C.R.C.P. 2019 Amendments – Summary Judgment Rule 56

11/13/19

As long as the committee is considering possible tweaks to Rules 12, 16 and 56, there is one more that has not been previously discussed that I urge the Civil Rules Committee to consider. In the 2015 changes to Rule 16(b)(14), we added provisions specifically allowing and encouraging judges to require parties make oral presentations to the court to attempt to resolve pretrial discovery and other disputes before commencing the preparation and filing of written motions and briefs. Prior experience of judges in Colorado and across the nation suggested the efficacy of such procedures; recommendations of the IAALS/ACTL Task Force; and the findings revealed in "*Working Smarter, Not Harder – How Excellent Judges Manage Cases*," among other experiences supported this change. Subsequent reactions of many local trial courts have justified and supported the use of this practice for most motions.

Even after the 2015 rule changes to the Colorado and Federal civil rules, IAALS continued to receive numerous comments that the single biggest pretrial cause of delay was created by the practice of filing unnecessary or even inappropriate Rule 56 motions for summary judgment. Due to the requirements of Rule 56, these motions were frequently unlikely, if not impossible to be granted. Indeed, often these filings were strategic efforts (not necessarily in good faith) to delay cases or punitively increase the opposing party's legal expenses. Experience had shown that overly long and argumentative motions generate animosity between the parties, add expense and unduly burden judges who have to read and rule on those motions.

In 2017, IAALS gathered a group of 30-40 people to consider possible means of improving the situation caused by the increasing number of summary judgment motions being filed in civil cases. This IAALS group was comprised of select trial and appellate judges, trial lawyers on both sides of the "v," and academicians. After a two-day conference, additional small group meetings and discussions of potential solutions, in January 2019 IAALS published its report "*Efficiency in Motion – Recommendations for Improved Dispositive Motions Practice in State and Federal Courts"* (hereafter "*Efficiency in Motion*").

As relevant to my present suggestion, the IAALS recommendation made the following suggestions relating to Rule 56 summary judgment motions:[1]

> The Court may require that, before a summary judgment motion can be filed, the party intending to file a summary judgment motion request a pre-motion conference with the court by submitting a short letter (not to exceed three pages). The letter should briefly describe the principal grounds for summary judgment and set forth the details of the meet and confer process. Parties opposing summary judgment may also file a letter in response.
>
> As soon as possible following the filing of the letters, the court should hold a conference with the parties, preferably in person. (*Efficiency in Motion* at 20.)

With these recommendations in mind I propose consideration be given to the following changes to Rule 16 and Rule 56:

Clarifying Rule 16(b)(14) along the following lines:

> (14) Oral Discovery Motions. The proposed order shall state whether the court does or does not require discovery motions ***and motions under Rule 56 for summary judgment*** to be presented orally, without written motions or briefs, and may include such other provisions as the court deems appropriate.

[1] Several of the IAALS proposals seem to be unnecessary because other provisions of the Colorado Civil Rules already deal with those issues.

Rule 56. Summary Judgment and Rulings on Questions of Law.

[It is proposed that Rule 56(c) be changed,

[(1) by splitting it into subsections (1) – (4) for ease of reading with the only addition being to allow "declarations" as well as "affidavits," and

[(2) by adding subsections (5) – (8) to add the new provisions for pre-filing judicial conferences.]

(c) Motion and Proceedings Thereon.

(1) Unless otherwise ordered by the court, any motion for summary judgment shall be filed no later than 91 days (13 weeks) prior to trial. A cross-motion for summary judgment shall be filed no later than 70 days (10 weeks) prior to trial.

(2) The motion may be determined without oral argument. The opposing party may file and serve opposing affidavits within the time allowed for the responsive brief, unless the court orders some lesser or greater time.

