

Rule Change 2008 (03)

CHAPTER 29

COLORADO RULES OF CRIMINAL PROCEDURE

Rule 5. Preliminary Proceedings

(a) Felony Proceedings.

(4) **Preliminary Hearing -- County Court Procedures.** Every person accused of a class 1, 2, or 3 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. In addition, only those persons accused of a class 4, 5, or 6 felony by felony complaint which felony requires mandatory sentencing or is a crime of violence as defined in section ~~16-11-309~~ 18-1.3-406 or is a sexual offense under part 4 of article 3 of title 18, C.R.S., shall have 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. However, any defendant accused of a class 4, 5, or 6 felony who is not otherwise entitled to a preliminary hearing may request a preliminary hearing if the defendant is in custody for the offense for which the preliminary hearing is requested; except that, upon motion of either party, the court shall vacate the preliminary hearing if there is a reasonable showing that the defendant has been released from custody prior to the preliminary hearing. Any person accused of a class 4, 5, or 6 felony who is not entitled to a preliminary hearing shall, unless otherwise waived, participate in a dispositional hearing for the purposes of case evaluation and potential resolution. The following procedures shall govern the holding of a preliminary hearing:

(I) No Changes.

(II) No Changes.

(III) No Changes.

(IV) If from the evidence it appears to the county court that there is not probable cause to believe that any or all of the offenses s charged ~~has been~~ were committed by the

defendant, the county court shall dismiss those counts from the complaint and, if all counts are dismissed, 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. The appeal of such final order shall be conducted pursuant to the procedures for interlocutory appeals in Rule 37.1 of these rules. Such error, if any, shall not constitute good cause for refileing.~~ Upon a finding of no probable cause, the prosecution may appeal pursuant to Rule 5(a)(4)(V), file a direct information pursuant to Rule 5(a)(4)(VI) charging the same offense(s), or submit the matter to a grand jury, but may not file a subsequent felony complaint charging the same offenses.

~~(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. If the prosecutor believes the court erred in its finding of no probable cause, the prosecutor may appeal the ruling to the district court. The appeal of such final order shall be conducted pursuant to the procedures for interlocutory appeals in Rule 37.1 of these rules. Such error, if any, shall not constitute good cause for refileing.~~

(VI) Upon a finding of no probable cause as to any one or more of the offenses charged in a felony complaint, the prosecution may file a direct information in the district court pursuant to Rule 7(c)(2) charging the same offense(s). If the prosecutor states an intention to proceed in this manner, 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.

(VII) If a felony complaint is dismissed prior to a preliminary hearing being held when one is required or, in other cases, prior to being bound over, the prosecution may thereafter file a direct information in the district court pursuant to Rule 7(c)(4) charging the same offense(s), file a felony complaint in the county court charging the same offense(s), or submit the matter to a grand jury. If the prosecution files a subsequent felony complaint charging the defendant with the same offense(s), the felony complaint shall be accompanied by a written statement from the prosecutor providing good cause for dismissing and refileing the charges. Within twenty days of defendant's first appearance following the filing of the new felony complaint the defendant may request an evidentiary hearing at which the prosecutor shall establish the existence of such good cause.

(VIII) If the county court has bound over the defendant to the district court and the case is thereafter dismissed in the district court before jeopardy has attached, the prosecution may file a direct information in the district court pursuant to Rule 7(c)(5) charging the same offense(s), file a felony complaint in county court charging the same offense(s), or submit the matter to a grand jury, and the case shall then proceed as if the previous case had never been filed. The prosecution shall also file with the felony complaint or the direct information a statement showing good cause for dismissing and then refileing the case. Within twenty days of defendant's first appearance following the filing of the new felony complaint or the direct filing of the new information the defendant may request an evidentiary hearing at which the prosecutor shall establish the existence of such good cause.

## Rule 7. The Indictment and the Information

(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~~ A preliminary hearing was held either in the county court or in the district court and the court found probable cause did not exist as to one or more counts. or the case was dismissed without a preliminary hearing being held. If the prosecutor states an intention to proceed in this manner, 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 such 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.

