

2023 Prosecutor's Bootcamp

Colorado Municipal Court Rules of Procedure



Empowered cities and towns, united for a strong Colorado.

Contents of this presentation reflects the view of the presenter, not of CML.



COLORADO
MUNICIPAL
LEAGUE

Colorado Municipal Court Rules of Procedure

Presented by

- Judge Billy R. Stiggers, II, City of Aurora
- Shantel Withrow, Division Chief of Prosecution, Colorado Springs City Attorney's Office
- Judge Robert (Bob) J. Frick, City of Longmont



Agenda

- First Appearance – Rules 204, 210 & 211
- Pre-Trial – Rules 202, 212, 216, 217, and 248
- Trial – Rules 223 and 224
- Post Trial and Warrants – Rules 235 & 241
- Proposed Rule Changes



www.coloradomunicipalcourts.org

Empowered cities and towns, united for a strong Colorado.

Contents of this presentation reflects the view of the presenter, not of CML.



COLORADO
MUNICIPAL
LEAGUE

About Us

- There 271 incorporated municipalities in Colorado representing 101 Home Rule Cities/Towns; 12 Statutory Cities, 1 Territorial Charter City; and 157 Statutory Towns.
- Two consolidated City and County governments. Municipalities may often be in one or more counties and judicial districts.
- More than 215 Colorado Municipal Courts serving these communities.
- Grants and limitations of power by the United States Constitution, the Colorado Constitution, the Colorado Revised Statutes, and rules of procedure promulgated by the Colorado Supreme Court.
- Original, special, exclusive, limited and concurrent jurisdiction in relation to other courts within the State.



“Quality of Life Courts”

- Municipal or local courts give the public their primary impression of the criminal justice system
- More people go before municipal or local courts than the state and federal courts
- These courts are also described as the first line of defense a community has in dealing with criminal behavior.



First Appearance

- Rules 204, 210 & 211



Rule 204 Simplified Procedure for Trial of Municipal Charter and Ordinance Violations

(a) Initiation of Prosecution.

(1) Prosecution of a violation under simplified procedure shall be commenced by:

(I) The issuance of a summons and complaint;

(II) The issuance of a summons following the filing of a complaint;

(III) The filing of a complaint following an arrest; or

(IV) The filing of a summons and complaint following arrest



Rule 204. Simplified Procedure for Trial of Municipal Charter and Ordinance Violations.

(b) Summons, Summons and Complaint – By Whom Issued; How Served; Failure to Appear; Contents; Amendment.

(1) Summons. Summons is issued by the clerk of the court following the filing of a sworn complaint when it appears from the complaint that there is probable cause to believe that a violation has been committed and that the defendant committed it. The summons need only contain the name of the defendant, the date, time, and place of appearance of the defendant. A copy of the complaint shall be served therewith, and a copy of the summons and the complaint shall be supplied to the prosecutor.

(2) Warrant. In lieu of a summons a warrant may be issued at the discretion of the court following the filing of a sworn complaint.

(3) Summons and Complaint. A summons and complaint may be issued by a peace officer for an offense constituting a violation which was committed in the peace officer's presence or, if not committed in the peace officer's presence, when the peace officer has reasonable grounds for believing that the offense was committed in fact and that the offense was committed by the person charged. A copy of the summons and complaint so issued shall be filed immediately with the court before which appearance is required. A second copy shall be supplied to the prosecutor if so requested.



Rule 204. Simplified Procedure for Trial of Municipal Charter and Ordinance Violations.

(4) Contents of Complaint or Summons and Complaint. The complaint shall contain the name of the defendant; the date and approximate location of the offense; identification of the offense charged, citing the charter or ordinance section alleged to have been violated; and a brief statement or description of the offense charged, which statement or description shall be sufficient if it states the type of offense to which the charter or ordinance relates. The summons and complaint shall contain all the foregoing information and shall also direct the defendant to appear before a specified court at a stated date, time, and place, or in the office of the court clerk or violations bureau as provided in subsection (5) below.

(5) The summons or summons and complaint shall direct the defendant to appear before a specified court at a stated date, time, and place, or to appear or to respond at the office of the court clerk or violations bureau of a specified court at a stated date and time or within a stated period of time after service of said summons or summons and complaint.

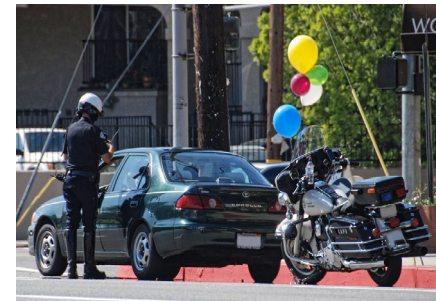
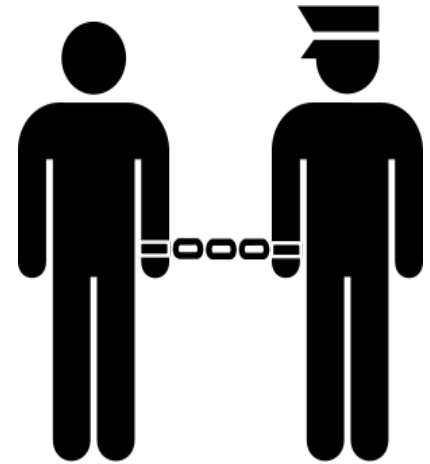
(6) Amendment of complaint or summons and complaint. The court may permit a complaint or summons and complaint to be amended as to form or substance at any time prior to trial; the court may permit it to be amended as to form at any time before the verdict or finding if no additional or different offense is charged and if substantial rights of the defendant are not prejudiced.



Rule 204. Simplified Procedure for Trial of Municipal Charter and Ordinance Violations.

Practice Tips:

1. Be aware of the Colorado municipal statute of limitations for prosecution
 - Prosecutions for the commission of any offense made punishable under any ordinance of any municipality shall be barred one year after the commission of the offense
C.R.S. 31-16-111
2. Peace officer definition may be any person authorized per municipal ordinance
 - Police officer, Animal Care Officer, Firefighter, Code Enforcement Officer, City Attorney . . .
3. Some defense attorney's use this section for probable cause hearing i.e. preliminary hearing
4. Summons and complaint must be filed with court, or court can dismiss the case without prejudice on its own motion
5. Court can dismiss the case for impossible appearance date
6. Prosecutor should make good faith amendments of the summons and complaint



Rule 210. Arraignment.

