

CHAPTER 29

COLORADO RULES OF CRIMINAL PROCEDURE

Rule 23. Trial by Jury or to the Court

(1) Every person accused of a felony has the right to be tried by a jury of twelve. Before the jury is sworn, the defendant may, except in class 1 felonies, elect a jury of less than twelve but no fewer than six, with the consent of the court.

(2) Every person accused of a misdemeanor has the right to be tried by a jury of six. Before the jury is sworn, the defendant may elect a jury of less than six but no fewer than three, with the consent of the court.

(3) Every person accused of a class 1 or class 2 petty offense has the right to be tried by a jury of three, if he or she:

(I) Files a written jury demand within twenty days after entry of a plea;

(II) Tenders twenty-five dollars to the court within twenty days after entry of a plea, unless such fee is waived by the judge because of the indigence of the defendant. If the charge 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 ten days before the scheduled trial date a written waiver of jury trial, the jury fee shall be returned to the defendant.

(4) The jury, in matters involving class 1 and class 2 petty offenses, shall consist of a greater number than three, not to exceed six, if requested by the defendant in the jury demand.

(5) (I) The person accused of a felony or misdemeanor may, with the consent of the prosecution, waive a trial by jury in writing or orally in court. Trial shall then be to the court.

(II) The court shall not proceed with a trial to the court after waiver of jury trial without first determining:

(a) That the defendant's waiver is voluntary;

(b) That the defendant understands that:

(i) The waiver would apply to all issues that might otherwise need to be determined by a jury including those issues requiring factual findings at sentencing;

(ii) The jury would be composed of a certain number of people;

(iii) A jury verdict must be unanimous;

(iv) In a trial to the court, the judge alone would decide the verdict;

(v) The choice to waive a jury trial is the defendant's alone and may be made contrary to counsel's advice.

(III) In a proceeding where the waiver of a jury trial is part of a determination preceding the entry of a guilty or nolo contendere plea, the court need only make the determinations required by Rule 11(b) and not those required by this rule.

(6) A defendant may not withdraw a voluntary and knowing waiver of trial by jury as a matter of right, but the court, with the consent of the prosecution, may permit withdrawal of the waiver prior to the commencement of the trial.

(7) In any case in which a jury has been sworn to try a case, and any juror by reason of illness or other cause becomes unable to continue until a verdict is reached, the court may excuse such juror. Except in class 1 felonies, if no alternate juror is available to replace such juror, the defendant and the prosecution, at any time before verdict, may stipulate in writing or on the record in open court, with approval of the court, that the jury shall consist of less than twelve but no fewer than six in felony cases, and less than six but no fewer than three in

misdemeanor cases, and the jurors thus remaining shall proceed to try the case and determine the issues.

(8) All jury verdicts must be unanimous.

Amended and Adopted by the Court, En Banc July 16, 2008, nunc pro tunc April 17, 2008, effective immediately.

BY THE COURT:

Alex J. Martinez
Justice, Colorado Supreme Court