(3) The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits *or Declarations*, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

(4) A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(5) Notification of Intent to File Rule 56 Motion. The court may require that, before a summary judgment motion can be filed, the party intending to file a summary judgment motion must request a pre-motion conference with the court by filing and serving a short Notice of Intent to File a Motion for Summary Judgment, which shall not to exceed three double-spaced pages. The Notice should briefly describe the principal grounds for summary judgment and set forth the details of the meet and confer process described in subsection (6) of this section. Such short Notice of Intent to File must be filed at least 21 days before the deadline for filing Rule 56 motions. Parties opposing summary judgment may also file a short Response to Notice of Intent to File.

(6) Before filing such a Notice of Intent to File, the parties must meet and confer in good faith concerning the basis for and objections to such a motion for summary judgment and about any other issues that might avoid the need for some or all of a summary judgment motion.

(7) Conference with court. As soon as possible following the filing of the Notice of Intent to File, the court should hold a brief conference with the parties, to discuss the necessity for and possible limitations on any motion for summary judgment. The conference shall be in person unless otherwise ordered by the court.

(8) Following such conference, a party may file such a summary judgement motion relating to issues with which the party disagrees with the court. Even though the court indicates that any part of the proposed summary judgment motion is likely to be denied, the proposed summary judgment motion may be prepared and filed, which the trial court, in its sole discretion may consider, and which shall preserve the issues raised in a motion for appeal. If such a summary judgment motion is filed, the opposing party may, in its discretion, file a responsive brief.

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MEMORANDUM

TO: Civil Rules Committee

FROM: Bradley A. Levin

DATE: November 11, 2019

RE: *District Court Civil Case Cover Sheet Modification to Include Associated Cases*

A subcommittee[1] was formed to address concerns raised by Judge Weishaupl in Arapahoe County District Court regarding the filing of "associated" or "related" cases in multiple divisions in the same courthouse, including multiple lawsuits arising out of the same incident. As the subcommittee investigated the issue, it discerned a number of intricacies, presenting different options for rule changes. Ultimately, the question for the Committee is whether it wants to adopt a statewide "related case doctrine," and, if so, what the doctrine should entail.

The U.S. District Court for the District of Colorado has, for many years, had a local rule requiring parties to a case to file a Notice of Related Cases. D.C.Colo. LCivR. 3.2. In this regard, the Civil Cover Sheet that the plaintiff in a civil case must file along with the initial pleading requires the identification of "Related Case(s) If Any," although the instructions for attorneys completing the sheet do not set forth what constitutes a "related case" and they do not refer to the rule. The statewide Colorado civil rules at present do not contain any like requirement. However, the First Judicial District has adopted a local rule, Rule 6. Multiple Filings, which includes a subsection

[1] The subcommittee includes, in addition to myself, David DeMuro, Lisa Hamilton-Feldman, and John Lebsack.

titled "Related-Case-Doctrine."[2] Also, while there does not appear to be a local rule addressing the matter, the Second Judicial District clerk's office has an Information Regarding Related Case(s) form, requiring that the filing party set forth various data regarding a "related case" (without defining what such a case consists of) and that the party "[s]tate reasons the case is related and should be assigned to the same judge."

The initial question, then, is whether the Committee should recommend that the Supreme Court adopt a statewide rule incorporating the "related case doctrine." For reasons embedded in the following discussion regarding the parameters of the doctrine, the subcommittee uniformly believes that the answer is yes. It also recommends that the doctrine be included as a new subsection of Rule 121.

The next questions are when and how should a related case be identified by a party. One possibility is to include a question respecting related cases on the civil cover sheet required by Rules 8(a) & 16.1(c), but that would omit knowledge of any such cases by defendants. The local federal rule mandates that a party file the required notice at the time of its first appearance or at the time of filing of its first pleading, response, or other document addressed to the court. A party must also promptly file a supplemental notice of any change in the information required under the rule. The subcommittee favors adoption of the local federal court's approach.

The next issues for consideration are what constitutes a "related case," and the scope of cases that are to be reviewed in making this ascertainment. With respect to the latter inquiry, the current version of the local federal rule specifies that the notice identify "all cases pending in this or any other federal, state, or foreign jurisdiction that are related to the case." The First Judicial District rule, on the other hand, requires that a party filing a case indicate whether it is "related to

[2] The subcommittee does not know whether this rule was adopted in conformity with C.R.C.P. 121(b).

any other district civil or domestic relations case pending before the court or terminated within the previous 12 months."[3] The subcommittee recommends adopting the latter approach, *i.e.*, including cases terminated within the previous 12 months, in order to avoid "judge shopping" and any other associated problems.