(4) The case was dismissed before a preliminary hearing was held in the county court or in the district court, when one is required, or, in other cases, before the defendant was bound over to the trial court or otherwise set for arraignment or trial. The information shall be accompanied by a written statement from the prosecutor stating good cause for dismissing and then refileing the case. Within twenty days after defendant's first appearance following the direct filing the defendant may request a hearing at which the prosecutor shall establish the existence of such good cause. The prosecution may also submit the matter to a grand jury.

(5) The case was dismissed after the district or county court found probable cause at the preliminary hearing if one was required or, in other cases, after the defendant was bound over to the trial court or otherwise set for arraignment or trial, and before jeopardy has attached. If such case was originally filed by direct information in the district court, the prosecution may not file the same offense(s) by a felony complaint in the county court, but the prosecution may charge the same offense(s) by filing a direct information in the district court or may submit the matter to a grand jury, and the case shall then proceed as if the previous case had never been filed. The prosecution shall also file with the direct information or with the felony complaint a statement showing good cause for dismissing and then refileing the case. Within twenty days of defendant's first appearance following the filing of the new felony complaint or the direct filing of the new information the defendant may request an evidentiary hearing at which the prosecutor shall establish the existence of such good cause.

**(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, if accused of a class 1, 2, or 3 felony or a class 4, 5, or 6 felony if such felony requires mandatory sentencing or is a crime of violence as defined in section ~~16-11-309~~ 18-1.3-406 or is a sexual offense under part 4 of article 3 of title 18, C.R.S. 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. However, any defendant accused of a class 4, 5, or 6 felony who is not otherwise entitled to a preliminary hearing may request a preliminary hearing if the defendant is in custody for the offense for which the preliminary hearing is requested; except that, upon motion of either party, the court shall vacate the preliminary hearing if there is a reasonable showing that the defendant has been released from custody prior to the preliminary hearing. Any person accused of a class 4, 5, or 6 felony who may not request a preliminary hearing shall participate in a dispositional hearing unless otherwise waived for the purposes of case evaluation and potential

resolution. The request for a preliminary hearing 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) No Changes.

(3) No Changes.

(4) If, from the evidence, it appears to the district court that no probable cause exists to believe that ~~the any or all of the~~ offenses charged ~~has been were~~ committed by the defendant, the court shall dismiss those counts from the information and, if the court dismisses all counts, discharge the defendant; —and dismiss the information; otherwise, or subsequent to a dispositional hearing, 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.

(4.5) No Changes.

(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 any or all of the counts in the information after a preliminary hearing shall be final and not subject to review on appeal. The granting of such a dismissal or any or all of the counts in an information shall not be a bar to further prosecution of the accused person for the same offenses. Upon a finding of no probable cause, the prosecution may appeal pursuant to Rule 7(h)(4), may file another direct information in the district court pursuant to Rule 7(c)(2) charging the same offense(s) or may submit the matter to a grand jury, but in such cases originally filed by direct information in the district court, the prosecution may not refile the same offense(s) by a felony complaint in the county court. The procedures to be followed upon such a refiling are set forth in subsection (c) (2) of this Rule.



**Rule 16. Discovery and Procedure Before Trial**

**Definitions.**

**(1) "Defense", as used in this rule, means an attorney for the defendant, or a defendant if pro se.**

**Part I. Disclosure to ~~Defendant~~the Defense**

**(a) Prosecutor's Obligations.**

(1) The prosecuting attorney shall make available to the ~~defendant~~defense the following material and information which is within the possession or control of the prosecuting attorney, and shall provide duplicates upon request, and concerning the pending case:

(I) Police, arrest and crime or offense reports, including statements of all witnesses;

(II) With consent of the judge supervising the grand jury, all transcripts of grand jury testimony and all tangible evidence presented to the grand jury in connection with the case;

(III) Any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons;

(IV) Any books, papers, documents, photographs or tangible objects held as evidence in connection with the case;

(V) Any record of prior criminal convictions of the accused, any codefendant or any person the prosecuting attorney intends to call as a witness in the case;

(VI) All tapes and transcripts of any electronic surveillance (including wiretaps) of conversations involving the accused, any codefendant or witness in the case;

(VII) A written list of the names and addresses of the witnesses then known to the district attorney whom he or she intends to call at trial;



(VIII) Any written or recorded statements of the accused or of a codefendant, and the substance of any oral statements made to the police or prosecution by the accused or by a codefendant, if the trial is to be a joint one.

