

1 **RULE 7B. Preliminary examinations**

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

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

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

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

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

21 (f) **Assignment on motion to quash.** If a defendant files a motion to quash a bind-over order,
22 the motion must be decided by the judge assigned to the case after bind-over, regardless of
23 whether the judge conducted the preliminary examination in the judge's role as a magistrate.