As for the definition of a "related case," under the First Judicial District rule, "a case is 'related' if it involves one or more of the same parties and common questions of law or facts (sic)." By contrast, the local federal rule previously defined "related cases" as "cases that have at least one party in common and that have common questions of law and fact." As of December 1, 2016, the definition was changed, and now reads that "[r]elated cases are cases that have common facts and claims and (1) have at least one party in common; or (2) are filed serially or collectively as a group by the same attorney or law firm." The subcommittee favors the current local federal rule definition, but omitting the second part of the definition, *i.e.*, the reference to cases "filed serially or collectively as a group by the same attorney or law firm," as it does not perceive a significant problem with such collective cases being filed in state court.

The next query concerns the expanse of those cases to be considered in evaluating whether they are "related." As set forth above, the local federal rule requires evaluation of "all cases pending in this or any other federal, state, or foreign jurisdiction." Because there is no express limitation on the type of cases to be considered, it apparently includes civil and criminal cases, as well as administrative matters. The First Judicial District rule encompasses civil, domestic relations, and juvenile cases "pending before the court"; presumably this restriction is in place because of concern that a district's local rule could not impact cases and practices in other judicial districts (although that does not appear to have been a concern for the local federal court).

[3] My recollection is that an earlier version of the local federal rule also included cases terminated in the previous 12 months.

While the subcommittee agrees that the doctrine should apply to various types of cases, it is split on whether only those cases pending or recently terminated in the same judicial district should be evaluated, or whether consideration should also be given to cases filed in other Colorado judicial districts, other state courts, and/or federal court.

This, then, leads to the final, and probably most complicated, issue arising from adoption of the related case doctrine: what is the effect of the filing of a notice of related case? Some subcommittee members are of the view that information concerning related cases should be solely for the purpose of notice to the parties and the court, leaving it to them to take action, if any, based on this information as they wish. Other subcommittee members favor a rule delineating affirmative action to be taken by the court in which related cases are filed. The First Judicial District rule specifies that if the filing party indicates that a case is related to a pending or recently-terminated case, the judge with the earliest filed case shall determine, in his or her discretion, if the cases should in fact be considered related and, if so, that judge should be assigned to handle all of the related cases. The Second Judicial District form indicates that related cases "should be assigned to the same judge" without providing further information as to who is to assess whether cases are related, or which judge is to be assigned the related cases. Under the local federal rule, "[o]n notice of a related case, the judicial officer with the lowest numbered case shall confer with every other judicial officer to whom a related case is assigned to discuss whether the related cases should be submitted for special assignment or reassignment . . . or transferred" from one judicial officer to another.

These differing rules raise several questions as to the action to be taken by a court when a party indicates that related cases have been filed in the same judicial district, different judicial districts within the state, or elsewhere. For instance, subcommittee members voiced concerns about requiring related cases pending in different Colorado judicial districts to be heard by a single

judge, including the power of a judge in one district to mandate that related cases filed in disparate districts be transferred to his or her courtroom for handling (not to mention cases filed in other state or federal courts). In this latter regard, there may be a need to address the interplay between the related case doctrine and C.R.C.P. 42.1, concerning the Panel on Consolidated Multi-District Litigation, as they pertain to related cases pending in multiple judicial districts.

In sum, the subcommittee recommends the adoption of a related case doctrine in the statewide rules. The methodology for implementation of the doctrine, however, raises several issues and concerns, and the subcommittee has no consensus recommendation in this regard.

MEMORANDUM

TO: Civil Rules Committee

FROM: Judge Robert J. Frick, Chair, Colorado Municipal Court Rules Subcommittee

RE: Proposed Changes to the Colorado Municipal Court Rules

Date: November 18, 2019

I. INTRODUCTION

The Colorado Municipal Court Rules Subcommittee ("Colorado Municipal Court Rules Subcommittee" or "Subcommittee") respectfully submits the following proposed changes to the Colorado Municipal Court Rules for consideration by the Civil Rules Committee ("Civil Rules Committee" or "Committee") for recommendation of adoption to the Colorado Supreme Court.

