesting a preliminary hearing has expired. In appropriate cases, the defendant may be admitted to, or continued upon bail by the county court, but bond shall be made returnable in the trial court at a day and time certain. All court records in the case, except the reporter's transcript, notes, or recording shall be transferred forthwith by the clerk to the appropriate court of record.

(b) Bail in Absence of a County Judge. (No change.)

(c) Misdemeanor and Petty Offense Proceedings.

(1) Procedure Following Arrest. If a peace officer or any other person makes an arrest, either with or without a warrant, the arrested person shall be taken without unnecessary delay before the nearest available county court. Thereafter a complaint or summons and complaint shall be filed, if it has not already been filed, immediately in the proper court and a copy thereof given to the defendant at or before arraignment. Trial may be held forthwith if the court calendar permits, immediate trial appears proper, and the parties do not request a continuance for good cause. Otherwise the case shall be set for trial as soon as possible.

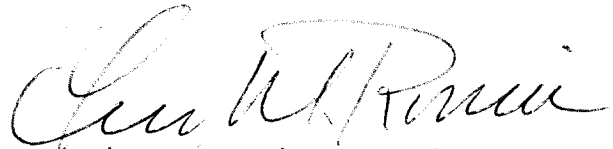
(2) Appearance Before the Court. At the first appearance in the county court the defendant shall be advised in accordance with the provisions set forth in subparagraphs (a)(2)(I) through (VII) of this Rule.

(3) Appearance in the County Court not Issuing the Warrant. If the defendant is taken before a county court which did not issue the arrest warrant, the court shall inform the defendant of the matters set out in subsection (a)(2) (I through VII) of this Rule and, allowing time for travel, set bail returnable not less than ten days thereafter before

the court which issued the arrest warrant, and shall transmit forthwith a transcript of the proceedings and all papers in the case to the court which issued the arrest warrant. In the event the defendant does not make bail within forty-eight hours, the sheriff of the county in which the arrest warrant was issued shall return the defendant to the court which issued the warrant.

Amended and adopted by the Court, En Banc, this 31st day of March 1988, effective January 1, 1989.

BY THE COURT:

A handwritten signature in cursive script, appearing to read "Luis D. Rovira".

Luis D. Rovira, Chairman
Court Rules Committee