

District Court, Weld County, State of Colorado Court Address: 901 9 th Avenue, Greeley, CO 80631 Mailing Address: P.O. Box 2038, Greeley, CO 80632-2038	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
ADMINISTRATIVE ORDER NO. 2015-13	
19TH JUDICIAL DISTRICT POLICIES AND PROCEDURES WHEN A DEFENDANT INVOLVED IN A CRIMINAL, PETTY OFFENSE, OR TRAFFIC CASE DIES	

This administrative order establishes the policies and procedures that are to be used when the court receives written notice and confirmation that a defendant involved in a criminal, traffic, or petty offense case is deceased.

I. Defendant has pending charges.

Upon receipt of written proof that the defendant is deceased, the division staff shall notify the District Attorney’s Office and defendant’s legal counsel, if the defendant is represented, in writing that the court has received notice of the defendant’s death. The District Attorney’s Office and defense counsel shall have twenty-eight days to file any motions relating to the defendant’s passing with the court. If no motions are filed with the court, the judge presiding over the case may *sua sponte* dismiss the charges, discharge the bond or quash a warrant, if applicable, and close the case.

II. Defendant has been convicted and is currently serving a sentence.

The division staff shall notify the District Attorney and defendant’s attorney, if represented, in writing that the court received information that the defendant is deceased. The D.A. and/or defense counsel may file a motion to vacate the remainder of the sentence within twenty-eight days of the date of the court’s notice. If a motion to vacate the sentence is not timely filed with court, the court may *sua sponte* issue an order vacating the remainder of the defendant’s sentence.

The court may waive any outstanding costs and fees; however, restitution ordered by the court remains a civil judgment in favor of the victim and the state and may not be waived. C.R.S. § 18-1.3-603(4)(a) (judgment entered for restitution shall remain in force until paid in full). The clerk of court shall send written notice to the victim of the defendant’s death and to inform the victim that the court will not be receiving any further restitution payments. A sample of this notice is attached to this administrative order.

If the defendant’s conviction is on appeal when the defendant dies, the court will be guided by the opinion issued in *People v. Daly*, which may require the conviction to be abated *ab initio*. 313 P.3d 571 (Colo. App. 2011). If a conviction is abated due to the defendant’s death under the principles espoused in *Daly*, restitution shall nevertheless remain as a civil judgment in favor of the victim and will not be vacated by the court. *Id.*

III. Defendant has been convicted and the sentence has been fully served.

If the defendant has been convicted and the sentence has been fully served, and the conviction is not on appeal, any outstanding fines, costs, and fees will be vacated by the court. Restitution remains a civil judgment in favor of the victim and may not be vacated or waived. The clerk of court will notify the victim in writing that the court will no longer receive restitution payments on the victim's behalf. A copy of this notice is attached to this order.

If, however, the defendant's conviction is on appeal when the defendant dies, the court will apply the holding in the *Daly* case, *supra*, which may require the conviction to be abated *ab initio*. If a conviction is abated due to the defendant's death under the principles espoused in *Daly*, restitution shall nevertheless remain as a civil judgment in favor of the victim and will not be vacated by the court. 313 P.3d at 576-577.

IV. Defendant is under a deferred judgment and sentence.

The division staff shall notify the District Attorney and defendant's attorney, if represented, in writing that the court received information that the defendant is deceased. The D.A. and/or defense counsel may file a motion to withdraw the defendant's plea and dismiss the charge(s) for which judgment and sentence were deferred within twenty-eight days of the date of the court's notice.

If a motion to withdraw the plea and dismiss the charge(s) is not timely filed with court, the court may *sua sponte* enter an order withdrawing the defendant's plea(s) of guilty and dismiss the charge(s) that are subject to the deferred judgment and sentence.

The court may vacate and waive any unpaid costs, fines, and fees imposed as a condition of the deferred judgment and sentence; however, restitution ordered by the court remains a civil judgment in favor of the victim and the state and may not be vacated or waived. C.R.S. § 18-1.3-603(4)(a). The clerk of court will send written notice to the victim of the defendant's death and inform the victim that the court will not be receiving any further restitution payments. A sample of this notice is attached to this administrative order.

Dated: October 8, 2015.

BY THE COURT:



James F. Hartmann
Chief Judge, 19th Judicial District



Marci L. Hoffman
WELD COUNTY COMBINED COURTS
Nineteenth Judicial District
Clerk of Court

Date:

RE:

Case #

The Court regrets to inform you that information has been received that the above named defendant has passed away. Consequently, there will be no further restitution payments to you from this defendant in the above referenced case. Since this is a civil matter and time limits may apply to your ability to recover restitution, you may wish to seek legal advice as soon as possible with regard to your rights, your remedies and the applicable deadlines. You may lose important rights if you fail to take the necessary steps within the deadlines set by law.

Sincerely,

Marci L. Hoffman
Marci L. Hoffman
Clerk of Court
Weld County Combined Courts