(2) The prosecuting attorney shall disclose to the defense—~~counsel~~ any material or information within his or her possession or control which tends to negate the guilt of the accused as to the offense charged or would tend to reduce the punishment therefor.

(3) The prosecuting attorney's obligations under this section (a) extend to material and information in the possession or control of members of his or her staff and of any others who have participated in the investigation or evaluation of the case and who either regularly report, or with reference to the particular case have reported, to his or her office.

**(b) Prosecutor's Performance of Obligations.**

(1) The prosecuting attorney shall perform his or her obligations under subsections (a)(1)(I), (IV), (VII), and with regard to written or recorded statements of the accused or a codefendant under (VIII) as soon as practicable but not later than twenty calendar days after the defendant's first appearance at the time of or following the filing of charges, except that portions of such reports claimed to be nondiscoverable may be withheld pending a determination and ruling of the court under Part III but the defense—~~counsel~~ must be notified in writing that information has not been disclosed.

(2) The prosecuting attorney shall request court consent and provide the defense ~~counsel~~—with all grand jury transcripts made in connection with the case as soon as practicable but not later than thirty days after indictment.

(3) The prosecuting attorney shall perform all other obligations under subsection (a)(1) as soon as practicable but not later than thirty days before trial.

(4) The prosecuting attorney shall ensure that a flow of information is maintained between the various investigative personnel and his or her office sufficient to place within his or her possession or control all material and

information relevant to the accused and the offense charged.

**(c) Material Held by Other Governmental Personnel.**

(1) Upon the defense's ~~counsel's~~ request and designation of material or information which would be discoverable if in the possession or control of the prosecuting attorney and which is in the possession or control of other governmental personnel, the prosecuting attorney shall use diligent good faith efforts to cause such material to be made available to the defense. ~~counsel.~~

(2) The court shall issue suitable subpoenas or orders to cause such material to be made available to the defense ~~counsel~~, if the prosecuting attorney's efforts are unsuccessful and such material or other governmental personnel are subject to the jurisdiction of the court.

**(d) Discretionary Disclosures.**

(1) The court in its discretion may, upon motion, require disclosure to the defense ~~counsel~~ of relevant material and information not covered by Parts I(a), (b), and (c), upon a showing by the defense that the request is reasonable.

(2) The court may deny disclosure authorized by this section if it finds that there is substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment, resulting from such disclosure, which outweighs any usefulness of the disclosure to the defense ~~counsel~~.

(3) Where the interests of justice would be served, the court may order the prosecution to disclose the underlying facts or data supporting the opinion in that particular case of an expert endorsed as a witness. If a report has not been prepared by that expert to aid in compliance with other discovery obligations of this rule, the court may order the party calling that expert to provide a written summary of the testimony describing the witness's opinions and the bases and reasons therefor, including results of physical or mental examination and of scientific tests, experiments, or comparisons. The intent of this section is to allow the defense sufficient meaningful information to conduct effective cross-examination under CRE [705](#).

**(e) Matters not Subject to Disclosure.**

(1) **Work Product.** Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the prosecuting attorney or members of his legal staff.

(2) **Informants.** Disclosure shall not be required of an informant's identity where his or her identity is a prosecution secret and a failure to disclose will not infringe the constitutional rights of the accused. Disclosure shall not be denied hereunder of the identity of witnesses to be produced at a hearing or trial.

**Part II. Disclosure to Prosecution**

**(a) The Person of the Accused.**

(1) Notwithstanding the initiation of judicial proceedings, and subject to constitutional limitations, upon request of the prosecuting attorney, the court may require the accused to give any nontestimonial identification as provided in Rule 41.1 (h)(2).

(2) Whenever the personal appearance of the accused is required for the foregoing purposes, reasonable notice of the time and place of such appearance shall be given by the prosecuting attorney to the accused and his or her counsel. Provision may be made for appearance for such purposes in an order admitting the accused to bail or providing for his or her release.

