

1 **Rule 7B. Preliminary Examinations**

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

6 (b) **Probable cause determination.** If from the evidence the magistrate finds probable
7 cause to believe that the crime charged has been committed and that the defendant has
8 committed it, the magistrate must order that the defendant be bound over for trial. The
9 findings of probable cause may be based on hearsay, ~~in whole or in part~~ but may not be
10 based solely on hearsay evidence admitted under Rule 1102(b)(8) of the Utah Rules of
11 Evidence. Objections to evidence on the ground that it was acquired by unlawful means
12 are not properly raised at the preliminary examination.

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

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

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

24 (f) **Assignment on motion to quash.** If a defendant files a motion to quash a bind-over
25 order, the motion shall be decided by the judge assigned to the case after bind-over,
26 regardless of whether the judge conducted the preliminary examination in the judge’s
27 role as a magistrate.

