

RULE CHANGE 2009(15)

CHAPTER 5

COLORADO RULES OF COUNTY COURT CIVIL PROCEDURE

Rule 305.5. Electronic Filing and Serving

~~Until these rules come before the Supreme Court for change through the rule change process, the following temporary rule is adopted for e filing in county court.~~

~~1.~~

 (a) **Definitions:**

~~(a~~ (1) **Document:** A pleading, motion, writing or other paper filed or served under the E-System.

~~(b~~ (2) **E-Filing/Service System:** The E-Filing/~~Service System~~ ~~(service system ("E-System"))~~ approved by the Colorado Supreme Court for filing and service of documents via the Internet through the Court-authorized E-System provider.

~~(c~~ (3) **Electronic Filing:** Electronic filing ~~(("E-Filing"))~~ is the transmission of documents to the clerk of the court, and from the court, via the E-System.

~~(d~~ (4) **Electronic Service:** Electronic service ~~(("E-Service"))~~ is the transmission of documents to any party in a case via the E-System. Parties who have subscribed to the E-System have agreed to receive service, other than service of a summons, via the E-System.

~~(e~~ (5) **E-System Provider:** The E-Service/E-Filing ~~System-Provider~~ ~~system provider~~ authorized by the Colorado Supreme Court.

~~(f~~ (6) **S/ Name:** A symbol representing the signature of the person whose name follows the "S/" on the electronically or otherwise signed form of the E-Filed or E-Served document.

~~2.~~ (b) **Types of Cases Applicable:** E-Filing and E-Service ~~are permissive in county courts in Colorado for civil suits asking for money damages, and FED case types may be used for all cases filed pursuant to § 13-40-101 et seq., but~~ in county court as the service becomes available. The availability of the E-System will be determined by the Colorado Supreme Court and announced through

its website: <http://www.courts.state.co.us/supct.htm> and through published directives. E-Filing and E-Service may be mandated pursuant to ~~Subsection 14~~Section (o) of this ~~Practice-Standard~~Rule 305.5.

3. (c) To Whom Applicable:

~~(a)~~ (1) Attorneys licensed to practice law in Colorado may register to use the E-System. Any attorney so registered may enter an appearance pursuant to ~~Rule C.R.C.P. 121~~, Section 1-1, through E-Filing. ~~In districts where~~ Where E-Filing is mandated pursuant to ~~Subsection 14~~Section (o) of this ~~Practice-Standard~~Rule 305.5, attorneys must register and use the E-System.

~~(b)~~

(2) Where the system and necessary equipment are in place to permit it, pro se parties and government entities and agencies may register to use the E-System.

4. (d) Commencement of Action-Service of Summons: Cases may be commenced under C.R.C.P. ~~303~~ through an E-Filing. Cases commenced under C.R.C.P. 303 through an E-Filing must be E-Filed to the court no later than five (5) business days before the set return date, if any. Service of a summons shall be made in accordance with C.R.C.P. 304.

5. (e) E-Filing, Date and Time of Filing: Documents filed in cases on the E-System may be filed under C.R.C.P. ~~305~~ through an E-Filing. A document transmitted to the E-System ~~Provider~~ provider by 11:59 p.m. Colorado time shall be deemed to have been filed with the clerk of the court on that date.

6. (f) E-Service, When Required, Date and Time of Service: Documents submitted to the court through E-Filing shall be served under C.R.C.P. 305 by E-Service. A document transmitted to the E-System ~~Provider~~ provider for service by 11:59 p.m. Colorado time shall be deemed to have been served on that date. E-Service shall entitle the party being served an additional three (3) days as provided by C.R.C.P. ~~306(e)~~.

7. (g) Filing Party ~~to~~To Maintain the Signed Copy, Paper Document Not ~~to~~To Be Filed, Duration of Maintaining of Document: A printed or printable copy of an E-Filed or E-Served document with original or scanned signatures shall be maintained by the filing party and made available for inspection by other parties or the court upon request, but shall not be filed with the court. When these rules require a party to maintain a document, the filer is required to maintain

the document for a period of two years after the final resolution of the action, including the final resolution of all appeals. __

~~7.5.~~ (h) Default Judgments and Original Documents:

~~(a)~~ (1) If the action is on a promissory note or where an original document is by law required to be filed, that original document shall be scanned and submitted electronically with the e-filed motion for default. The original document shall be presented to the court in order that the court may make a notation of the judgment on the face of the document.

~~(b)~~ (2) Following compliance with sub-paragraph ~~(a)~~1 of this paragraph ~~7.5(h)~~ the document may then be returned to the filing party; retained by the court for a specified period of time to be determined by the court; or destroyed by the court.