**(b) Medical and Scientific Reports.**

(1) Subject to constitutional limitations, the trial court may require that the prosecuting attorney be informed of and permitted to inspect and copy or photograph any reports or statements of experts, made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

(2) Subject to constitutional limitations, and where the interests of justice would be served, the court may order the defense to disclose the underlying facts or data supporting the opinion in that particular case of an expert

endorsed as a witness. If a report has not been prepared by that expert to aid in compliance with other discovery obligations of this rule, the court may order the party calling that expert to provide a written summary of the testimony describing the witness's opinions and the bases and reasons therefor, including results of physical or mental examinations and of scientific tests, experiments, or comparisons. The intent of this section is to allow the prosecution sufficient meaningful information to conduct effective cross-examination under CRE [705](#).

**(c) Nature of Defense.**

Subject to constitutional limitations, the defense ~~counsel~~ shall disclose to the prosecution the nature of any defense, other than alibi, which the defense ~~counsel~~ intends to use at trial. The defense ~~counsel~~ shall also disclose the names and addresses of persons whom the defense ~~counsel~~ intends to call as witnesses at trial. At the entry of the not guilty plea, the court shall set a deadline for such disclosure. In no case shall such disclosure be less than thirty (30) days before trial for a felony trial, or seven (7) days before trial for a non-felony trial, except for good cause shown. Upon receipt of the information required by this subsection (c), the prosecuting attorney shall notify the defense ~~counsel~~ of any additional witnesses which the prosecution intends to call to rebut such defense within a reasonable time after their identity becomes known.

**(d) Notice of Alibi.**

The ~~defendant~~ defense, if ~~he~~ it intends to introduce evidence that the defendant was at a place other than the location of the offense, shall serve upon the prosecuting attorney as soon as practicable but not later than thirty days before trial a statement in writing specifying the place where he or she claims to have been and the names and addresses of the witnesses he or she will call to support the defense of alibi. Upon receiving this statement, the prosecuting attorney shall advise the ~~defensedefendant~~ of the names and addresses of any additional witnesses who may be called to refute such alibi as soon as practicable after their names become known. Neither the prosecuting attorney nor the ~~defendant~~ defense shall be permitted at the trial to introduce evidence inconsistent with ~~his~~ the specification, unless the court for good cause and upon

just terms permits the specification to be amended. If ~~a defendant~~ the defense fails to make the specification required by this section, the court shall exclude evidence in his behalf that he or she was at a place other than that specified by the prosecuting attorney unless the court is satisfied upon good cause shown that such evidence should be admitted.

### **Part III. Regulation of Discovery**

#### **(a) Investigation Not to be Impeded.**

Subject to the provisions of Parts I (d) and III (d), neither the prosecuting attorney, the defense counsel, the defendant nor other prosecution or defense personnel shall advise persons having relevant material or information (except the defendant) to refrain from discussing the case with or ~~opposing counsel or~~ showing ~~opposing counsel~~ any relevant material to any party, counsel or their agent, nor shall they otherwise impede counsel's investigation of the case. The court shall determine that the parties are aware of the provision.

#### **(b) Continuing Duty to Disclose.**

If, subsequent to compliance with these standards or orders pursuant thereto, a party discovers additional material or information which is subject to disclosure, including the names and addresses of any additional witnesses who have become known or the materiality of whose testimony has become known to the district attorney after making available the written list required in part I (a)(1)(VII), he or she shall promptly notify the other party or his or her counsel of the existence of such additional material, and if the additional material or information is discovered during trial, the court shall also be notified.

#### **(c) Custody of Materials.**

~~Any materials furnished to an attorney in discovery pursuant to these standards~~ this rule may only be provided to others and used by them for purposes of preparation and trial of the case shall remain in his exclusive custody and be used only for the purposes of conducting his side of the case, and shall be subject to such other terms, and conditions or restrictions as the court, statutes or rules

may provide. Defense counsel is not required to provide actual copies of discovery to his or her client if defense counsel reasonably believes that it would not be in the client's interest, and other methods of having the client review discovery are available. An attorney may also use materials he or she receives in discovery for the purposes of educational presentations if all identifying information is first removed.

**(d) Protective Orders.**

With regard to all matters of discovery under this rule, upon a showing of cause, the court may at any time order that specified disclosures be restricted or deferred, or make such other order as is appropriate, provided that all material and information to which a party is entitled must be disclosed in time to permit ~~his counsel~~ the party to make beneficial use thereof.

