

Change # 1988 (3)

Crim. P. 7, The Indictment and The Information. 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. 7, The Indictment and The Information, is hereby amended as follows:

(a) The Indictment.

(1) An indictment shall be a written statement presented in open court by a grand jury to the district court which charges the commission of any crime by an alleged offender.

(2) Requisites of the Indictment. Every indictment of/accusation of the grand jury shall be/deemed/technically sufficient/and/correct/which/states/the/offense/in/the/terms and/language/of/the/statute/defining/it/or/so/plainly/that/the nature/of/the/offense/may/be/plainly/understood/ STATE THE CRIME CHARGED AND ESSENTIAL FACTS WHICH CONSTITUTE THE OFFENSE. It also should contain/therein STATE:

(I through III) (No change.)

(IV) That it is signed by the foreman of the grand jury, and the prosecuting/attorney/his/assistant/or/deputy PROSECUTOR.

(b) The Information.

(1) An information shall be a written statement, signed by a/district/attorney THE PROSECUTOR and filed in the court having jurisdiction over the offense charged, alleging that a person committed the criminal offense described therein.

(2) Requisites of the Information. (No change.)

(I through IV) (No change.)

(3) Information After Preliminary Hearing or Waiver. (No change.)

(I) Failed to file/a/motion/requesting REQUEST a preliminary hearing in the county pursuant to Rule 5; or

(II) (No change.)

(4) (No change.)

(B) Affidavits//in/all/cases/in/which/the/defendant/has not/had/or/waived/a/preliminary/hearing/there/shall/be/filed with/the/information/the/affidavit/of/some/credible/person/who is/competent/to/testify/verifying/the/information/upon/the/personal/knowledge/of/the/affiant/that/the/offense/was committed/

(c) Direct Information. The prosecuting/attorney PROSECUTOR,with/the/consent/of/the/court/may/file a direct information if:

(1) THE PROSECUTOR OBTAINS THE CONSENT OF THE COURT HAVING TRIAL JURISDICTION AND No complaint was filed against the accused person in the county court pursuant to Rule 5; or

(2) EITHER A preliminary hearing was held in/the county/court and the/accused/person/was/discharged THE COURT FOUND PROBABLE CAUSE DID NOT EXIST OR THE CASE WAS DISMISSED WITHOUT A PRELIMINARY HEARING BEING HELD. 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; OR

(3) THE PROSECUTOR OBTAINS THE CONSENT OF THE COURT HAVING TRIAL JURISDICTION AND the complaint upon which the preliminary hearing was held and the other records in the case have not been delivered to the clerk of the proper trial court.

(d) Names of Witnesses. At the time of filing either the indictment or the information, the prosecuting/attorney PROSECUTOR shall file with the court a written list of names and addresses of the witnesses then known to/him whom he THE PROSECUTOR intends to call during the trial.

(e) Amendment of Information. (No change.)

(f) Surplusage. The court, on motion of the defendant or the prosecuting/attorney PROSECUTOR, may strike surplusage from the information or indictment.

(g) Bill of Particulars. (No change.)

(h) Preliminary Hearing--DISTRICT COURT PROCEDURES.

(1) In cases in which a direct information was filed pursuant to Rule 7(c), either the defendant or the prosecuting/attorney PROSECUTOR may file/a/written/motion requesting REQUEST a preliminary hearing to determine whether probable cause exists to believe that the offense charged in the information has been committed by the defendant. The motion/may REQUEST SHALL be filed/even/though/a/preliminary hearing/in/the/county/court/has/been/held/on/the/same/charge pursuant/to/Rule/5(a)(1)/if/the/information/is/filed/ despite/a finding/of/no/probable/cause//the/motion/shall/be/filed MADE prior to plea and/shall/be/presented together with any

motions filed pursuant to Rule 12(b). The trial court may permit a ~~motion/requesting~~ REQUEST FOR a preliminary hearing to be ~~filed~~ MADE after a plea only upon a showing of good and sufficient cause. No ~~motion/requesting~~ REQUEST FOR a preliminary hearing may be filed in a case which is to be tried upon indictment.

(2) Upon the ~~making~~ MAKING of such a ~~motion~~ REQUEST, the district ~~judge~~ COURT shall set the hearing which shall be held within thirty days of the day of the setting, unless good cause for continuing the hearing beyond that period ~~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.

(3) The defendant shall not be called upon to plead at the preliminary hearing ~~allegedly/has~~. THE DEFENDANT may cross-examine THE PROSECUTOR'S witnesses ~~against/his~~ and may introduce evidence ~~in/his/own/benefit~~. The ~~presiding~~ ~~officer~~ PROSECUTOR shall have the burden of establishing probable cause. The presiding judge at the preliminary hearing may temper the rules of evidence in the exercise of sound judicial discretion.