This submission is to supplement the "Memorandum RE: Proposed Changes to the Colorado Municipal Court Rules," dated May 29, 2019 (date corrected from May 29, 2018) ("Memorandum 5-29-19")[1] previously submitted to the Committee. Memorandum 5-29-19 is incorporated herein by reference.

The Subcommittee appeared before the Committee on June 28, 2019 and introduced proposed changes to certain Colorado Municipal Court rules.[2] There was discussion and feedback with the proposed changes. The Subcommittee has continued to engage with

[1] See https://www.coloradomunicipalcourts.org/rulemaking/
[2] See https://www.coloradomunicipalcourts.org/rulemaking/

stakeholders and make proposed revisions. Two additional stakeholder meetings have been held since the June 28th Committee meeting and more are anticipated (notably, regarding Group 2 proposed rule changes). The Subcommittee held Stakeholder meetings on August 30, 2019 and November 14, 2019 with opportunities for further submission and comment.[3]

The subject matter of the November 22, 2019 presentation to the Committee will focus on the following amended (Group 1) rules and the proposed changes:

Group 1 – Rules 204, 210, 223, 241, and 254

The Subcommittee respectfully submits this Memorandum and incorporates all changes herein. Future presentations to Committee regarding further proposed rule changes are anticipated.

[3] See https://www.coloradomunicipalcourts.org/rulemaking/

II. Group 1 – Proposed Revisions to Rules 204, 210, 223, 241, and 254

A. Rule 204

The Subcommittee proposes several changes to Rule 204. See Exhibit 1.

The first proposal is to increase the minimum time prior to the time that defendant is required to appear from 7 days to 14 days. In practice, most of the Colorado Municipal Courts set out arraignment dates anywhere from three to 14 weeks after the alleged incident or contact by law enforcement has occurred. This additional 7-day period, in part, allows for additional administrative processing by law enforcement and courts.

The second proposal is to define how alternate service may be accomplished, as Rule 204 was previously silent. Service by mail shall be complete upon the return of the receipt signed by the defendant or signed on behalf of the defendant by one authorized by law to do so (e.g. a parent accepting service on behalf of a minor, etc.). Personal service shall be made by a peace officer, non-sworn personnel of a law enforcement agency, a municipal employee who duties include enforcing health and safety municipal code and charter provisions, or any disinterested party over the age of eighteen years. This proposal does include additional language that was not included in the Memorandum 5-29-19 proposed changes as a result of the November 14th stakeholder meeting.

The language of service by any 'disinterested party over the age of eighteen years' was to include, although not limited to, the non-sworn personnel of a law enforcement agency or those employees of a municipality whose duties include enforcing the health and safety municipal code and charter provisions (e.g. code enforcement inspector, animal control officer,

park ranger, etc.). It is also foreseeable that some jurisdictions with limited resources may utilize a process server or process service company in the service of the summons and complaint. The proposed language changes now specifically reflects these additions.

B. Rule 210

The Subcommittee proposes changes to Rule 210 to reflect the court's duty to inform on first appearance in court and on pleas of guilty pursuant to § 16-7-207, C.R.S. See Exhibit 2.

The court's duty to inform on first appearance in court and on pleas of guilty pursuant to § 16-7-207, C.R.S., is now applicable to the Colorado Municipal Courts as of July 1, 2018 for prosecutions of municipal charter and ordinance violations.[4] The application of the enhanced advisement requirements of § 16-7-207, C.R.S., does not apply to traffic infractions.[5] As such, there are now slight inconsistencies and differences in language between Rule 210 and § 16-7-207, C.R.S. Further, a defendant's right to trial by jury or by the court is defined in Rule 223 and does not need to be duplicated in Rule 210.

