

District Court, Weld County, State of Colorado Court Address: 901 9 <sup>th</sup> Avenue, Greeley, CO 80631 Mailing Address: P.O. Box 2038, Greeley, CO 80632-2038	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<b>ADMINISTRATIVE ORDER NO. 2015-13</b> <i>(Revised December 12, 2017)</i>	
<b>19<sup>TH</sup> JUDICIAL DISTRICT POLICIES AND PROCEDURES WHEN A DEFENDANT INVOLVED IN A CRIMINAL, PETTY OFFENSE, OR TRAFFIC CASE DIES</b>	

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. With regard to any unpaid restitution, the court will follow the policies and procedures set forth in Chapter 9-14 of the Colorado Judicial Department Fiscal Rules.

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*, any remaining restitution shall be addressed pursuant to Chapter 9-14 of the Colorado Judicial Department Fiscal Rules.

### **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 will be addressed pursuant to Chapter 9-14 of the Colorado Judicial Department Fiscal Rules.

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*, any outstanding restitution shall be addressed pursuant to Chapter 9-14 of the Colorado Judicial Department Fiscal Rules.

### **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. Any outstanding restitution shall be addressed pursuant to Chapter 9-14 of the Colorado Judicial Department Fiscal Rules.

Dated: December 12, 2017.

BY THE COURT:

  
James F. Hartmann  
Chief Judge, 19<sup>th</sup> Judicial District