(4) If, from the evidence, it appears to the district ~~judge~~ COURT that no probable cause exists to believe that the offense charged has been committed by the defendant, the ~~judge~~ COURT shall discharge the defendant and dismiss the information; otherwise, ~~it~~ IT shall set the case for arraignment or trial. IF THE PROSECUTOR BELIEVES THE COURT ERRED IN ITS FINDING OF NO PROBABLE CAUSE, THIS RULING MAY BE APPEALED PURSUANT TO COLORADO APPELLATE RULES. SUCH A RULING SHALL NOT CONSTITUTE GOOD CAUSE FOR REFILEING.

(5) If a ~~motion~~ REQUEST for preliminary hearing has not been filed within the time limitations of subsection (h)((1) of this Rule, such a ~~motion~~ REQUEST shall not thereafter be heard by the court, nor shall the court entertain successive ~~motions~~ REQUESTS for preliminary hearing. The order denying a dismissal of the information after a preliminary hearing shall be final and not subject to review on appeal. The granting of such a ~~motion~~ DISMISSAL shall not be a bar to further prosecution of the accused person for the same offense ~~if/now/or/added/initial/charges/is/formed/by/this/prosecution~~. THE PROCEDURES TO BE FOLLOWED UPON SUCH A REFILEING ARE SET FORTH IN SUBSECTION (c)(2) OF THIS RULE.

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. 7, The Indictment and The Information, is hereby amended as follows:

(a) The Indictment.

(1) An indictment shall be a written statement presented in open court by a grand jury to the district court which charges the commission of any crime by an alleged offender.

(2) Requisites of the Indictment. Every indictment of the grand jury shall state the crime charged and essential facts which constitute the offense. It also should state:

(I through III) (No change.)

(IV) That it is signed by the foreman of the grand jury, and the prosecutor.

(b) The Information.

(1) An information shall be a written statement, signed by the prosecutor and filed in the court having jurisdiction over the offense charged, alleging that a person committed the criminal offense described therein.

(2) Requisites of the Information. (No change.)

(I through IV) (No change.)

(3) Information After Preliminary Hearing or Waiver. (No change.)

(I) Failed to request a preliminary hearing in the county pursuant to Rule 5; or

(II) (No change.)

(4) (No change.)

(c) Direct Information. The prosecutor may file a direct information if:

(1) The prosecutor obtains the consent of the court having trial jurisdiction and no complaint was filed against the accused person in the county court pursuant to Rule 5; or

(2) Either a preliminary hearing was held and the court found probable cause did not exist or the case was dismissed without a preliminary hearing being held. 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: or

(3) The prosecutor obtains the consent of the court having trial jurisdiction and the complaint upon which the preliminary hearing was held and the other records in the case have not been delivered to the clerk of the proper trial court.

(d) Names of Witnesses. At the time of filing either the indictment or the information, the prosecutor shall file with the court a written list of names and addresses of the witnesses then known whom the prosecutor intends to call during the trial.

(e) Amendment of Information. (No change.)

(f) Surplusage. The court, on motion of the defendant or the prosecutor, may strike surplusage from the information or indictment.

(g) Bill of Particulars. (No change.)

(h) Preliminary Hearing--District Court Procedures.

(1) In cases in which a direct information was filed pursuant to Rule 7(c), either the defendant or the prosecutor may request a preliminary hearing to determine whether probable cause exists to believe that the offense charged in the information has been committed by the defendant. The request shall be made prior to plea together with any motions filed pursuant to Rule 12(b). The trial court may permit a request for a preliminary hearing to be made after a plea only upon a showing of good and sufficient cause. No request for a preliminary hearing may be filed in a case which is to be tried upon indictment.

(2) Upon the making of such a request, the district court shall set the hearing which shall be held within thirty days of the day of the setting, unless good cause for continuing the hearing beyond that period 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.


(3) The defendant shall not be called upon to plead at the preliminary hearing. The defendant may cross-examine the prosecutor's witnesses and may introduce evidence. The prosecutor shall have the burden of establishing probable cause. The presiding judge at the preliminary hearing may temper the rules of evidence in the exercise of sound judicial discretion.

(4) If, from the evidence, it appears to the district court that no probable cause exists to believe that the offense charged has been committed by the defendant, the court shall discharge the defendant and dismiss the information; otherwise, it shall set the case for arraignment or trial. If the prosecutor believes the court erred in its finding of no probable cause, this ruling may be appealed pursuant to Colorado appellate rules. Such a ruling shall not constitute good cause for refiling.

(5) If a request for preliminary hearing has not been filed within the time limitations of subsection (h)((1) of this Rule, such a request shall not thereafter be heard by the court, nor shall the court entertain successive requests for preliminary hearing. The order denying a dismissal of the information after a preliminary hearing shall be final and not subject to review on appeal. The granting of such a dismissal shall not be a bar to further prosecution of the accused person for the same offense. The procedures to be followed upon such a refiling are set forth in subsection (c)(2) of this Rule.

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

BY THE COURT:



Luis D. Rovira, Chairman
Court Rules Committee