The right to 'have process issued by the court' as detailed in the current Rule 210(4)(IV) is proposed to be removed as it is not contained in § 16-7-207, C.R.S., nor the analogous provisions of Crim.P. 10. Service of a subpoena is defined in § 13-9-115, C.R.S. and other applicable case law and statutes.

[4] See H.B. 16-1309 and 17-1083. ((Note: The effective date of H.B. 16-1309 changed from May 1, 2017 to July 1, 2018, by H.B. 17-1316. See L. 2017, p. 607)).
[5] See H.B. 17-1083.

At the June 28th presentation before the Committee, one committee member suggested to add language to Rule 210(4)(Vi) to include "The right to…" before the language ".. to a trial by jury…" and is now incorporated in the proposed rule change.

C. Rule 223

The Subcommittee proposes three changes to Rule 223. See Exhibit 3.

Under the Colorado Municipal Court Rules, "Trials shall be to the Court" unless the defendant is entitled to a jury trial.[6] The United States and Colorado Constitutions grant defendants in criminal trials the right to trial by jury. The states are required to afford jury trials for serious offenses[7]. The right to a jury trial is a fundamental right.[8] Both § 13-10-101, C.R.S. and C.M.C.R. 223 recognize the right to a jury trial in municipal court prosecutions. Exceptions have been made for minor traffic violations, which have been decriminalized and no jail sentence may be imposed.[9] Some municipalities have by ordinance provided for no jury trials for violations allegedly committed by minors, for which no jail term may be imposed.

The first proposal is to include additional language 'or the offense carries the possible penalty of imprisonment'. This language is proposed to further define when someone is eligible for a jury trial and is the status of current law. The addition of this language does not create a new right to a jury trial, but rather adds clarification. In addition, recent discussion before the

[6] C.M.C.R. 223(a)
[7] *Duncan v. Louisiana*, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968).
[8] *People v. Curtis*, 681 P.2d 504 (Colo. 1984).
[9] See C.R.S. 42-4-1701 *et seq.*

Colorado legislature in HB 16-1309[10], 17-1083[11], and 19-1225[12] has made a noticeable distinction between what municipal ordinances may be 'jail able' versus 'non-jail able' for purposes of advisement, counsel representation, and bail.

The second proposal is to modify Rule 223 to remove the language after 'arraignment or' to delineate that the 21 day period for filing a jury demand and tendering the jury fee does not begin until the after the 'entry of plea'. This proposal provides further clarification and consistency of practice amongst the Colorado Municipal Courts.

The third proposal is to add 'unless good cause is shown' to allow a court discretion in the determination on whether or not a defendant has waived his right to a jury trial if he fails to comply with the requirements of filing a written jury demand. The Subcommittee does not propose to define what may constitute 'good cause'. This will allow for a case by case determination and more discretion by the court. This specific language proposal came from Prof. Ann England of the University of Colorado School of Law – Criminal Defense Clinic and "would allow for counsel to raise issues regarding choice of jury trial or court trial … if there was in fact good cause for a defendant's failure to file a jury demand."[13]

Please note that the stakeholder comments from the (Denver) Office of the Municipal Public Defender contends that the procedural requirements of the 'written jury demand', 'jury fee', and '21 day' deadline should be removed and are unconstitutional.[14]

[10] H.B. 16-1309 – Concerning a Defendant's Right to Counsel.
[11] H.B. 17-1083 – Court's Duty to Inform on First Appearance – Traffic Infractions.
[12] H.B. 19-1225 – Concerning Prohibiting the Use of Monetary Bond for Certain Level of Offenses
[13] See Exhibit 11 - Stakeholder Comment – University of Colorado School of Law – Criminal Defense Clinic 1-2-2019.
[14] See Exhibit 12 - Stakeholder Comment – (Denver) Office of the Municipal Public Defender – 1-15-2019.