**(e) Excision.**

(1) When some parts of certain material are discoverable under the provisions of these court rules, and other parts are not discoverable, the nondiscoverable material may be excised and the remainder made available in accordance with the applicable provisions of these rules.

(2) Material excised pursuant to judicial order shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

**(f) In Camera Proceedings.**

Upon request of any person, the court may permit any showing of cause for denial or regulation of disclosures, or portion of such showing, to be made *in camera*. A record shall be made of such proceedings. If the court enters an order granting relief following a showing *in camera*, the entire record of such showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal.

**(g) Failure to Comply; Sanctions.**

If at any time during the course of the proceedings 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 disclosed or enter such other order as it deems just under the circumstances.

#### **Part IV. Procedure**

##### **(a) General Procedural Requirements.**

(1) In all criminal cases, in procedures prior to trial, there may be a need for one or more of the following three stages:

(I) An exploratory stage, initiated by ~~counsel~~ the parties and conducted without court supervision to implement discovery required or authorized under this rule;

(II) An omnibus stage, when ordered by the court, supervised by the trial court and court appearance required when necessary;

(III) A trial planning stage, requiring pretrial conferences when necessary.

(2) These stages shall be adapted to the needs of the particular case and may be modified or eliminated as appropriate.

##### **(b) Setting of Omnibus Hearing.**

(1) If a plea of not guilty or not guilty by reason of insanity is entered at the time the accused is arraigned, the court may set a time for and hold an omnibus hearing in all felony and misdemeanor cases.

(2) In determining the date for the omnibus hearing, the court shall allow counsel sufficient time:

(I) To initiate and complete discovery required or authorized under this rule;

(II) To conduct further investigation necessary to the defendant's case;

(III) To continue plea discussion.

(3) The hearing shall be no later than thirty days after arraignment.

**(c) Omnibus Hearing.**

(1) If an omnibus hearing is held, the court on its own initiative, utilizing an appropriate checklist form, should:

(I) Ensure that there has been compliance with the rule regarding obligations of ~~counsel~~ the parties;

(II) Ascertain whether the parties have completed the discovery required in Part I (a), and if not, make orders appropriate to expedite completion;

(III) Ascertain whether there are requests for additional disclosures under Part I (d);

(IV) Make rulings on any motions or other requests then pending, and ascertain whether any additional motions or requests will be made at the hearing or continued portions thereof;

(V) Ascertain whether there are any procedural or constitutional issues which should be considered; and

(VI) Upon agreement of ~~counsel~~ the parties, or upon a finding that the trial is likely to be protracted or otherwise unusually complicated, set a time for a pretrial conference.

(2) Unless the court otherwise directs, all motions and other requests prior to trial should be reserved for and presented orally or in writing at the omnibus hearing. All issues presented at the omnibus hearing may be raised without prior notice by either party ~~by counsel~~ or by the court. If discovery, investigation, preparation, and evidentiary hearing, or a formal presentation is necessary for a fair determination of any issue, the omnibus hearing should be continued until all matters are properly disposed of.

(3) Any pretrial motion, request, or issue which is not raised at the omnibus hearing shall be deemed waived,



unless the party concerned did not have the information necessary to make the motion or request or raise the issue.

(4) Stipulations by any party or his or her counsel should be binding upon the parties at trial unless set aside or modified by the court in the interests of justice.

(5) A verbatim record of the omnibus hearing shall be made. This record shall include the disclosures made, all rulings and orders of the court, stipulations of the parties, and an identification of other matter determined or pending.

**(d) Omnibus Hearing Forms.**

(1) The forms set out in the Appendix to Chapter 29 shall be utilized by the court in conducting the omnibus hearing. These forms shall be made available to the parties at the time of the defendant's first appearance.

(2) Nothing in the forms shall be construed to make substantive changes of these rules.