(a) In Court.

(1) Arraignment shall be held upon defendant's first appearance in court, unless defendant is granted a continuance to seek assistance of counsel, to determine which plea to enter, or for other good and sufficient reasons. The court shall advise each defendant of the right to have the arraignment continued upon request for good cause shown, and if no such request is made, the court may proceed with the arraignment.

(2) Arraignment shall be conducted in open court, and the defendant may appear in person or by counsel. If a plea of guilty or nolo contendere is entered by counsel in the absence of the defendant, the court may command the appearance of the defendant in person for the imposition of sentence.

(3) Upon arraignment, the defendant or counsel shall be furnished with a copy of the complaint or summons and complaint if one has not been previously served.

(4) A defendant appearing without counsel at arraignment shall be advised by the court of the nature of the charges contained in the complaint and of the maximum penalty which the court may impose in the event of a conviction; in addition, the court shall inform the defendant of the following rights:



Rule 210. Arraignment.

(I) To bail;

(II) To make no statement, and that any statement made can and may be used against the defendant;

(III) To be represented by counsel, and, if indigent, the right to appointed counsel as applicable;

(IV) To have process issued by the court, without expense to the defendant, to compel the attendance of witnesses in defendant's behalf;

(V) To testify or not to testify in defendant's own behalf;

(VI) To a trial by jury where such right is granted by statute or ordinance, together with the requirement that the defendant, if desiring a jury trial, demand such trial by jury in writing within 21 days after arraignment or entry of a plea; also the number of jurors allowed by law, and of the requirement that the defendant, if desiring a jury trial, tender to the court within 21 days after arraignment or entry of a plea a jury fee of \$25 unless the fee be waived by the judge because of the indigence of the defendant.

(VII) To appeal.



Rule 210. Arraignment.

(b) At Office of Court Clerk or Violations Bureau.

(1) Except where arraignment and immediate trial are available, the court, in order to eliminate unnecessary court appearances, may provide that a defendant desiring to enter a plea of not guilty may enter an appearance and such a plea at the clerk's office or violations bureau, in person or by counsel, and have the case assigned for trial at a future date. The clerk shall furnish notice of such entry of plea to the prosecutor without delay.

(2) Before a plea of guilty is received, the defendant shall be arraigned in court as provided in section (a) above, unless the offense is included in a uniform schedule of fines imposed by the court in accordance with the provisions of subsection (5) below, and the defendant elects such procedure.

(3) Under the conditions specified in subsection (4) herein, a court where authorized may establish a procedure for the payment to the court clerk or violations bureau according to a schedule of fines. In such matters the violations bureau shall act under the direction and control of the court.

(4) Any court subject to these rules may by order, which may from time to time be amended, supplemented, or repealed, designate the violations, the penalties for which may be paid at the office of the court clerk or violations bureau. In no event shall the order of reference, or any amendment or supplement thereto, designate for processing any of the following traffic violations:



Rule 210. Arraignment.

((I) Offenses resulting in an accident causing personal injury, death, or appreciable damage to the property of another;

(II) Reckless driving;

(III) Exceeding the speed limit by more than twenty-four miles per hour;

(IV) Exhibition of speed or speed contest.

(5) Schedule of Fines. The court, in addition to any other notice, by published order to be prominently posted in a place where fines are to be paid, shall specify by suitable schedules the amount of fines to be imposed for violations, designating each violation specifically in the schedules. Such fines shall be within the limits declared by ordinance. Fines and costs shall be paid to, receipted by, and accounted for by the violations clerk or court clerk in accordance with these rules.



Rule 210. Arraignment.



Rule:

- The arraignment may be oral, written or by video
- Arraignments may be held without a prosecutor present
- If the defendant is in custody:
 1. Defendant must see a judge within 48 hours of arrest for bond/bail hearing C.R.S. 16-4-102
 2. If jail is a possible sentence, the defendant is entitled to court appointed counsel during the first appearance. C.R.S. 13-10-114.5
- Attorney may appear at arraignment and request the court to waive the defendant's appearance
- The court must advise the defendant of the nature of the offenses charged and trial rights – including jury trial rights and the requirements to perfect a jury right (traffic offenses and criminal offenses)
- Defendant can enter plea of guilty, not guilty or nolo contendere (no contest)
- Rule 210 allows for plea with clerk, by mail or online – traffic disposition



© Can Stock Photo - csp20518873

Empowered cities and towns, united for a strong Colorado.

Contents of this presentation reflects the view of the presenter, not of CML.



COLORADO
MUNICIPAL
LEAGUE

Rule 211. Pleas.

(a) Generally. A defendant, in person or by counsel, may plead guilty, not guilty, or, with the consent of the court, nolo contendere.

(b) Pleas of Guilty and Nolo Contendere. The court shall not accept a plea of guilty or a plea of nolo contendere without first determining that the defendant has been advised of all rights set forth in Rule 210 (a)(4) and also determining:

- (1) That the defendant understands the nature of the charge and the effect of the plea;
- (2) That the plea is voluntary and is not the result of undue influence or coercion on the part of anyone;
- (3) That the defendant understands the right to trial by court, or by jury, if applicable, and that the plea waives the right to trial on all issues;
- (4) That the defendant understands the possible penalty or penalties.



Rule 211. Pleas.

(c) Absence of the Defendant. The court may accept, in the absence of the defendant, any plea entered in writing by the defendant or counsel or orally made by counsel.

(d) Failure or Refusal to Plead. If a defendant refuses to plead or if the court refuses to accept a plea of guilty, or a plea of nolo contendere, or if a corporation fails to appear, the court shall enter a plea of not guilty. If for any reason the arraignment here provided for has not been had, the case shall for all purposes be considered as one in which a plea of not guilty has been entered.



Rule 211. Pleas.

