**Rule 243 – Proposed Revisions**

**Version 5-1-2019**

**[REDLINE VERSION]**

**Rule~~s~~ 242 ~~and 243.~~ No Colorado Rule~~s~~.**

**Rule 243. Presence of the Defendant**.

**(a) Presence Required.**The defendant shall be present at the arraignment, at the time of the plea, at every stage of the trial including the impaneling of the jury and the return of the verdict, and at the imposition of sentence, except as otherwise provided by this rule.

**(b) Continued Presence Not Required.**The trial court in its discretion may complete the trial, and the defendant shall be considered to have waived his right to be present, whenever a defendant, initially present:

(1) Voluntarily absents himself after the trial has commenced, whether or not he has been informed by the court of his obligation to remain during the trial, or

(2) After being warned by the court that disruptive conduct will cause him to be removed from the courtroom, persists in conduct which is such as to justify his being excluded from the courtroom.

**(c) Presence Not Required.**A defendant need not be present in the following situations:

(1) A corporation may appear by counsel for all purposes.

(2) At a conference or argument upon a question of law.

(3) At a reduction of sentence under Rule 235.

(4) Payment before appearance for traffic infractions as authorized by Rule 6 of the Colorado Rules for Traffic Infractions.

(5) At a First Hearing, as authorized by Rule 7 of the Colorado Rules for Traffic Infractions.

**(d) Presence of the defendant**

(1) If the maximum penalty for the offense charged is more than one year's imprisonment, the defendant must be personally present for arraignment; except that the court, for good cause shown, may accept a plea of not guilty made by an attorney representing the defendant without requiring the defendant to be personally present. In all prosecutions for lesser offenses, the defendant may appear by his or her attorney who may enter a plea on his or her behalf. See also C.R.S. 16-7-202.

(2)  If a plea of guilty or nolo contendere (no contest) 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.

**(e) Presence of the Defendant by Interactive Audiovisual Device.**

(1) Definitions. As used in this Rule 243:

(I) "Interactive audiovisual device" means a television, telephone, or computer based audiovisual system capable of two-way transmission and of sufficient audio and/or visual quality that persons using the system can converse with each other with a minimum of disruption.

(2) A defendant may be present within the meaning of this Rule 243 by the use of an interactive audiovisual device, in lieu of the defendant's physical presence, for the following hearings:

(I) First appearances for the purpose of advisement and setting of bail, including first appearances on probation or deferred sentence revocation complaints;

(II) Further appearances for the filing of charges;

(III) Hearings to modify bail;

(IV) Entry of pleas and associated sentencing or probation violation hearings in of municipal charter and ordinance violations.

(VI) Restitution hearings;

(VII) Appeal bond hearings;

(VIII) Any hearing to which the Court authorizes after motion and due consideration consistent with this rule.

(VIII)  Rule 235 hearings.

(3) Minimum standards. Every use of an interactive audiovisual device must comply with the following minimum standards in addition to those set forth in Rule 243(e)(I):

(I) If defense counsel appears, such appearance may be done by interactive audiovisual device. If defense counsel does not appear in the same location as the defendant, a separate confidential communication line, such as a phone line, shall be provided to allow for private and confidential communication between the defendant and counsel.

(II) Installation of the interactive audiovisual device in the courtroom shall be done in such a manner that members of the public are reasonably able to observe, and, where appropriate, participate in the hearing.

(4) Nothing in this rule shall require a court to use an interactive audiovisual device.

(5) In the event of inclement weather or other exceptional circumstances, which would otherwise prevent a hearing from occurring, the court may conduct the hearing by use of an interactive audiovisual procedure consistent with this rule.

**[CLEAN VERSION]**

**Rule 242. No Colorado Rule.**

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