

**Rule Change #1999(2)**

**CHAPTER 29. THE COLORADO RULES OF CRIMINAL PROCEDURE  
VII. JUDGMENT**

**Rule 32.1 Death Penalty Sentencing Hearing**

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(a) through (e) \* \* \* \*[NO CHANGE]

**(f) Discovery Procedures for Sentencing Hearing.** THE FOLLOWING DISCOVERY PROVISIONS SHALL APPLY TO THE DEATH PENALTY SENTENCING HEARING:

(1) **Aggravating Factors.** NOT LATER THAN 20 DAYS AFTER THE FILING OF THE WRITTEN STATEMENT OF INTENTION REQUIRED IN SUBSECTION (b) OF THIS RULE, THE PROSECUTING ATTORNEY SHALL MAKE AVAILABLE TO THE DEFENDANT A LIST OF THE AGGRAVATING FACTORS ENUMERATED AT §16-11-103(5), C.R.S., THAT ARE THEN KNOWN TO THE PROSECUTING ATTORNEY AND THAT THE PROSECUTING ATTORNEY INTENDS TO PROVE AT THE HEARING AND SHALL PROMPTLY FURNISH THE DEFENDANT WRITTEN NOTIFICATION OF ANY ADDITIONAL AGGRAVATING FACTORS AS THEY BECOME KNOWN. NOT LATER THAN 5 DAYS AFTER THE GUILTY VERDICT, THE PROSECUTING ATTORNEY SHALL HAVE FURNISHED THE DEFENDANT WRITTEN NOTIFICATION OF ALL AGGRAVATING FACTORS THAT THE PROSECUTING ATTORNEY MAY PROVE AT THE SENTENCING HEARING.

(2) **Prosecution Witnesses.** NOT LATER THAN 20 DAYS AFTER THE FILING OF THE WRITTEN STATEMENT OF INTENTION REQUIRED IN SUBSECTION (b) OF THIS RULE, THE PROSECUTING ATTORNEY SHALL MAKE AVAILABLE TO THE DEFENDANT A LIST OF THE WITNESSES WHOM THE PROSECUTING ATTORNEY INTENDS TO CALL AT THE SENTENCING HEARING AND SHALL PROMPTLY FURNISH THE DEFENDANT WITH WRITTEN NOTIFICATION OF ANY SUCH WITNESSES WHO SUBSEQUENTLY BECOME KNOWN OR THE MATERIALITY OF WHOSE TESTIMONY SUBSEQUENTLY BECOMES KNOWN. NOT LATER THAN 5 DAYS AFTER THE GUILTY VERDICT, THE PROSECUTING ATTORNEY SHALL HAVE FURNISHED THE DEFENDANT WITH WRITTEN NOTIFICATION OF ALL WITNESSES WHOM THE PROSECUTING ATTORNEY MAY CALL AT THE SENTENCING HEARING, EXCEPT THE NAMES OF ANY ADDITIONAL WITNESSES WHOM THE PROSECUTING ATTORNEY INTENDS TO CALL IN RESPONSE TO THE DEFENDANT'S DISCLOSURES. ALONG WITH THE NAME OF THE WITNESS, THE PROSECUTING ATTORNEY SHALL FURNISH THE WITNESS' ADDRESS AND DATE OF BIRTH, THE SUBJECT MATTER OF THE WITNESS' TESTIMONY, AND ANY WRITTEN OR RECORDED STATEMENT OF THAT WITNESS, INCLUDING NOTES.

(3) **Prosecution Books, Papers, Documents.** NOT LATER THAN 20 DAYS AFTER THE FILING OF THE WRITTEN STATEMENT OF INTENTION REQUIRED IN SUBSECTION (b) OF THIS RULE, THE PROSECUTING ATTORNEY SHALL MAKE AVAILABLE TO THE DEFENDANT A LIST OF THE BOOKS, PAPERS, DOCUMENTS, PHOTOGRAPHS, OR TANGIBLE OBJECTS, AND ACCESS THERETO, THAT THE PROSECUTING ATTORNEY HAS WITHIN THE PROSECUTING ATTORNEY'S POSSESSION OR CONTROL AND INTENDS TO INTRODUCE AT THE SENTENCING HEARING AND SHALL PROMPTLY FURNISH THE DEFENDANT WRITTEN NOTIFICATION OF ADDITIONAL SUCH

ITEMS AS THEY BECOME KNOWN. NOT LATER THAN 5 DAYS AFTER THE GUILTY VERDICT, THE PROSECUTING ATTORNEY SHALL HAVE FURNISHED THE DEFENDANT WRITTEN NOTIFICATION OF ALL SUCH MATERIALS THAT THE PROSECUTING ATTORNEY MAY INTRODUCE AT THE SENTENCING HEARING.

(4) **Prosecution Experts.** AS SOON AS PRACTICABLE BUT NOT LATER THAN 30 DAYS BEFORE TRIAL, THE PROSECUTING ATTORNEY SHALL MAKE AVAILABLE TO THE DEFENDANT ANY REPORTS, RECORDED STATEMENTS, AND NOTES, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS AND SCIENTIFIC TESTS, EXPERIMENTS, OR COMPARISONS, OF ANY EXPERTS WHOM THE PROSECUTING ATTORNEY INTENDS TO CALL AS A WITNESS AT THE SENTENCING HEARING AND SHALL PROMPTLY FURNISH THE DEFENDANT ADDITIONAL SUCH ITEMS AS THEY BECOME AVAILABLE. NOT LATER THAN 5 DAYS AFTER THE GUILTY VERDICT, THE PROSECUTING ATTORNEY SHALL HAVE FURNISHED THE DEFENDANT ALL REPORTS, RECORDED STATEMENTS, AND NOTES, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS AND SCIENTIFIC TESTS, EXPERIMENTS, OR COMPARISONS, OF ANY EXPERTS WHOM THE PROSECUTING ATTORNEY MAY CALL AS A WITNESS AT THE SENTENCING HEARING.

