

Chief Judge, Twelfth Judicial District

**ORDER RE:
Safeguarding, Retention and
Disposal of Physical/Tangible
Exhibits and Demonstrative
Evidence**



**CHIEF JUDGE
ADMINISTRATIVE ORDER
2017-02
As amended April 16, 2018**

The Colorado Judicial Department has policies and procedures for the retention and disposition of records, including exhibits. “Colorado Judicial Department Records Management, Retention and Disposition Schedules” (October 2008). The courts of the Twelfth Judicial District, however, lack the secure storage capacity to retain physical evidence received as exhibits including, by way of example, but not limited to, items such as weapons, ammunition, hazardous materials, drugs, paraphernalia, rape kits, blood, bodily fluids, dangerous and illegal materials, and any oversized exhibits or other tangible evidence. In addition, after compliance with the Judicial Department Records Retention and Disposition Schedules, the courts may destroy exhibits no longer needed.

This policy does not apply to audio and video recordings. Such recordings cannot be e-filed. Attorneys shall provide such audio and video recordings to the court on a flash drive or a DVD and the court shall retain this evidence in the court’s possession after a trial or hearing is completed.

IT IS THEREFORE ORDERED that

1. At the conclusion of a hearing or trial in a **FELONY CRIMINAL, JUVENILE DELINQUENCY, MISDEMEANOR OR TRAFFIC** case in which physical evidence is offered, the court shall return such exhibits to the custody of the investigating law enforcement agency for storage unless, after discussion with counsel, the court finds good cause to retain the exhibits in the court’s custody. The court, with the assistance of counsel, shall determine the appropriate law enforcement custodian to take custody of such evidence. Any defense physical or demonstrative exhibit that was not originally in the custody of the investigating law enforcement agency shall be returned to defense counsel.
2. At the conclusion of a hearing or trial in a **CIVIL, COUNTY COURT CIVIL, SMALL CLAIMS, DOMESTIC RELATIONS, PROBATE, WATER, MENTAL HEALTH, OR JUVENILE (OTHER THAN JUVENILE DELINQUENCY)** case, in which physical evidence is offered, the court shall return such exhibits to the custody of the submitting party’s attorney. If a party does not have an attorney, the court shall retain the exhibit during the appeal period and until a mandate is issued if an appeal is taken.
3. The law enforcement agency, the district attorney, defense counsel, or attorney for submitting party, as appropriate, shall sign a receipt for the returned exhibits specifically identifying the exhibit by number or letter and description of the item. A receipt form is attached as Exhibit A.

4. In all cases which are e-filed: Civil, Probate, County Court Civil, Domestic Relations, Water, Felony Criminal, Juvenile Delinquency, Misdemeanor, and Traffic, the attorney or party who intends to use a physical or demonstrative exhibit at a trial or hearing shall e-file a photograph of the exhibit in advance of the trial or hearing in the same manner as is required for documentary exhibits. (See Chief Justice Directive 11-01, Amended November 2014 and 12th Judicial District Admin Order 2017-01). At the conclusion of the trial or hearing, the Court Clerk or designee shall review the copies of exhibits filed electronically to make certain there is a photo of each physical or demonstrative exhibit and then return the physical and demonstrative exhibits to the appropriate law enforcement agency, district attorney, defense counsel or attorney for submitting party as discussed above.

5. In all cases which are not e-filed, the attorney or party who intends to use a physical or demonstrative exhibit at a trial or hearing shall submit a photograph of the physical or demonstrative exhibit at the time the exhibit is offered in evidence. At the conclusion of the trial or hearing, the Court Clerk or designee shall review the exhibits offered and admitted in the case and shall make certain there is a photo of each physical or demonstrative exhibit and then return the physical and demonstrative exhibits to the appropriate law enforcement agency, district attorney, defense counsel or attorney for the submitting party as discussed above. An attorney or party in a non-e-filed case may submit the exhibits in an electronic form on a compact disk, DVD or flash drive if desired, and may include the photographs of the physical exhibits on the compact disk, DVD or flash drive rather than providing the court a paper copy.

6. The law enforcement agency, district attorney, defense counsel, or attorney for the submitting party to whom the court returns the physical and demonstrative exhibits shall retain the exhibits until further order of the court. The district attorney, defense counsel, or attorney for submitting party, may petition the court to allow disposal of the exhibits in a specific case pursuant to the following schedule:

CASE TYPE	MINIMUM RETENTION PERIOD	DISPOSITION
Felony Criminal: Defendant Found Not Guilty	30 days after acquittal or dismissal.	May petition the court to allow return of items to owners and/or destruction.
Defendant Found Guilty	Upon completion of sentence or 20 years after sentencing (whichever occurs first) or as the court may otherwise order.	May petition the court to allow return of items to owners and/or destruction.
Juvenile Delinquency	Same as felony criminal.	Same as felony criminal.
Traffic & Misdemeanor	30 days after appeal period has passed, or after acquittal or dismissal.	Same as felony criminal.

Civil, Probate, Domestic Relations, Mental Health, Juvenile (Except delinquency), & Water	30 days after the appeal period following a final judgment in the case.	May petition the court to allow return of items to owners and/or destruction.
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7. The Clerk of the Court or designee in each county of the 12th Judicial District shall destroy all tangible/physical exhibits remaining with the court pursuant to the procedure required by the Colorado Judicial Department Records Management, Retention and Disposition Schedules (available on-line at <https://www.courts.state.co.us/judicialnet/TCRM/page.cfm?Page=793>) depending on the case-type. The Clerk or designee shall give at least 30 days notice to the parties/attorneys of record prior to destroying any exhibits, as required by the Records Management, Retention and Disposition Schedules.
8. If the Clerk of the Court or designee is unable to determine to whom notice should be given prior to destroying an exhibit, the Clerk of the Court or designee shall provide a descriptive list of such exhibits to the Chief Judge who shall issue appropriate orders for the items' destruction.

DONE this 16th day of April 2018.

BY THE COURT:

Pattie P. Swift, Chief Judge