



The Honorable Elizabeth Harris
Chair, Colorado Criminal Rules Committee
Colorado Court of Appeals
2 E. 14th Avenue
Denver, Colorado 80203

April 12, 2024

Re: Rule 49(c)

Dear Judge Harris and Members of the Committee:

Clean Slate Colorado is seeking a rule change to Criminal Rule of Procedure 49(c) to include an exception to the mailing requirement for sealing orders entered under the automated sealing process outlined in Colorado Revised Statutes § 13-3-117. Clean Slate Colorado is a coalition comprised of several non-profit organizations and businesses seeking to expand access for people to work, support themselves, and live healthy lives. The coalition supports legislation that streamlines the process by which eligible conviction and non-conviction records are sealed.

In 2022, the coalition supported [Senate Bill 22-099](#), which created a system in which criminal records eligible for sealing will move through an automated process to be sealed. As relevant here, the state court administrator's office (SCAO) initiates the automated process, district attorneys are provided a limited opportunity to object to the sealing of records, and the Chief Judge of each district signs every order that has no objection and returns the bulk list of orders to the SCAO.

What was not contemplated in the 2022 legislation, nor in the [fiscal note](#), was the separate requirement under Criminal Rule of Procedure 49(c) to mail a notice of the order to the parties. Specifically, the rule states:

Immediately upon entry of any order made out of the presence of the parties after the information or indictment is filed, the clerk shall mail to each party affected a notice of the order and shall note the mailing in the docket.

Crim. R. P. 49(c). While we generally support the notion that parties receive notice of an order, there are a few reasons why there should be an exception to Rule 49(c) for sealed orders under the automated process.

First, defendants will have alternative ways to obtain the information. In particular, SB22-099 requires the SCAO to develop a website by July 1, 2024, that will allow defendants to confidentially determine whether their records have been sealed under the automated process. *See* C.R.S. § 13-3-117(3)(c). If the defendant wishes to access the sealed record, the defendant may do

so through the courts or through the Colorado Bureau of Investigation. *See* C.R.S. § 24-72-703(2)(a)(VII), (2)(b).

Second, sending orders to the last known address of a defendant creates a privacy concern. Under the automated process, sealing for most eligible records will occur at least 7-10 years after the final disposition. *See* C.R.S. § 13-3-117(1)(a), (a.5). We expect that timeframe to be much longer in the first round of automated sealing given the expected breadth of historical cases to be sealed. It is highly unlikely that many of the last known addresses for older cases will still be accurate, and sending an order regarding criminal matters to an incorrect address creates privacy concerns.

Indeed, the drafters of the bill were intentional in only requiring notice for a defendant in the expected limited circumstance in which a district attorney objects to the sealing of an eligible felony case based on public safety concerns. *See* § 13-3-117(3)(a)(IV); Senate Judiciary Committee Hearing at 2:38:48 (Feb. 24, 2022), available at <https://tinyurl.com/s6ft4mym> (explaining that the “public safety” objection will be relatively rare “because 10 years have gone by without a conviction and the underlying conviction is [a] nonviolent and non-VRA crime”). The coalition, which included justice-involved individuals, ultimately decided that - in this limited circumstance - the privacy concerns regarding mailing orders were outweighed by the importance of providing notice to defendants about their opportunity to be heard.

Third, district attorneys already receive a copy of the sealing orders under the automated process. District courts are required to “send a copy of the sealing order to the district attorney’s office that prosecuted the case to facilitate the sealing of the records.” C.R.S. § 13-3-117(3)(b)(II).

Last, amending language in the rules will save the judicial branch tens of thousands of dollars. *Cf.* Revised Fiscal Note, HB24-1099 at 3 (Mar. 12, 2024), available at <https://tinyurl.com/mbryantp> (estimating “an average cost of \$1.64 per mailing for paper, printing, and postage” in the eviction context). Sealing records in bulk across the state is unprecedented for Colorado. The fiscal note estimated that over half a million Coloradans would be included in the initial 2024 list for automated sealing. Requiring the judicial branch to mail sealing orders to defendants and administer large amounts of returned mail from old and likely outdated addresses will cost the judicial branch an exorbitant amount of money.

For these reasons, Clean Slate Colorado asks that the rules committee consider amending Rule 49(c) to not require courts to send sealing orders in automated sealing cases. Our proposal is a simple change by adding the exception to the beginning of the Rule:

Except for cases in which criminal records are sealed pursuant to C.R.S. § 13-3-117, immediately upon entry of any order made out of the presence of the parties after the information or indictment is filed, the clerk shall mail to each party affected a notice of the order and shall note the mailing in the docket.



Thank you for your time and attention to this proposal. Please contact Bethany Pray, Deputy Director at the Colorado Center on Law and Policy at bpray@copolicy.org with any questions.

Best,
Clean Slate Coalition