(5) **Material favorable to the accused.** NOT LATER THAN 20 DAYS AFTER THE FILING OF THE WRITTEN STATEMENT OF INTENTION REQUIRED IN SUBSECTION (b) OF THIS RULE, THE PROSECUTING ATTORNEY SHALL MAKE AVAILABLE TO THE DEFENDANT ANY MATERIAL OR INFORMATION WITHIN THE PROSECUTING ATTORNEY'S POSSESSION OR CONTROL THAT WOULD TEND TO REDUCE THE PUNISHMENT OF THE ACCUSED, AND THE PROSECUTING ATTORNEY SHALL PROMPTLY MAKE AVAILABLE TO THE DEFENDANT ANY SUCH MATERIAL OR INFORMATION THAT SUBSEQUENTLY COMES INTO THE PROSECUTING ATTORNEY'S POSSESSION OR CONTROL.

(6) **Defendant's Disclosure.** SUBJECT TO CONSTITUTIONAL LIMITATIONS, THE DEFENDANT SHALL PROVIDE THE PROSECUTING ATTORNEY WITH THE FOLLOWING INFORMATION AND MATERIALS NOT LATER THAN 20 DAYS AFTER THE GUILTY VERDICT. UPON RECEIPT OF THE INFORMATION REQUIRED BY THIS SUBSECTION (5), THE PROSECUTING ATTORNEY SHALL NOTIFY THE DEFENDANT AS SOON AS PRACTICABLE OF ANY ADDITIONAL WITNESSES WHOM THE PROSECUTING ATTORNEY INTENDS TO CALL IN RESPONSE TO THE DEFENDANT'S DISCLOSURES.

(I) A LIST OF WITNESSES WHOM THE DEFENDANT MAY CALL AT THE SENTENCING HEARING. ALONG WITH THE NAME OF THE WITNESS, THE DEFENDANT SHALL FURNISH THE WITNESS'S ADDRESS AND DATE OF BIRTH, THE SUBJECT MATTER OF THE WITNESS'S TESTIMONY, AND ANY WRITTEN OR RECORDED STATEMENT OF THAT WITNESS, INCLUDING NOTES, THAT COMPRISE SUBSTANTIAL RECITATIONS OF WITNESS STATEMENTS AND RELATE TO THE SUBJECT MATTER OF THE TESTIMONY;

(II) A LIST OF THE BOOKS, PAPERS, DOCUMENTS, PHOTOGRAPHS, OR TANGIBLE OBJECTS, AND ACCESS THERETO, THAT THE DEFENDANT MAY INTRODUCE AT THE SENTENCING HEARING;

(II) ANY REPORTS, RECORDED STATEMENTS, AND NOTES OF ANY EXPERT WHOM THE DEFENDANT MAY CALL AS A WITNESS DURING THE SENTENCING HEARING, INCLUDING RESULTS OF PHYSICAL OR MENTAL EXAMINATIONS AND SCIENTIFIC TESTS, EXPERIMENTS, OR COMPARISONS.

(7) **Regulation of discovery and sanctions.** NO PARTY SHALL BE PERMITTED TO RELY AT THE SENTENCING HEARING UPON ANY WITNESS, MATERIAL, OR INFORMATION THAT IS

SUBJECT TO DISCLOSURE PURSUANT TO THIS RULE UNTIL IT HAS BEEN DISCLOSED TO THE OPPOSING PARTY. THE TRIAL COURT, UPON A SHOWING OF EXTRAORDINARY CIRCUMSTANCES THAT COULD NOT HAVE BEEN FORESEEN AND PREVENTED, MAY GRANT AN EXTENSION OF TIME TO COMPLY WITH THE REQUIREMENTS OF THIS RULE. IF 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 TIMELY DISCLOSED, OR ENTER SUCH OTHER ORDER AS IT DEEMS JUST UNDER THE CIRCUMSTANCES AND WHICH IS CONSISTENT WITH CONSTITUTIONAL LIMITATIONS.

—~~(f)~~ (g) [Relettered, NO OTHER CHANGE] **Sentencing Hearing.** The trial judge shall be the presiding judge for the sentencing hearing. The trial judge shall rule on all motions relating to the sentencing hearing, shall conduct the sentencing hearing and shall rule on all evidentiary issues. If the Chief Justice designates a replacement for the trial judge pursuant to section 16-11-103(1)(a.5), 8A C.R.S., the three appointed judges shall choose a presiding judge from among themselves. The elected presiding judge shall assume the duties of the trial judge as they relate to the sentencing hearing.

—(g) (h) [Relettered, NO OTHER CHANGE] **Decision of Panel.** No later than 10 days following the conclusion of the presentation of evidence and argument at the sentencing hearing, the judges shall present their written decision as required by sections 16-11-103(2)(c) and (d), 8A C.R.S., in open court with the defendant present.

**Amended and Adopted by the Court, En Banc, January 14, 1999, effective January 14, 1999.**

**BY THE COURT:**

**Gregory J. Hobbs, Jr.**  
**Justice, Colorado Supreme Court**