Practice Tips:

1. Known as the “Rule 211 Advisement”
2. Make sure the court does a full 211 advisement (210 + 211)
3. Defense counsel may waive the 211 advisement
4. Court must also advise on right to seek legal advice on collateral issues effecting immigration C.R.S. 18-1-410.6 (possibly driving privilege and open criminal cases)
5. Defense attorney may waive defendant’s appearance and enter a plea
6. The court may also accept plea agreements in writing. The prosecutor should make sure the plea paperwork includes a fully signed and acknowledged 211 advisement
7. In dealing with “sovereign citizens” or others who refuse to plea, court may enter a not guilty plea on their behalf and set for trial.



Pre-Trial

- Rules 202, 212, 216, 217, and 248



Rule 202 – Purpose and Construction

- These rules are intended to provide for the just determination of all municipal charter and ordinance violations. They shall be construed to secure **simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.**
- This means: Municipal Court is *different* than county and district court, and the rules are one of the reasons why.



Municipal
Court



County
Court

Municipal v. County

Municipal Court

Simplified Procedure

- Oral Motions Practice (although may be written motions practice)
- Simplified complaint process

Elimination of unjustifiable delay...

- 91 day speedy trial clock
- Often shorter time between date of ticket and date of first appearance

Limited Jurisdiction

- No felonies, no DUI, no Drivers License issues, no matters of statewide concern
- No VRA (**unless DV**)

Other Differences

- More Pro Se defendants

County Court

Formalized Procedure

- Written Motions Practice

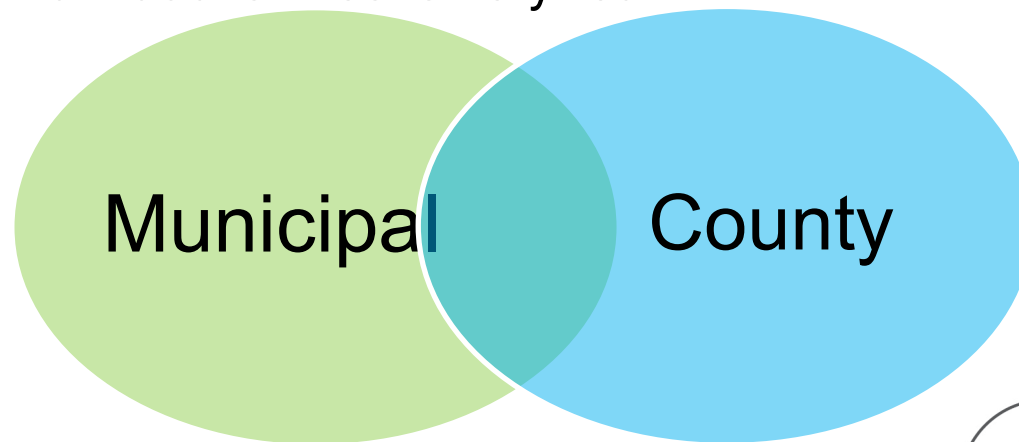
- 180 day speedy trial clock
- Longer time between ticket date and first appearance

- Jurisdiction is statewide, includes DUI, license issues, all DV cases
- VRA

- Mostly represented parties

But... Municipal and County are the same...

- The burden of proof= Beyond a Reasonable Doubt
- Constitutional Rights of Defendants Are Protected
- Ethical Considerations for Prosecutors Are the Same
- Issues in cases are often the same
- Impact on individual's lives is very real



Rule 212 Pleadings and Motions Before Trial

(a) Pleadings and Motions. Pleadings shall consist of the complaint or summons and complaint and pleas of guilty, not guilty, or nolo contendere. All other pleas, demurrers, and motions to quash are abolished, and defenses and objections raised before trial which heretofore could have been raised by one or more of them shall be raised only by motion to dismiss or to grant appropriate relief, or as provided in these rules.

(b) Oral or Written Motions. All motions shall be oral unless otherwise ordered by the court.

(c) Defenses and Objections Which May Be Raised. Any defense or objection which is capable of determination without the trial of the general issue may be raised by motion.

(d) Defenses and Objections Which Must Be Raised. Defenses and objections based on defects in the institution of the prosecution or in the complaint or summons and complaint other than that it fails to show jurisdiction in the court or to charge an offense may be raised only by motion. The motion shall include all such defenses and objections then available to the defendant. Failure thus to present any such defense or objection constitutes a waiver of it, but the court for cause shown may grant relief from the waiver. Lack of jurisdiction or the failure of the complaint or summons and complaint to charge an offense shall be noticed by the court at any time during the proceeding.

(e) Time for Making Motion. The motion shall be made before the plea is entered, but the court may permit it to be made within a reasonable time thereafter.

(f) Hearing on Motion. A motion before trial raising defenses or objections under section (c) or (d) shall be determined before the day of trial unless the court orders that it be deferred for determination at or after the trial of the general issue.

(g) Effect of Determination. If a motion is determined adversely to the defendant, the defendant shall be permitted to plead if no plea has previously been made. A plea previously entered shall stand.



212 –Pleadings and Motions- Highlights

Oral Motions Practice Tips:

Rule 212 says:

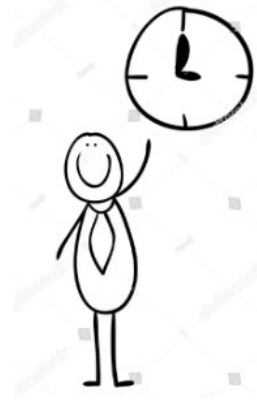
- Oral motions unless otherwise ordered by the court

In practice you should:

- Ask for leave to file written motions, or ask for the court to order defense (counsel) to file written motions
 - Do this when issues are complicated, when you want to present significant caselaw, or when you want to preserve your record for appeal (Example: First Amendment Challenges)
 - Do this when you need to know if there are witnesses that must be subpoenaed (Example: Miranda Motions Hearing)

You should be prepared:

- To argue issues on your feet without preparation/advance notice
 - So, have your office help create ‘cheat sheets’ for the common issues:
 - Motion to withdraw plea (applying rule 235)
 - Sovereign Citizen Arguments (UCC application, jurisdiction, ‘traveler’ argument)
 - Miranda Violations (Standard for determination, burden to proceed)
- To ask the court for a continuance if an issue you did not anticipate requires witnesses or further research
- To handle pro se motions



Rule 216 Discovery and Inspection

(a) By Defendant. Upon the motion of a defendant or upon the court's own motion at any time after the filing of the complaint or summons and complaint the court may order the prosecution to permit the defendant to inspect and copy or photograph any books, papers, documents, photographs, or tangible objects that are within the prosecution's possession and control, upon a showing that the items sought may be material to the preparation of the defense and that the request is reasonable. The order shall specify the time, place, and manner of making the inspection and of taking the copies or photographs and may prescribe such terms and conditions as are just.

