

Chief Judge Directive 16-03 (amended 1/9/17)
Regarding Criminal E-filing

Effective April 18, 2016, all District and County Court criminal cases shall be subject to mandatory electronic filing using the State's E-Filing system. This includes the following case types: CR, M, T, and JD. The order shall be effective as to all new and pending cases.

Documents shall be electronically filed and served in accordance with Colorado Rules of Criminal Procedure 49.5 and Chief Justice Directive 11-01 as currently in effect, and as subsequently amended.

Documents must clearly identify which attorney(s) signed the document.

All documents relating to a single pleading or other filing may be filed electronically as a separate document but as a single filing submission. For example: a motion shall be filed as the principal document while exhibits to the motion shall be filed as attachments within the same submission.

Parties shall not upload documents into the E-Filing system in any manner that prevents the Court from copying/pasting text or employing enhanced search functionality within the document.

All Motions requiring a judicial decision must be accompanied by a proposed order. All proposed orders shall be submitted in editable format and will be rejected by the Clerk's office if they are not.

The submission of documents for an *in camera* review will continue to be done in paper format until further notice.

All judicial rulings, opinions, orders, and other written communications from the Court shall be electronically filed.

Parties not represented by counsel may file documents in paper format. Court staff shall scan and upload documents into the E-Filing system. No additional fees shall be charged to *pro se* litigants for scanning and uploading.

After notice to an attorney that all future documents are to be e-filed, the Court will charge a fee of \$50.00 per document for the service of scanning and uploading a document filed in paper form, pursuant to Rule 49.5

Exhibits:

All exhibits, uploaded in their original format (i.e. color or black and white), must be submitted by attorneys through the Colorado Courts E-filing system (CCE) and made part of the court record. Exhibits tendered by self-represented parties will be scanned and uploaded into the jPOD system by the court.

The following procedures apply when exhibits are offered by attorneys in all criminal, traffic, and juvenile delinquency cases:

A. Exhibits. Exhibits shall be filed as one filing submission, when possible. Exhibits shall be titled according to the party's designation in the case, such as People's or Defendant's Proposed Exhibits. Each exhibit shall be a separate file (for example, PDF file, Excel spreadsheet) within the filing submission. The exhibit designation shall be legible when electronically filed.

B. Documentary Exhibits that Exceed E-Filing Size Restrictions. A party intending to submit any documentary exhibit that exceeds the megabyte file size limit of CCE, shall separate the exhibit into electronic files as provided in CJD 11-01. If the document cannot be separated, then the party shall place it on a CD or DVD for filing with the court.

C. Exhibits of Large Physical Size and Non-Documentary Exhibits. If a party intends to submit an exhibit or document, or use a demonstrative aid, during a hearing or trial that cannot be submitted through the e-filing system because of its physical size or because it is non-documentary in nature (e.g. an item of clothing or a weapon), a digital image (photograph) of the exhibit or document shall be electronically filed for purposes of the record.

D. Audio and Video Exhibits. Audio or video exhibits cannot be submitted through the e-filing system at this time. Those exhibits shall be placed on a CD or DVD and submitted to the court.

E. All physical evidence introduced by the People shall be returned to the law enforcement custodian of the police agency investigating the case for storage after the hearing or trial in which the items were introduced in evidence. "Physical evidence" includes such items as clothing, weapons, controlled substances, and the originals of all documents, such as a check, handwritten note, etc., and any other item of evidence the district attorney determines should be returned to the law enforcement agency directly to maintain a chain of custody. The court, with the assistance of the district attorney, shall determine the appropriate law enforcement custodian to take custody of the physical evidence. The appropriate law enforcement custodian shall sign a receipt for those exhibits specifically identified by exhibit number or letter, and shall include a brief description of the exhibit. The appropriate law enforcement custodian or the district attorney shall photograph the returned exhibits and a digital copy of the photographs shall be submitted to the court through CCE to preserve the record as to the released exhibits. The receipt of the returned exhibits and any digital photographs shall also be retained by the district attorney. The appropriate law enforcement custodian shall be responsible for retaining these exhibits until notified by the district attorney that they may be disposed of.