**(e) Pretrial Conference.**

(1) Whenever a trial is likely to be protracted or otherwise unusually complicated, or upon request by agreement of ~~counsel~~ the parties, the trial court may (in addition to the omnibus hearing) hold one or more pretrial conferences, with trial counsel present, to consider such matters as will promote a fair and expeditious trial. Matters which might be considered include:

(I) Making stipulations as to facts about which there can be no dispute;

(II) Marking for identification various documents and other exhibits of the parties;

(III) Excerpting or highlighting exhibits;

(IV) Waivers of foundation as to such documents;

(V) Issues relating to codefendant statements;

(VI) Severance of defendants or offenses for trial;

(VII) Seating arrangements for defendants and counsel;

(VIII) Conduct of jury examination, including any issues relating to confidentiality of juror locating information;

(IX) Number and use of peremptory challenges;

(X) Procedure on objections where there are multiple counsel or defendants;

(XI) Order of presentation of evidence and arguments when there are multiple counsel or defendants;

(XII) Order of cross-examination where there are multiple defendants;

(XIII) Temporary absence of defense counsel during trial;

(XIV) Resolution of any motions or evidentiary issues in a manner least likely to inconvenience jurors to the extent possible; and

(XV) Submission of items to be included in a juror notebook.

(2) At the conclusion of the pretrial conference, a memorandum of the matters agreed upon should be signed by counsel the parties, approved by the court, and filed. Such memorandum shall be binding upon the parties at trial, on appeal and in postconviction proceedings unless set aside or modified by the court in the interests of justice. However, admissions of fact by an accused if present should bind the accused only if included in the pretrial order and signed by the accused as well as his or her attorney.

**(f) Juror Notebooks.**

Juror notebooks shall be available during all felony trials and deliberations to aid jurors in the performance of their duties. Counsel The parties shall confer about the items to be included in juror notebooks and, by the pretrial conference or other date set by the court, shall make a joint submission to the court of items to be included in a juror notebook. In non-felony trials, juror notebooks shall be optional.

**Part V. Time Schedules and Discovery Procedures**

**(a) Mandatory Discovery.**

The furnishing of the items discoverable, referred to in Part I (a), (b) and (c) and Part II (b)(1), (c) and (d) herein, is mandatory and no motions for discovery with respect to such items may be filed.

**(b) Time Schedule.**

(1) In the event the defendant enters a plea of not guilty or not guilty by reason of insanity, or asserts the defense of impaired mental condition, the court shall set a deadline for such disclosure to the prosecuting attorney of those items referred to in Parts II (b)(1) and (c) herein, subject to objections which may be raised by the defense ~~eounsel~~ within that period pursuant to Part III (d) of this rule. In no case shall such disclosure be less than thirty (30) days before trial for a felony trial, or seven (7) days before trial for a non-felony trial, except for good cause shown.

(2) If either the prosecuting attorney or the defense ~~eounsel~~ claims that discoverable material under this rule was not furnished, was incomplete, was illegible or otherwise failed to satisfy this rule, or if claim is made that discretionary disclosures pursuant to Part I (d) should be made, the prosecuting attorney or the defense ~~eounsel~~ may file a motion concerning these matters and the motion shall be promptly heard by the court.

(3) For good cause, the court may, on motion of either party or its own motion, alter the time for all matters relating to discovery under this rule.

**(c) Cost and Location of Discovery.**

The cost of duplicating any material discoverable under this rule shall be borne by the party receiving the material, based on the actual cost of copying the same to the party furnishing the material. Copies of any discovery provided to a defendant by court appointed counsel shall be paid for by the defendant. The place of discovery and furnishing of materials shall be at the office of the party furnishing it, or at a mutually agreeable location.

**(d) Compliance Certificate.**

(1) When deemed necessary by the trial court, the prosecuting attorney and the defense ~~counsel~~ shall furnish to the court a compliance certificate signed by all counsel listing specifically each item furnished to the other party. The court may, in its discretion, refuse to admit into evidence items not disclosed to the other party if such evidence was required to be disclosed under Parts I and II of this rule.

(2) If discoverable matters are obtained after the compliance certificate is filed, copies thereof shall be furnished forthwith to the opposing ~~counsel~~ party and, upon application to the court, the court may either permit such evidence to be offered at trial or grant a continuance in its discretion.

**Amended and Adopted by the Court, En Banc January 17, 2008, effective immediately.**

**BY THE COURT:**

**Alex J. Martinez  
Justice, Colorado Supreme Court**