(b) Witness's Statements. At any time after the filing of the complaint or summons and complaint, upon the request of a defendant or upon the order of court, the prosecution shall disclose to the defendant the names and addresses of persons whom the prosecution intends to call as witnesses at the hearing or trial, together with any witness statements.

(c) Irrelevant Matters. If the prosecution claims that any material or statement ordered to be produced under this rule contains matter which does not relate to the subject matter of the witness's testimony, the court shall order it to deliver the statement for the court's inspection in chambers. Upon such delivery the court shall excise the portions of the statement which do not relate to the subject matter of the witness's testimony, then the court shall direct delivery of the statement to the defendant.

(d) Statement Defined. The term "statement" as used in sections (b) and (c) of this Rule in relation to any witness who may be called by the prosecution means:

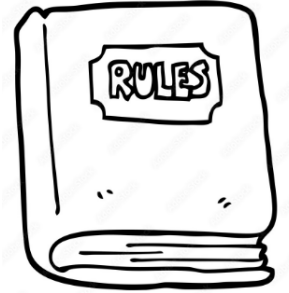
- (1) A written statement made by such witness and signed or otherwise adopted or approved by the witness;
- (2) A mechanical, electrical, or other recording, or a transcription thereof, which is a recital of an oral statement made by such witness; or
- (3) Stenographic or written statements or notes which are in substance recitals of an oral statement made by such witness and which were reduced to writing contemporaneously with the making of such oral statement.

(e) Additional Rules. Municipal courts may make such additional rules for discretionary or mandatory discovery by the defense or by the prosecution as are consistent with these rules and with any applicable law.



Rule 216- Discovery-Highlights

Rule 216 is NOT Rule 16. HOWEVER:



(e) Allows any court to “make such additional rules”

- You should check with your jurisdiction for any case management orders or further discovery rules

Colorado Rule of Professional Conduct 3.8 still applies:

- The prosecutor in a criminal case shall
 - (d) timely disclose to the defense *all information known to the prosecutor*, regardless of admissibility, that the prosecutor also knows or reasonably should know *tends to negate the guilt of the accused or mitigate the offense, or would affect a defendant's decision about whether to accept a plea disposition*, except when the prosecutor is relieved of this responsibility by statute, rule, or protective order of the tribunal. This information includes all unprivileged and unprotected mitigation information the prosecutor knows or reasonably should know could affect the sentence. A prosecutor may not condition plea negotiations on postponing disclosure of information known to the prosecutor that negates the guilt of the accused. A prosecutor must make diligent efforts to obtain information subject to this rule that the prosecutor knows or reasonably should know exists by making timely disclosure requests to agencies known to the prosecutor to be involved in the case, and alerting the defense to the information if the prosecutor is unable to obtain it;

Changes may be coming....

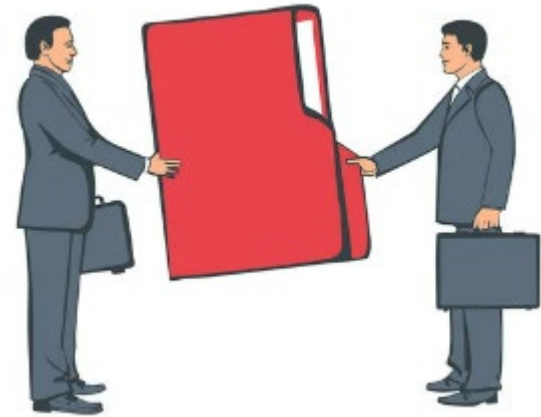
- Colorado Municipal Court Rules of Procedure are being revised



Rule 216- Discovery-Highlights- Continued

Practice Tips:

1. Error on the side of discovering information:
 - Argue admissibility, not discovery
2. Have reasonable timelines
 - Main reports v. Witness criminal histories
3. Understand Brady obligations, even for officer credibility issues
4. Build reputation for reasonableness
 - Comply with your individual court orders
 - Respond to defense inquiries
5. Have an advisement with information about discovery and require a request from defendants
6. Process, Process, Process



Rule 217 Subpoena

(a) For Attendance of Witnesses-Form-Issuance. A subpoena shall be issued either by the court or by the clerk of the court or by counsel whose appearance has been entered in the particular case in which the subpoena is sought. It shall state the name of the court and the title, if any, of the proceeding, and shall command each person to whom it is directed to attend and give testimony at the time and place specified therein. The court or clerk shall issue a subpoena signed and sealed but otherwise in blank to a party requesting it, who shall fill in the blanks before it is served.

(b) For Production of Documentary Evidence and of Objects. Upon order of the court which may be issued ex parte, a subpoena may also command the person to whom it is directed to produce the books, papers, documents, photographs, or other objects designated therein. The court on motion made promptly may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that books, papers, documents, photographs, or objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered in evidence and may upon their production permit the books, papers, documents, photographs, or objects or portions thereof to be inspected by the parties and their attorneys.

(c) Service. Unless service is admitted or waived, a subpoena may be served by any peace officer or any other person who is not a party and who is not less than eighteen years of age. Service of a subpoena may be made by delivering a copy thereof to the person named. Service is also valid if the person named has signed a written admission or waiver of personal service.

(d) Contempt. Failure by any person without adequate excuse to obey a subpoena may be deemed a contempt of the court from which the subpoena issued.



Rule 217 Subpoena- Highlights

Rule:

- (a) Subpoenas for people:
 - By judge, clerk, or counsel of record
- (b) SDT
 - Different from county/district court
 - Upon *order of the court*
 - Can make a motion to quash
 - Can make a motion for in camera review

Practice Tips:

1. Know the difference between discovery and an SDT request
 - Intervene and provide documents if it is discovery
 - Example: Radar Documents v. Traffic Cameras
2. Know your role: IA files for police officers– As the prosecutor, you cannot have access to these files and refuse to provide them. Have a separate municipal lawyer representing the police or other agencies in these areas.
3. Ask for written requests and orders. Wording matters in these areas.