The Subcommittee does not propose to remove the procedural requirements of a 'written jury demand', 'jury fee', or the '21 day' deadline as detailed in Rule 223 at this time. An overwhelming majority of Subcommittee members and municipal judges prefer these procedural requirements of Rule 223 for cases that come before the Colorado Municipal Courts. The 'jury fee' may be "waived by the judge because of indigence of the defendant."[15] The third proposal to add 'unless good cause is shown' will allow a court discretion in the determination of whether or not good cause may exist when a defendant waives his right to a jury trial if he fails to comply with the requirements of filing a written jury demand. This may be the subject for future changes to Rule 223.

D. Rule 241

The Subcommittee proposes changes to Rule 241 to expand the authority of the Colorado Municipal Courts to issue a search warrant when it relates to a charter or ordinance violation involving a threat to public health, safety or order. See Exhibit 4.

The size and subject matter that come before the Colorado Municipal Courts differs greatly amongst the jurisdictions. Colorado Municipal Courts range from small 'part-time' courts that handle traffic and simple criminal matters to 'major-courts' such as Aurora, Colorado Springs, Lakewood, and Denver[16] that handle case numbers that exceed most of the Colorado Judicial Districts. Serious crimes including acts of domestic violence, assault, auto theft, drug possession, etc., are the subject matter of many jurisdictions. The Colorado

[15] C.M.C.R. 223(a)

[16] The City and County of Denver is a consolidated City and County government. Municipal ordinance violations and infractions go before the Criminal/General Sessions Division of the City and County of Denver's County Court.

Municipal Courts, especially Home Rule municipalities, often have exclusive jurisdiction in municipal ordinances that are civil in nature such as local election laws, business and other licensing, liquor and marijuana regulation, safety and health regulations, code and nuisance violations.

The proposed changes to Rule 241 through the stakeholder process notably have been related to Home Rule municipalities as they deal with the ever-increasing issues involving marijuana sale and grow operations, unattended deaths (to which no criminal activity is suspected or are natural), and other threats to public health, safety, or order. The proposed Rule 241 changes provide for additional tools for municipalities (and their respective law enforcement, code enforcement, and public health agencies) as they deal with these matters of local concern. A particular municipality may still seek a search warrant from the respective state court as the law allows.

Part of the discussion at the June 28th Committee meeting was a comparison of the Rule 241 requirement "… A judge of any court" to § 16-3-301(1), C.R.S., which states "… A search warrant authorized by this section may be issued by any judge of a court of record…" The requirement for a "… judge of a court of record…" has always been silent in Rule 241 recognizing the differences that exist in Colorado Municipal Courts. It was argued by several Committee and/or Subcommittee members that regardless, a municipality must have the ability to enforce its own rules and laws.

As previously outlined in Memorandum 5-29-19,[17] there are 271 incorporated municipalities in Colorado representing 101 Home Rule Cities/Towns; 12 Statutory Cities; 1 Territorial Charter City; and 157 Statutory Towns. There are two consolidated City and County governments.[18] Municipalities may often be in one or more counties and judicial districts.[19] There are approximately 215 Colorado Municipal Courts serving these communities.[20] Most (overwhelming majority) of the 215 Colorado Municipal Courts are courts of record, although an exact number unknown as of the submission of this Memorandum. There are small number of jurisdictions that are not courts of record.

The Subcommittee anticipates that the expansion of Rule 241 may also provide some relief to the state courts. Nothing of the proposed Rule 241 changes will impact the ability to appeal the decision of a lower court to a higher court as authorized by law.

E. Rule 254

The Subcommittee proposes the addition of Rule 254 as a simple and clarifying rule to provide guidance for Colorado Municipal Courts. The subject matter of the proposed Rule 254 is the current law. See Exhibit 5.

The size and subject matter that comes before the Colorado Municipal Courts differs greatly amongst the jurisdictions. Colorado Municipal Courts range from small 'part-time' courts that handle traffic and simple criminal matters to 'major-courts' such as Aurora,

[17] See https://www.coloradomunicipalcourts.org/rulemaking/
[18] See https://www.coloradomunicipalcourts.org/about/
[19] The City and County of Denver and City and County of Broomfield are the two consolidated City and County governments in Colorado; See also https://www.coloradomunicipalcourts.org/about/
[20] See https://www.coloradomunicipalcourts.org/about/; See generally www.cml.org.