F. After the hearing or trial, all exhibits not meeting the criteria of "physical evidence" set forth in the paragraph II (E) above shall be returned to the attorney submitting the item for uploading into the electronic file through CCE, unless the attorney filed the exhibit electronically before the hearing or trial. The attorney shall file a written motion for the release of the original exhibit(s), which shall include the exhibit number or letter and a brief description of each exhibit being released. The court will issue an order releasing the original exhibit(s) directly to the attorney for uploading through the attorney's office. The responsible attorney's office shall upload the released exhibit(s) within twenty-one days of the date it was released to the attorney, and the attorney shall immediately thereafter file a notice with the court verifying that each of the released exhibits has been uploaded into the electronic court file.

G. Audio and video recordings presently cannot be uploaded electronically into CCE and jPOD. Therefore, a DVD or CD containing an audio or video recording that was received into evidence will be retained by the court after the hearing or trial.

Retention, transmission, and viewing of Sensitive Records:

Chief Justice Directive 16-03 establishes the policies and procedures of the Colorado Judicial Department with regard to Sensitive Records. CJD 16-03 may be viewed at:

https://www.courts.state.co.us/Courts/Supreme_Court/Directives/16-03%20Initial%20Web.pdf

A. "Sensitive Record" means any photograph, motion picture, video, recording, computer-generated image, or other record whose release or transmission is restricted by section 16-9-601, C.R.S. (2015), 18 U.S.C. § 2252 (2015), or 18 U.S.C. § 2252A (2015). This includes sexually exploitative material, visual depictions involving the use of a minor engaging in sexually explicit conduct, and child pornography.

B. "Sexually explicit conduct" has the same meaning as defined in 18 U.S.C. § 2256(2).

C. "Sexually exploitative material" has the same meaning as defined in section 18-6-403(2)(j), C.R.S. (2015).

D. "Visual depiction" has the same meaning as defined in 18 U.S.C. § 2256(5).

E. "Child pornography" has the same meaning as defined in 18 U.S.C. § 2256(8) (2015).

F. "Minor" has the same meaning as defined in 18 U.S.C. § 2256(1).

G. Evidence submitted during a hearing or trial that meets the definition of "Sensitive Record" shall not be electronically uploaded into the file by any person, party, an attorney for a party, or court personnel. Instead, if any such item is received into evidence, the court or court personnel shall seal the item(s) in an envelope and place the case number, exhibit number(s) or letter(s), the defendant's name, and "Sensitive Record" on the outside of the envelope. The judge presiding over the case shall forthwith issue an order directing

that the sealed envelope may not be opened by anyone absent a court order. The order shall be affixed to the sealed envelope and thereafter secured in the locked evidence room at the courthouse. The court will include an entry in Eclipse and jPOD listing the items by exhibit number or letter without any further description of the contents of the envelope, that the exhibits have been sealed pursuant to the court's order, and specify that those exhibits are secured in the locked evidence room and may not be viewed by anyone absent a court order.

H. Evidentiary items that are subject to the provisions of this section shall not be submitted to the appellate court as a matter of course as part of the record on appeal, irrespective of any designation of record submitted by an attorney or party requesting that all exhibits offered or received into evidence be certified by the trial court as part of the appellate record. The trial court appeals clerk will include the following statement in the designation of record: Exhibits containing sexually exploitative material, child pornography, or visual depictions that involve the use of a minor engaging in sexually explicit conduct, or other materials falling within the provisions of C.J.D. 16-03, have not been included as part of the record submitted on appeal and will be retained by the trial court, under seal, unless those items are specifically ordered by the appellate court to be included with the appellate record. The sealed envelope containing Sensitive Records will be retained by the trial court and only be transmitted to the appellate court if the appellate court specifically orders the sealed envelope to be submitted as part of the record on appeal. If the appellate court orders the sealed envelope containing Sensitive Records to be submitted on appeal, the appeals clerk shall confer with the judge presiding over the case and the chief judge to seek specific directions as to how the sealed envelope will be submitted to the appellate court; however, under no circumstances may a clerk or any other court personnel personally transport a Sensitive Record from the trial court to the appellate court.

I. Under no circumstances may the court, court personnel, an attorney for a party, or any other person upload a Sensitive Record into an electronic case file, upload a Sensitive Record to an electronic device connected to the Judicial Department's network, download a Sensitive Record onto any electronic device connected to the Judicial Department's network, or transmit a Sensitive Record to or from any electronic device connected to the Judicial Department's network.

So Ordered in Salida, Colorado, this _9th_ day of _January____, 2017.

/s/ Patrick W. Murphy_____
Patrick W. Murphy
Chief Judge, 11th Judicial District