Rule 248 Dismissal

(a) By the Prosecution. No case pending in any court shall be dismissed or a nolle prosequi therein entered by the prosecution, unless upon a motion in open court and with the court's consent and approval. Such a motion shall be supported by a statement concisely stating the reasons for the action. Such a dismissal may not be entered during the trial without the defendant's consent.

(b) By the Court. If there is unnecessary delay in the trial of a defendant, the court may dismiss the case. If the trial of a defendant is delayed more than 91 days (13 weeks) after the arraignment of the defendant, or unless the delay is occasioned by the action or request of the defendant, the court shall dismiss the case and the defendant shall not thereafter be tried for the same offense; except that if on the day of a trial set within the last 7 days of the above time limit a necessity for a continuance arises which the court in the exercise of sound judicial discretion determines would warrant an additional delay, then one continuance, not exceeding 28 days, may be allowed, after which the dismissal shall be entered as above provided if trial is not held within the additional time allowed.



Rule 248 Dismissal- Highlights

Rule:

- Within 91 days
- After the **arraignment** of the defendant
- Unless delay occasioned by the defendant
- Escape hatch- Additional 28 days



Practice Tips:

1. Beware: The current rule is unclear if arraignment is the first appearance, advisement, or entry of plea.
2. As a prosecutor, never consent to a defendant/counsel setting anything other than a trial without a waiver and tolling of speedy trial. Make it explicit on the record.
 1. Waiver= restart the 91 days at the next court date
 2. Tolling= pause, exclude the intervening days
3. Know the rules:
 1. Look to the county court rules and caselaw for what type of behavior is considered a “delay occasioned by the defendant”
 1. FTA, defense counsel scheduling issue, requesting a PTC, refusing to accept a date offered by the court, etc.

Trial

- Rules 223 and 224



Rule 223. Trial by Jury or by the Court.

(a) Trial by Jury. Trial shall be to the court, unless the defendant is entitled to a jury trial under the constitution, ordinance, charter, or general laws of the state, in which case the defendant shall have a jury, if, within 21 days after arraignment or entry of a plea, the defendant files with the court a written jury demand and at the same time tenders to that court a jury fee of \$25, unless the fee is waived by the judge because of the indigence of the defendant. If the action 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 7 days before the scheduled trial date a written waiver of jury trial, the jury fee shall be refunded. A defendant who fails to file with the court the written jury demand as provided above waives the right to a jury trial.

(b) Numbers of Jurors. When a jury trial is granted pursuant to section (a) of this Rule, the jury shall consist of three jurors unless a greater number, not to exceed six, is requested by the defendant in the jury demand.

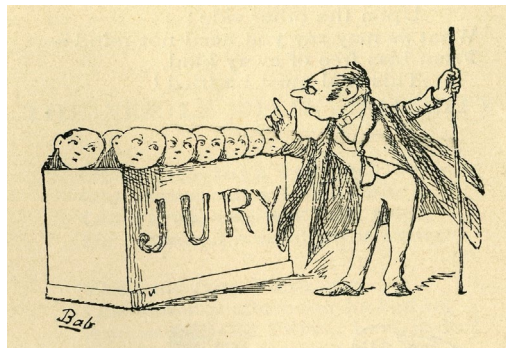
(c) Trial Without a Jury. In a case tried without a jury, the court shall make a general finding and in addition on request shall make oral findings of fact and conclusions of law.



Rule 223. Trial by Jury or by the Court.

Rule:

- The rule presumes a trial to the court unless the jury right is perfected
- A defendant knowingly waives the right to a jury trial by failing to pay the \$25 jury and submit a written jury demand within 21 days from arraignment or not guilty plea after being fully advised by the court Christie v. People, 837 P.2d 1237 (Colo. 1992).
- Jury fee is refundable upon acquittal or resolution of the case seven days before the jury trial
- Court required to make findings of fact and conclusions of law. Either side may request this to preserve the record for appeal.
- Minimum jury of three and maximum of six



Empowered cities and towns, united for a strong Colorado.

Contents of this presentation reflects the view of the presenter, not of CML.



COLORADO
MUNICIPAL
LEAGUE

Rule 224. Trial Jurors.

(a) Summoning and Selecting Prospective Jurors.

(1) Each municipality shall establish a procedure for summoning and selecting prospective jurors, which procedure shall be calculated to provide the defendant with a fair opportunity for obtaining on the jury a representative cross section of the population of the area served by the court.

(2) For the purposes of this rule, the term “area served by the court” means the entire territorial boundaries of the municipality, even if the boundaries encompass portions of more than one county or other political subdivision.

(b) Challenge to the Array.

(1) No array or panel of any trial jury shall be quashed, nor shall any verdict in any case be set aside or averted, by reason of the fact that the court or jury commissioner has returned such jury or any of them in any informal or irregular manner, if in the opinion of the court the irregularity is unimportant and insufficient to vitiate the return of such jury. All issues of fact arising on any challenge to the array shall be tried by the court.



Rule 224. Trial Jurors.

(2) At any time before trial, upon motion by a party or on its own motion, the court may declare a mistrial in a case on the ground that a fair jury pool cannot be safely assembled in that particular case due to a public health crisis or limitations brought about by such crisis. A declaration of a mistrial under this paragraph must be supported by specific findings.

(c) Orientation and Examination of Jurors. An orientation and examination shall be conducted to inform prospective jurors about their duties and service and to obtain information about prospective jurors to facilitate an intelligent exercise of challenges for cause and peremptory challenges.

(1) The jury commissioner or court employee in charge of summoning prospective jurors is authorized to examine and, when appropriate, excuse prospective jurors who do not satisfy the statutory qualifications for jury service, or who are entitled to a postponement, or as otherwise authorized by appropriate court order.



Rule 224. Trial Jurors.

d) Challenges for Cause.