Colorado Springs, Lakewood, and Denver[21] that handle case numbers that exceed most of the Colorado Judicial Districts. Serious crimes including acts of domestic violence, assault, auto theft, drug possession, etc., are the subject matter of many jurisdictions. The Colorado Municipal Courts, especially Home Rule municipalities, often have exclusive jurisdiction in municipal ordinances that are civil in nature such as local election laws, business and other licensing, liquor and marijuana regulation, safety and health regulations, code and nuisance violations.

The Colorado Supreme Court has adopted the Colorado Municipal Court Rules of Procedure that govern the operations, proceedings and conduct of all municipal courts within the State of Colorado.[22] The Colorado Municipal Court 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 and administration and the elimination of unjustifiable expense and delay."[23] If no procedure is specifically presented by the Colorado Municipal Court Rules, the court can look for guidance to any directive of the Supreme Court regarding the conduct of formal judicial proceedings.[24]

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[21] The City and County of Denver is a consolidated City and County government. Municipal ordinance violations and infractions go before the Criminal/General Sessions Division of the City and County of Denver's County Court.
[22] C.R.S. 13-10-103 and 13-10-112; C.M.C.R. 201.
[23] C.M.C.R. 202; *City of Englewood v. Municipal Court,* 687 P.2d 521 (Colo. App. 1984).
[24] [If no procedure is specifically presented by the Municipal Court Rules, the court can look for guidance to the Colorado Rules of Criminal Procedure. *Bachicha v. Municipal Court,* 581 P.2d 746 (Colo. App. 1978). "As their parallel purposes and numbering system indicate, the Colorado Rules of Criminal Procedure and the Colorado Municipal Court Rules of Procedure are *in pari materia.* See, Crim. P. 2; C.M.C.R. 202. Being *in pari materia,* they should be reconciled if possible. See*, People v. Cornelison,* 559 P.2d 1102 (Colo. 1977). See also, *People ex rel. Farina v. District Court,* 184 Colo. 406, 521 P.2d 778 (1974); "If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these Rules of Criminal Procedure or with any directive of the Supreme Court regarding the conduct of formal judicial proceedings in the criminal courts, and shall look to the Rule of Civil Procedure and to the applicable." See, *People v. Cornelison, supra; People v. Linger,* 566 P.2d 1367 (Colo. App. 1977).]

Group 1 Exhibits

Rules 204, 210, 223, 241, and 254

EXHIBIT 1

Rule 204 – Proposed Revisions
Version 11-14-19

[REDLINE VERSION]

Rule 204

…

(e) Service of Summons and Complaint. A copy of a summons or summons and complaint issued pursuant to these rules shall be served personally upon the defendant. In lieu of personal service, service may be made by leaving a copy of the summons or summons and complaint at the defendant's usual place of abode with some person over the age of eighteen years residing therein or by mailing a copy to the defendant's last known address by certified mail, return receipt requested, not less than ~~7~~ 14 days prior to the time the defendant is required to appear. Personal service shall be made by a peace officer, non-sworn personnel of a law enforcement agency, a municipal employee who duties include enforcing health and safety municipal code and charter provisions, or any disinterested party over the age of eighteen years.

…

(No other proposed changes to this Rule)

[CLEAN VERSION]

Rule 204

…

(e) Service of Summons and Complaint. A copy of a summons or summons and complaint issued pursuant to these rules shall be served personally upon the defendant. In lieu of personal service, service may be made by leaving a copy of the summons or summons and complaint at the defendant's usual place of abode with some person over the age of eighteen years residing therein, or by mailing a copy to the defendant's last known address by registered mail with return receipt requested or certified mail with return receipt requested, not less than 14 days prior to the time the defendant is required to appear. Service by mail shall be complete upon the return of the receipt signed by the defendant or signed on behalf of the defendant by one authorized by law to do so. Personal service shall be made by a peace officer, non-sworn personnel of a law enforcement agency, a municipal employee who duties include enforcing health and safety municipal code and charter provisions, or any disinterested party over the age of eighteen years.