~~(c)~~ (3) When the return of service is required for entry of default, the return of service may be scanned and E-Filed. In accordance with paragraph ~~8(i)~~ of this ~~practice standard~~Rule, signatures of attorneys, parties, witnesses, notaries and notary stamps may be in S/ Namedname typed form to satisfy signature requirements, once the necessary signatures have been obtained on a paper form of the return of service.

~~8.~~

(i) Documents Requiring E-Filed Signatures: ~~For all~~ E-Filed and E-Served documents, signatures of attorneys, parties, witnesses, notaries and notary stamps may be in S/ Namedname typed form to satisfy signature requirements, once the necessary signatures have been obtained on a paper form of the document. It is preferable that such documents be scanned into the system.

~~9.~~ (j) C.R.C.P. 311 Compliance: Use of the E-System by an attorney constitutes compliance with the signature requirement of C.R.C.P. 311. An attorney using the E-System shall be subject to all other requirements of ~~Rule~~Rule 311.

~~10.~~ (k) Documents ~~under~~Under Seal: A motion for leave to file documents under seal may be E-Filed. Documents to be filed under seal pursuant to an order of the court may be E-Filed at the ~~direction~~discretion of the court; however, the filing party may object to this procedure.

~~11.~~ (l) Transmitting of Orders, Notices, and Other Court Entries: Courts shall distribute orders, notices, and other court entries using the E-System in cases where E-Filings

were received from any party.

~~12.~~ (m) **Form of E-Filed Documents:** C.R.C.P. 310 shall apply to E-Filed documents. A document shall not be transmitted to the clerk of the court by any other means unless the court at any later time requests a printed copy.

~~12.5.~~ ~~§~~ (n) **Section 13-1-113, C.R.S. Compliance:** Use of an electronic seal by the clerk of the court or public officer for E-Filing shall be the same as impressing a seal as required by ~~§~~Section 13-1-113, C.R.S.

~~13.~~ (o) **E-Filing May ~~be~~ Mandated:** With the permission of the Chief Justice, a chief judge may mandate E-~~Filing~~ filing within a county or judicial district for specific case classes or types of cases. ~~A judicial officer may mandate E-Filing and E-Service in that judicial officer's division for specific cases, for submitting documents to the court and serving documents on case parties.~~ Where E-Filing is mandatory, the court may thereafter accept a document in paper form and the court shall scan the document and upload it to the ~~E-service Provider.~~ Service provider. After notice to an attorney that all future documents are to be E-Filed, the court may charge a fee of \$50 per document for the service of scanning and uploading a document filed in paper form. Where E-Filing and E-Service are mandatory, the Chief Judge or appropriate judicial officer may exclude pro se parties from mandatory E-Filing requirements.

~~14.~~ (p) **Relief in the Event of Technical Difficulties:**

~~(a)~~ (1) Upon satisfactory proof that E-Filing or E-Service of a document was not completed because of: (1) an error in the transmission of the document to the E-System ~~Provider~~provider which was unknown to the sending party, (2) a failure of the E-System ~~Provider~~provider to process the E-Filing when received, or ~~(3)~~ (3) other technical problems experienced by the filer or E-System ~~Provider~~provider, the court may enter an order permitting the document to be filed nunc pro tunc to the date it was first attempted to be sent electronically.

~~(b)~~ (2) Upon satisfactory proof that an E-Served document was not received by or unavailable to a party served, the court may enter an order extending the time for responding to that document.

~~15.~~ (q) **Form of Electronic Documents**

~~(a~~ (1) Electronic document format, size ~~Density:~~ Document Format, Size, and density: Electronic document format, size, and density shall be as specified by Chief Justice Directive # 05-02, as amended.

~~(b~~ (2) Multiple Documents: Multiple documents (including proposed orders) may be filed in a single electronic filing transaction. Each document (including proposed orders) in that filing must bear a separate document title.

~~(c~~ (3) Proposed Orders: Proposed orders shall be E-Filed in an editable format. Proposed orders that are E-Filed in a non-editable format shall be rejected by the Court Clerk's office and must be resubmitted.

~~ADDITIONAL INFORMATION ON RULE~~

COMMITTEE COMMENT

The Court authorized service provider for the program is LexisNexis File & Serve (~~www.lexisnexus.com/fileandserve~~ www.lexisnexus.com/fileandserve).

~~In the future, E-Filing and E-Service may be approved for other courts. Announcements regarding the E Filing system will be made by the Colorado Supreme Court through its web site <http://www.courts.state.co.us/supet/supet.htm> and through published directives to the clerks of the affected court systems~~ "Editable Format" is one which is subject to modification by the court using standard means such as Word or WordPerfect format.

C.R.C.P. 377 ~~states~~ provides that courts are always open for business. This ~~Practice Standard~~ Rule 305.5 is intended to comport with ~~this~~ that rule.

Adopted by the Court, En Banc, September 10, 2009, effective immediately.

BY THE COURT:

Nancy E. Rice

Justice, Colorado Supreme Court

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