(1) Challenges for cause may be taken on one or more of the following grounds:

(I) Absence of any qualification prescribed by statute to render a person competent as a juror except that, for the purpose of this rule, any requirement that a prospective juror be a resident of the county shall be deemed satisfied if the prospective juror is a resident of the area served by the court as defined in section (a)(2) of this rule;

(II) Relationship within the third degree, by blood, adoption, or marriage, to a defendant or to any attorney of record or attorney engaged in the trial of the case;

(III) Standing in the relation of guardian and ward, employer and employee, landlord and tenant, debtor and creditor, or principal and agent to, or being a member of the household of, or associated in business with, or surety on any bond or obligation for, any defendant;

(IV) The juror is or has been a party adverse to the defendant in a civil action, or has complained against or been accused by the defendant in a criminal prosecution;

(V) The juror has served on any investigatory body which inquired into the facts of the offense charged;



Rule 224. Trial Jurors.

(VI) The juror was a juror at a former trial arising out of the same factual situation or involving the same defendant;

(VII) The juror was a juror in a civil action against the defendant arising out of the act charged as a crime;

(VIII) The juror was a witness to any matter related to the crime or its prosecution;

(IX) The juror occupies a fiduciary relationship to the defendant or a person alleged to have been injured by the crime or the person on whose complaint the prosecution was instituted;

(X) The existence of a state of mind in a juror manifesting a bias for or against the defendant, or for or against the prosecution, or the acknowledgment of a previously formed or expressed opinion regarding the guilt or innocence of the defendant shall be grounds for disqualification of the juror, unless the court is satisfied that the juror will render an impartial verdict based solely upon the evidence and the instructions of the court;

(XI) Repealed.

(XII) The juror is an employee of a public law enforcement agency or public defender's office.



Rule 224. Trial Jurors.

(2) If either party desires to introduce evidence, other than the sworn responses of the prospective juror, for the purpose of establishing grounds to disqualify or challenge the juror for cause, such evidence shall be heard and all issues related thereto shall be determined by the court out of the presence of the other prospective jurors. All matters pertaining to the qualifications and competency of the prospective jurors shall be deemed waived by the parties if not raised prior to the swearing in of the jury to try the case, except that the court for good cause shown or upon a motion for mistrial or other relief may hear such evidence during the trial out of the presence of the jury and enter such orders as are appropriate.

(e) Peremptory Challenges and Manner of Exercise. Unless otherwise ordered by the court, the jury shall be impaneled as follows: The box shall be filled with prospective jurors exceeding by six the number of jurors requested by the defendant pursuant to Rule 223 (b) above. Prospective jurors shall be sworn, voir dire examination conducted, and challenges for cause taken and determined. Jurors excused by virtue of successful challenge for cause shall be replaced and replacements sworn, examined, and subjected to challenge for cause. When there are no remaining jurors subject to challenges for cause, the prosecution and defendant each shall be entitled to three peremptory challenges, all of which must be exercised either orally or by striking names from a list prepared by the court, and to be exercised alternatively by the parties commencing with the prosecution. In any case where there are multiple defendants, each side shall have an additional peremptory challenge for each defendant after the first, but not to exceed ten. The number of jurors called to the box in cases involving multiple defendants shall be consistent with the number of peremptory challenges permitted to be exercised.



Rule 224. Trial Jurors.

(f) Alternate jurors. The court may, on its own motion or on the motion of either the prosecution or defense, direct that not more than one alternate juror be impaneled. Such juror shall have the same qualifications, shall be subject to the same examination and challenges, and shall have the same functions, powers, facilities and privileges as the regular jurors.

(g) Custody of Jury.

(1) The court should only sequester jurors in extraordinary cases. Otherwise, jurors should be permitted to separate during all trial recesses, both before and after the case has been submitted to the jury for deliberation. Cautionary instructions as to their conduct during all recesses shall be given to the jurors by the court.

(2) The jurors shall be in the custody of the bailiff or other person designated by the court whenever that are deliberating and at any other time as ordered by the court.

(3) If the jurors are permitted to separate during any recess of the court, the court shall order them to return at a day and hour appointed by the court for the purpose of continuing the trial, or for resuming their deliberations if the case has been submitted to the jury.

(h) Juror Questions. Jurors shall be allowed to submit written questions to the court for the court to ask of witnesses during trial, in compliance with procedures established by the trial court. The trial court shall have the discretion to prohibit or limit questioning in a particular trial for good cause.



Rule 224. Trial Jurors.

Rule:

- Due to COVID-19, Rule 224 was amended in 2020 to allow mistrials for public health emergencies
- Challenge to Array (Pool)
 1. A challenge to the demographics and jury panel was not publicly drawn
 2. The challenge must be in writing before the start of jury trial, generally with affidavits, and have a hearing before the trial judge
- Basic requirements for the judge's voir dire
- Enumerated challenges for cause
- Under rule 224, jury selection is different than state court (no presumptive six)
- Jury pool is the number of jurors selected plus six
 1. E.g., Jury of four plus six more jurors = 10-member jury pool
 2. Each side gets three preemptory to get to the panel of four
 3. The court may seat replacement jurors for those stricken for cause
 4. Court may seat only one alternate juror to remain throughout the trial



Rule 224. Trial Jurors.



Practice Tips:

1. Challenges for cause are unlimited
2. Be sure to know the requirements for a “Batson Challenge”
3. Preemptory challenges are “use them or lose them” to the defense
4. Make a deliberate effort to avoid direct contact or conversation with jurors
5. Juror are allowed to submit written questions. You should remind the judge
6. Use voir dire as a time to get to know jurors and let them get to know you and your case
7. You cannot try your case during voir dire but you are allowed to establish whether jurors can be fair and impartial regarding the facts of your case

Post Trial and Warrants

- Rules 235 & 241



Rule 235

(a) Correction of Illegal Sentence. The court may correct an illegal sentence at any time and may correct a sentence imposed in an illegal manner within the time provided herein for the reduction of sentence.

