

Report of the subcommittee on Criminal E-Filing

6/30/2014

The attached document is the subcommittee's submission to craft a criminal rule to address criminal e-filing. It is borrowed from C.R.C.P. 121, Section 1-26 thus the edits appear in track changes mode. There is also an accept changes version attached. The proposed rule is being submitted for a vote at the July criminal rules committee meeting.

Explanation of proposal.

Paragraph 7. Colo. RPC 1.16A(c) provides specific requirements for the retention of criminal files. Rather than repeat those requirements in this Rule, the committee just referenced the Rules of Professional Conduct.

Paragraph 9. C.R.C.P. 11(a) provides that if a pleading is signed in violation of the rule, attorney's fees incurred because of the filing of the pleading may be awarded to the opposing party. This provision has no application in the criminal context.

Paragraph 10. There are a variety of occasions where a party may, or is required to file a document under seal. In the criminal e-filing context the clerk must have an Order from the court allowing for filing documents under seal. This can be carried out by the e-filing clerk holding in clerk review the documents that are sought to be sealed until the judge approves the motion, or the filing party submitting the documents to be sealed *after* the court has approved the motion. Sealed documents will thereafter only be viewable by the judge.

Version 1, dated 6.6.2014; Paragraph 16. There are certain elements of documents that are not public pursuant to CJD 05-01. This proposal was modeled after the federal e-filing rule. Victim locating information was included in order to comply with the Victims' Rights Act legislation that allows a victim to prevent any party from compelling testimony regarding his or her locating information. If the information is available through filings then this aspect of the legislation becomes moot. The applicable statute is §24-4.1-302.5(1)(v), C.R.S. (2013).

Version 2, dated 6.25.2014; No redaction by filing parties, clerks will do all redaction. An internal workgroup at SCAO met on 6.25.2014 and it was determined that to require all filers to redact their own documents in accordance with the rule, as well as submit an un-redacted copy will be difficult to program the system for and still meet the October pilot deadline. This proposed change was sent to the subcommittee on 6.25.2014. Other sections are renumbered accordingly.

Version 1, dated 6.6.2014, Paragraph 17. Due to the fact that there is a great deal of information that must be redacted from documents in a criminal case, or whole documents that cannot be released either pursuant to statute or Chief Justice Directive 05-01, the committee and the SCAO internal workgroup felt that only making documents public after a request and clerk review was the appropriate way to address the situation for criminal e-filing.

Paragraph 18. This is another borrowed paragraph from the federal rules in Version 1, and modified in accordance with suggested changes for Version 2.

Respectfully submitted,

Terri S. Morrison, Legal Counsel

Staff to the subcommittee