…

(No other proposed changes to this Rule)

EXHIBIT 2

Rule 210 – Proposed Revisions
Version November 18, 2019

[REDLINE VERSION]

Rule 210. Arraignment.

…

(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~~: At the first appearance of the defendant in court or upon arraignment, whichever is first in time, it is the duty of the judge to inform the defendant and make certain that the defendant understands the following:

(I) ~~To bail;~~ The defendant need make no statement, and any statement made can and may be used against him or her.
(II) ~~To make no statement, and that any statement made can and may be used against the defendant~~; The defendant has a right to counsel.
(III) ~~To be represented by counsel, and, if indigent, the right to appointed counsel as applicable;~~ If the defendant is an indigent person, he or she may make application for a court-appointed attorney, and, upon payment of the application fee, he or she will be assigned counsel as provided by law or applicable rule of criminal procedure.
(IV) ~~To have process issued by the court, without expense to the defendant, to compel the attendance of witnesses in defendant's behalf;~~ Any plea the defendant makes must be voluntary on his or her part and not the result of undue influence or coercion on the part of anyone.
(V) ~~To testify or not to testify in defendant's own behalf;~~ The defendant has a right to bail, if the offense is bailable, and the amount of bail that has been set by the court.
(VI) The right 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~~ or by the court pursuant to C.M.C.R. 223.
(VII) ~~To appeal.~~ The nature of the charges against the defendant and the maximum possible penalties.
…

(No other proposed changes to this Rule)

[CLEAN VERSION]

Rule 210. Arraignment.

….

(4) At the first appearance of the defendant in court or upon arraignment, whichever is first in time, it is the duty of the judge to inform the defendant and make certain that the defendant understands the following:

(I) The defendant need make no statement, and any statement made can and may be used against him or her.
(II) The defendant has a right to counsel.
(III) If the defendant is an indigent person, he or she may make application for a court-appointed attorney, and, upon payment of the application fee, he or she will be assigned counsel as provided by law or applicable rule of criminal procedure.
(IV) Any plea the defendant makes must be voluntary on his or her part and not the result of undue influence or coercion on the part of anyone.
(V) The defendant has a right to bail, if the offense is bailable, and the amount of bail that has been set by the court.
(VI) The right to a trial by jury or by the court pursuant to C.M.C.R. 223.
(VII) The nature of the charges against the defendant and the maximum possible penalties.
…

(No other proposed changes to this Rule)

COMMENT:

The court's duty to inform on first appearance in court and on pleas of guilty pursuant to 16-7-207, C.R.S., is now applicable to municipal courts as of July 1, 2018. See H.B. 16-1316 and 17-1083 ((Note: The effective date of H.B. 16-1316 changed from May 1, 2017 to July 1, 2018, by H.B. 17-1316. See L. 2017, p. 607)).

A defendant's right to trial by jury or by the court is detailed in C.M.C.R. 223.

EXHIBIT 3

Rule 223 – Proposed Revisions
Version 5-1-19

[REDLINE VERSION]

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, or the offense carries the possible penalty of imprisonment, in which case the defendant shall have a jury, if, within 21 days after ~~arraignment or~~ entry of a not guilty 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 unless good cause is shown.

…

(No other proposed changes to this Rule)

[CLEAN VERSION]

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, general laws of the state, or the offense carries the possible penalty of imprisonment, in which case the defendant shall have a jury, if, within 21 days after entry of a not guilty 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 unless good cause is shown.

…

(No other proposed changes to this Rule)

EXHIBIT 4

Rule 241 – Proposed Revisions
Version 5-1-19

[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 health, 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**~~.

…

(No other proposed changes to this Rule)

[CLEAN 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 when it relates to a charter or ordinance violation involving a threat to public health, safety or order.

…

(No other proposed changes to this Rule)

EXHIBIT 5

Rule 254– Proposed Revisions
Version 11-29-2018

[REDLINE VERSION]

Rule 254. ~~No Colorado Rule.~~ Application

These Rules apply to all proceedings 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 254. Application

These Rules apply to all proceedings 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.