(b) Reduction of Sentence. The court may reduce the sentence provided that a motion for reduction of sentence is filed (1) within 91 days (13 weeks) after the sentence is imposed, or (2) within 91 days (13 weeks) after receipt by the court of a remittitur issued upon affirmance of the judgment or sentence or dismissal of the appeal, or (3) within 91 days (13 weeks) after entry of any order or judgment of the appellate court denying review or having the effect of upholding a judgment of conviction or sentence. The court may, after considering the motion and supporting documents, if any, deny the motion without a hearing. The court may reduce a sentence on its own initiative within any of the above periods of time.

(c) Other Remedies. A person convicted of a municipal ordinance violation may move the court for post-conviction review on the grounds that said conviction was obtained or sentenced imposed in violation of the constitution or laws of the United States, or of the constitution or laws of this state, or of the municipality's charter or ordinance. Said motion shall be made within six months after the date of conviction unless the applicant can show good cause for the delay.



Search Warrants

- The [Fourth Amendment](#) of the United States Constitution protects citizens from unreasonable searches and seizures by law enforcement officers. A [search and seizure](#) is considered unreasonable if it is conducted by police without a valid search warrant, and does not fall under an exception.
- A judge issues a [search warrant](#) to authorize law enforcement officers to search a particular location and seize specific items. To obtain a search warrant, police must show probable cause that a crime was committed and that items connected to the crime are likely to be found in the place specified by the warrant.
- Colorado Municipal Courts are authorized to issued search warrants under CMCR 241.



Common exceptions to the Search Warrant Requirement

- Consent
- Plain View
- Search incident to arrest
- Exigent Circumstances
- Automobile Exception
- Hot Pursuit



Exclusionary Rule

- If evidence is obtained without a valid search warrant, and no exception to the warrant requirement applies, the evidence may be subject to the exclusionary rule.
- The [exclusionary rule](#) prevents illegally obtained evidence from being admitted in a court of law. Evidence gathered on the basis of illegally obtained evidence (known as "fruit of the poisonous tree") will also be excluded.



Rule 241 - Authority

(a) Authority to Issue Warrant. A judge of any court shall have power to issue a search warrant under this Rule only when:

(1) It relates to a charter or ordinance violation involving a serious threat to public safety or order; and

(2) The violation is not also a violation prohibited by state statute for which a search warrant could be issued by a district or county court.

...



Rule 241 – Grounds for Issuance

(b) Grounds for Issuance.

(1) A search warrant may be issued to search for and seize property which is located within the municipality and which:

(I) Is designated or intended for use in committing a charter or ordinance violation;

(II) Has been used as a means of committing a charter or ordinance violation; or

(III) The possession of which is prohibited by charter or ordinance.

...



Rule 241 – Inspection of private premises

(2) A search warrant may be issued for the inspection of private premises by an authorized public inspector upon showing that:

(I) The premises are located within the municipality;

(II) The inspection is required or authorized by charter or ordinance in the interest of public safety; and

(III) The owner or occupant of such private premises has refused entry to the public inspector, or the premises are locked and the public inspector has been unable to obtain permission of the owner or occupant to enter. This rule shall not be construed to require the issuance of a warrant for emergency inspections, or in any other case where warrants are not presently required by law.

...



Rule 241 – “Motions to Suppress”

(e) Motion for Return of Property and to Suppress Evidence. A person aggrieved by unlawful search and seizure may move the municipal court for the municipality where property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that:

- (1)** The property was illegally seized without warrant;
- (2)** The warrant is insufficient on its face;
- (3)** The property seized is not that described in the warrant;
- (4)** There was not probable cause for believing the existence of the grounds on which the warrant was issued;
- (5)** The warrant was illegally executed.

...



Example - Discussion

(This is a real example.) ...

(d) It shall be lawful for an animal management officer to go upon private property to capture any animal to be impounded for, or to investigate any report of, a violation of this chapter if:

- (1) The officer has obtained consent of the person in possession of the property; or
- (2) The officer has obtained a search warrant pursuant to Rule 241 of the Colorado Municipal Court Rules; or
- (3) The officer is in pursuit of an animal which is or has been running at large; or ...

(e) Notwithstanding subsection (d)(2) of this section, if the animal management officer **has reasonable cause** to believe that the keeping or maintaining of any animal is so hazardous, unsafe, or dangerous as to require immediate inspection to safeguard the animal or the public health or safety, the animal management officer shall have the right immediately to enter and inspect the property or vehicle in or upon which the animal is kept, and may use any reasonable means required to effect such entry and make such inspection, whether the property or vehicle is occupied or unoccupied and whether permission to inspect has been obtained or not. ...

Discussion: Does this ordinance section (e) comply with the warrant requirements or constitute a valid exception to the warrant requirement?



Proposed Rule Changes

Empowered cities and towns, united for a strong Colorado.

Contents of this presentation reflects the view of the presenter, not of CML.



COLORADO
MUNICIPAL
LEAGUE



Colorado Municipal Court Rules of Procedure Committee

Empowered cities and towns, united for a strong Colorado.

Contents of this presentation reflects the view of the presenter, not of CML.



COLORADO
MUNICIPAL
LEAGUE

Municipal Court Rules of Procedure Committee

- The Colorado Municipal Court Rules of Procedure Committee is a standing committee appointed by the Colorado Supreme Court. The membership is comprised of judges, prosecutors, administrators, defense attorneys, and other attorneys who work with the Colorado Municipal Courts. The Committee of the whole meets approximately four times per year. There may be the creation of subcommittees that meet to discuss changes to a particular rule or to discuss changes around a specific topic.
- Newest standing committee of the Colorado Supreme Court.



WARNING!

- **Proposed Rules are not presently law**
- **Parties may have to agree to disagree**
- **Proposed Rules are subject to change**
- **Colorado Supreme Court has the final say**



Rule 201

[REDLINE VERSION]

Rule 201. Scope and Application.

These rules shall govern the procedure in all municipal charter and ordinance violation cases in municipal courts in the state of Colorado. In the absence of a specific Rule, the court may look for guidance to the Colorado Rules of Criminal Procedure, the Colorado Rules of Civil Procedure, the Colorado Rules for Traffic Infractions, and any other rules or Chief Justice directives promulgated by the Colorado Supreme Court regarding the conduct of formal judicial proceedings.

