

**Explanation and Summary of Significant Changes in
Response to 2020 Public Comments¹**

Rule 2.2(2) and 2.2(4)—Based on experience during the COVID-19 pandemic, defendants are permitted to waive both initial appearance and preliminary hearing through a written waiver. Additionally, attorneys may waive these proceedings on the defendant’s behalf with the defendant’s consent.

Rule 2.4(7)—Minutes of testimony may be amended without court approval. This change was requested in public comments and reflects, to some extent, actual practice.

Rule 2.8(2)—As in the existing rules, there is no requirement that the defendant be placed under oath for a guilty plea colloquy; this is left to the district court’s discretion.

Rule 2.8(2)—The defendant shall be advised when pleading guilty that the guilty plea may have other adverse consequences such as loss of the ability to vote, to possess firearms, or to receive federal or state benefits.

Rule 2.8(2)—A conditional guilty plea is now available. This allows a defendant, with the approval of the court and the prosecutor, to conditionally plead guilty, reserving the right to challenge a pretrial ruling such as the denial of a motion to suppress on appeal. If the appeal is unsuccessful, the guilty plea stands. The rule is modeled after current federal practice.

Rule 2.8(2)—In response to the public comments, in the revised rules, the court will question the defendant during the plea colloquy. The court may allow the defendant’s attorney to question the defendant. The prosecuting attorney may suggest to the court additional questions to be asked of the defendant.

Rule 2.8(4)—Based on experience during the COVID-19 pandemic, as well as public comments received in 2020 and feedback from district court

¹This is not an exhaustive list of changes made in response to the public comments, but an effort to summarize the most significant changes. Interested parties should read the text of the final revised rules carefully.

judges, written guilty pleas are permitted for nonforcible class “D” felonies, in addition to misdemeanors, and a new guilty plea form has been created.

Rule 2.11(7)—The motion for bill of particulars, which was part of the existing rules, has been restored in the revised rules as requested in public comments.

Rule 2.11(12)—Based on public comments, the rule regarding notice of affirmative defenses have been limited to notice for the affirmative defenses of intoxication, entrapment, justification, necessity, duress, mistake, or prescription drugs.

Rule 2.15(3)—Based on public comments, a provision has been added allowing the defendant to apply to the court—with notice to the prosecution—for issuance of a pretrial subpoena. Issuance of any subpoena will be under the regulation and control of the district court with participation by all parties. Potential grounds for objecting to the issuance of the subpoena are also listed. The rule includes provisions requiring disclosure, on request, to the prosecution and any codefendants of materials obtained by the defendant with the subpoena.

Rule 2.15(3)—Based on public comments, the defendant may also seek a preservation order for evidence from the district court with notice to the prosecution.

Rule 2.23(2)—Based on experience during the COVID-19 pandemic, and to be consistent with the change to rule 2.8(4), a provision was added allowing, with court approval, the parties to submit a written sentencing agreement in place of in-person sentencing for misdemeanors and nonforcible class “D” felonies.

Rule 2.27(1)—Based on public comment and experience during the COVID-19 pandemic, a provision was added allowing defendants to appear at pretrial proceedings by video. In addition, sentencing may be by video with the consent of all parties. The defendant must be personally present for trial, including trial of serious and aggravated misdemeanors.

Rule 2.27(1)—The defendant’s presence at a deposition may be waived with the approval of the prosecutor.

Rule 2.33(1)—The existing rule language allowing dismissal of a criminal prosecution by the court on its own motion in the furtherance of justice has been restored. This provision is subject to existing caselaw.

Rule 2.64(3)—Based on public comments, for misdemeanor trials, and on request, evidence to be offered as an exhibit at trial by any party—other than evidence solely for rebuttal or impeachment—shall be provided to all parties at least seven days prior to trial. Except for good cause shown, disclosure is limited to evidence intended to be offered as an exhibit at trial.