

1 **RULE 7B. Preliminary Examinations**

2
3 (a) **Burden of proof.** At the preliminary examination, the state has the burden of proof and
4 proceeds first with its case. At the conclusion of the state's case, the defendant may testify under
5 oath, call witnesses, and present evidence. The defendant may also cross-examine adverse
6 witnesses.

7 (b) **Probable cause determination.** If from the evidence the magistrate finds probable cause to
8 believe that the crime charged has been committed and that the defendant has committed it, the
9 magistrate must order that the defendant be bound over for trial. The findings of probable cause
10 may be based on hearsay, in whole or in part. Objections to evidence on the ground that it was
11 acquired by unlawful means are not properly raised at the preliminary examination.

12 (c) **If no probable cause.** If the magistrate does not find probable cause to believe the crime
13 charged has been committed or the defendant committed it, the magistrate must dismiss the
14 information and discharge the defendant. The magistrate may enter findings of fact, conclusions
15 of law, and an order of dismissal. The dismissal and discharge do not preclude the state from
16 instituting a subsequent prosecution for the same offense.

17 (d) **Witnesses.** At a preliminary examination, the magistrate, upon request of either party, may
18 exclude witnesses from the courtroom and may require witnesses not to converse with each other
19 until the preliminary examination is concluded.

20 (e) **Written findings.** If the magistrate orders the defendant bound over for trial, the magistrate
21 must execute a bind-over order and include any written findings in the case record.

Effective May 1, 2018