[CLEAN VERSION]

Rule 201. Scope and Application

These rules shall govern the procedures and proceedings for charter and ordinance violation cases in municipal courts in the state of Colorado. In the absence of a specific Rule, the court may look for guidance to the Colorado Rules of Criminal Procedure, the Colorado Rules of Civil Procedure, the Colorado Rules for Traffic Infractions, and any other rules or Chief Justice directives promulgated by the Colorado Supreme Court regarding the conduct of formal judicial proceedings.

(Approved and recommended for adoption)

Empowered cities and towns, united for a strong Colorado.

Contents of this presentation reflects the view of the presenter, not of CML.



COLORADO
MUNICIPAL
LEAGUE

Rule 212

[REDLINE VERSION]

Rule 212. Pleadings and Motions Before Trial.

...

(b) ~~Oral or Written~~ Motions. ~~All M~~otions ~~may shall~~ be ~~oral~~ or-written unless otherwise ordered by the court.

...

(e) Time for Making Motion. Motions shall be made before a ~~plea is entered~~ trial ~~but the court may permit it to be made within a reasonable time thereafter or within~~ such other time frame as is established by the court. The court may require a response within a time frame as is established by the court.

...

(No other proposed changes to this Rule)

(Approved and recommended for adoption)



Rule 241

[REDLINE VERSION]

Rule 241. Search and Seizure

(a) Authority to Issue Warrant. A judge of any court shall have power to issue a search warrant under this Rule ~~only~~ when:

~~(1) It relates to a charter or ordinance violation involving a serious threat to public safety or order; and~~

~~(2) The violation is not also a violation prohibited by state statute for which a search warrant could be issued by a district or county court.~~

[CLEAN VERSION]

Rule 241. Search and Seizure

Authority to Issue Warrant. A judge of any court shall have power to issue a search warrant under this Rule when it relates to a charter or ordinance violation.

...

(No other proposed changes to this Rule)

(Approved and recommended for adoption)

Empowered cities and towns, united for a strong Colorado.

Contents of this presentation reflects the view of the presenter, not of CML.



COLORADO
MUNICIPAL
LEAGUE

Works in Progress

- Rule 216 Subcommittee
- Rule 248 Subcommittee
- Rules 210, 223, 243, 237, 239



Websites

- <https://www.coloradomunicipalcourts.org/municipal-court-rules-of-procedure-committee/>
- https://www.courts.state.co.us/Courts/Supreme_Court/Committees/Committee.cfm?Committee_ID=47



Final thoughts

- No single rule describes all of the law which must be applied.
- The Colorado Rules of Municipal Court Procedure apply to all of the Colorado Municipal Courts.
- Each municipality (especially Home Rule) may have different code provisions, records retention schedules, administrative orders, etc., unique to that jurisdiction.
- Other statutes, rules of procedure promulgated by the Colorado Supreme Court, Chief Justice Directives, etc., may or may not be applicable – but at least they are persuasive and provide guidance.
- Discovery is the sole obligation of the prosecution (and it does not matter what size of jurisdiction you are).
- Consistent practices and procedures amongst all of the Colorado Municipal Courts.

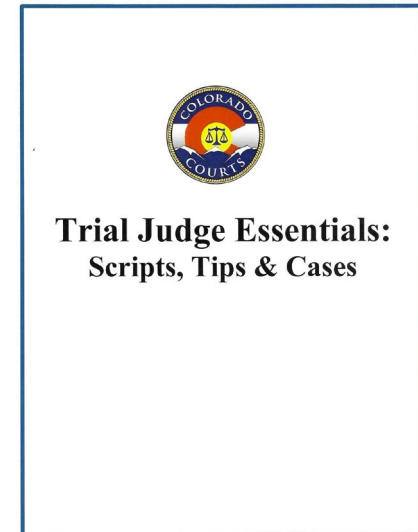
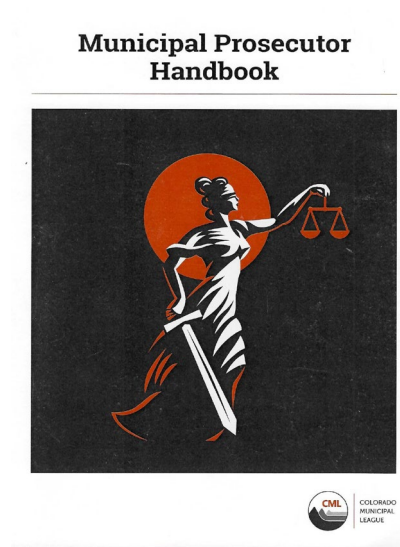
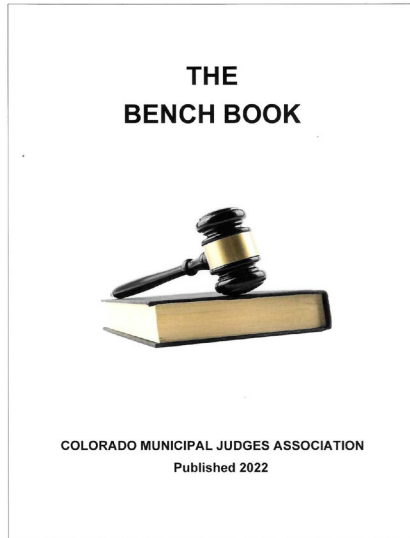


Stay Tuned

- Further Bail Reform
- Homeless Bill of Rights
- Data-Sharing Task Force in response to HB 23-1132 (electronic sharing of records)
- eDiscovery expanded to Colorado Municipal Courts (CDAC)
- Possible changes to retention schedule recommendation documents in light of legislative changes.



Other Resources



- The Bench Book, Colorado Municipal Judges Association, Published 2022
- Municipal Prosecutor Handbook, Colorado Municipal League, Published 2020
- Colorado Courts – Trial Judge Essentials: Scripts, Tips & Cases, Published 2022

Empowered cities and towns, united for a strong Colorado.

Contents of this presentation reflects the view of the presenter, not of CML.



COLORADO
MUNICIPAL
LEAGUE

Questions?



www.coloradomunicipalcourts.org

Empowered cities and towns, united for a strong Colorado.

Contents of this presentation reflects the view of the presenter, not of CML.



COLORADO
MUNICIPAL
LEAGUE