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October 29, 2026 4:52 PM

DISTRICT COURT, ALAMOSA COUNTY, COLORADO, 8955 Independence Way Alamosa, CO 81101 --- THE PEOPLE OF THE STATE OF COLORADO Plaintiff, v. BARRY LEE MORPHEW, Defendant.	▲ COURT USE ONLY ▲
JANE FISHER-BYRIALSEN, #49133 FISHER & BYRIALSEN, PLLC 4600 S. Syracuse Street, 9th Floor Denver, CO 80237 (202)256-5664 Jane@fblaw.org DAVID BELLER, #35767 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1400 Denver, CO 80202 (303)573-1900 Fax: (303) 446-9400 david@rklawpc.com	Case Number: 25 CR 128

[D-065] NOTICE OF MR. MORPHEW'S INABILITY TO PREPARE MOTIONS AND RETAIN EXPERTS BECAUSE HE HAS NOT BEEN ALLOWED TO ADEQUATELY INVESTIGATE THE PHYSICAL EVIDENCE AND BECAUSE OF LATE DISCOVERY AND THE STATE'S DELAYED AND CONTINUING FORENSIC INVESTIGATION

Mr. Morphew, through counsel, notifies the Court that he cannot file a complete set of motions concerning certain physical evidence by the November 2, 2026 motions deadline. *See* First Amended Omnibus Order, pp. 3-4 (entered August 7, 2026). Two matters remain outstanding. First, the defense has not yet examined the remains of Suzanne Morphew, and that examination will not occur until after the deadline. Second, the prosecution continues to conduct forensic testing, and results from that testing may be disclosed after the deadline.

Mr. Morphew will timely file all motions he is able to prepare by November 2, 2026. He reserves the right to file supplemental motions arising from the examination of the remains and

from any forensic testing disclosed after that date, and he requests that the Court grant leave to do so. In support, Mr. Morphew states as follows.

1. On June 25, 2026, the Court continued the trial in this case. The continuance gave the defense time to organize and review discovery, determine what experts to retain, obtain funding, determine what motions to file, and prepare for trial. A central purpose was to allow the defense to obtain and review the forensic evidence.

2. The First Amended Omnibus Order sets November 2, 2026 as the deadline for filing motions. *See* First Amended Omnibus Order, pp. 3-4 (entered August 7, 2026).

3. The defense has worked diligently to review the physical evidence and discovery available to it.

4. The defense has not yet examined the remains of Suzanne Morphew.

5. The prosecution has been working cooperatively with the defense to arrange that examination, and the defense acknowledges those efforts.

6. Based on current scheduling, the examination will not take place until after the November 2, 2026 motions deadline.

7. Until the defense and its experts have examined the remains, the defense cannot determine whether motions concerning the remains, related forensic findings, or related expert opinions are warranted. Mr. Morphew therefore reserves the right to file motions arising from that examination.

8. As set forth in [D-064], the prosecution continues to conduct forensic testing in this case.

9. Any results, reports, and underlying documentation from testing that is completed or disclosed after November 2, 2026 will not be available to the defense before the motions deadline.

10. When new testing is disclosed, the defense will need time to review the results and underlying data, consult with or retain experts as needed, and determine whether motions are warranted.

11. Mr. Morphew therefore reserves the right to file motions concerning any forensic testing, results, reports, or expert opinions disclosed after November 2, 2026.

12. Good cause exists to permit supplemental motions on these two matters. The defense cannot file motions about evidence it has not yet examined or discovery it has not yet received. Requiring motions on these matters by November 2, 2026 would force the defense to file speculative motions or risk forfeiting issues that could not have been raised by that date.

13. The delay is not the result of any lack of diligence by the defense. The examination of the remains is being scheduled with the prosecution's cooperation, and the timing of any new testing is outside the defense's control.

14. Mr. Morphew makes this request, and all other motions and objections in this case, whether or not specifically noted at the time, as a continuing objection based on the following grounds and authorities: the due process, trial by jury, right to counsel, equal protection, equal access to and administration of justice, inalienable rights to defend life and liberty, cruel and unusual punishment, confrontation, compulsory process, right to remain silent, and right to appeal clauses of the federal and Colorado Constitutions; the first, fourth, fifth, sixth, eighth, ninth, tenth, and fourteenth amendments to the United States Constitution; article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution; Crim. P. 16; Colo. RPC 3.8; and the Colorado Rules of Evidence, including CRE 401, 402, 403, 404, 608, 801, 802, 803, 804, and 901.

15. Mr. Morphew cross-references and incorporates by reference all pleadings filed or to be filed in this case, including but not limited to D-048, and the case law cited in them and at oral argument.

WHEREFORE, Mr. Morphew respectfully provides this notice.

Respectfully submitted this 29th day of October, 2026.

FISHER & BYRIALSEN, PLLC

/s/ Jane Fisher-Byrialsen
Jane Fisher-Byrialsen, #49133

RECHT KORNFELD, P.C.

/s/ David Beller
David Beller, #35767

Certificate of Service

I hereby certify that on October 29, 2026 I caused the foregoing to be filed with the Alamosa County District Court and a copy of the same to be served on the Alamosa County District Attorney's office via CCE-File Service.

/s/ Abigail Clement
Paralegal at Fisher & Byrialsen PLLC