



The Honorable
 C. Jean Stewart, Presiding



Best Practices and Rule 8.8 Non-Appearance Hearings

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Denver Probate Court
 Announces an Open House to
 honor Teresa Toomey.
 More details on page 3.

Nationwide, non-appearance hearings are a fairly unique procedural mechanism. In Colorado, non-appearance hearings belong predominantly to probate proceedings, so most non-probate attorneys are unfamiliar with the non-appearance procedures. Moreover, non-appearance procedures vary from district to district within the state, so even experienced probate attorneys have uncertainties regarding the proper usage of the non-appearance docket. We spend a great deal of time addressing confusion regarding the non-appearance docket, so this article attempts to address the confusion by providing some history and a glimpse into the Denver Probate Court’s approach to non-appearance hearings.

The History and (hidden) Purpose of the Non- Appearance Docket

In the early ‘90’s Sandra Franklin, who was then the Magistrate of the Denver Probate Court, led the effort for the creation of the non-appearance hearing.¹ Her efforts resulted in the codification of Colo. R. Prob. Proc. 8.8 (“Rule 8.8”). It should come as no surprise that a court official advocated for the creation of the non-appearance docket, for non-appearance hearings are especially convenient for case management and judicial administration.

non-appearance hearings provide an efficient and sure way to get routine matters before the judge in a timely fashion.

Consider the standard operating procedure for motions and petitions that are not set for a non-appearance hearing. Typically, when a court receives a motion, it passes through several steps before it lands on a judge’s desk. Unless something on the face of the motion alerts the court that the matter justifiably requires immediate attention, staff will “age” the motion as it awaits response and reply.

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This newsletter is intended to provide general reference material in summary form and does not constitute binding authority on this or any other Court in a particular case. Moreover, this information is in no way an adequate substitute for qualified legal representation.



Redaction

From inquiring about estates to random genealogical research, cases are sought after for every sort of reason. The Denver Probate Court, as a general rule, puts forth every effort to accommodate the public's interest in searching for case files. Also, as a general rule, we do locate cases for John Q. Public's perusal. That is why redaction, or the censure of important personal information, is an integral part of Probate Court Procedure.

Established formally by Chief Justice Directive 05-01, section 4.60, the Public Access Committee found that Social Security numbers and bank account numbers, amongst other categories of personal information, are to be redacted. In fact, any data in which disclosure would be contrary to the public interest is to be denied (§24-72-204 C.R.S.). Because court staff lacks the time to search each document for jeopardizing information, the Denver Probate Court is requiring that filings be "cleaned" before submission to ensure that sensitive information is not placed into cases.

Although certain types of information are to be redacted, specific documents that may or may not contain this data are still "sealed." That is, they are not accessible by the general public. Credit Reports are sealed as a rule of procedure because of sensitive information, C.B.I. reports are sealed under §24-33.5-412(6) C.R.S., and Social Security numbers are to be sealed under U.S.C. §405(c)(2)(c)(vii)(I), Section 7, of the Privacy Act of 1974.

Parties to a case may want certain documents sealed that are outside the Denver Probate Court's general policy. A judicial officer can grant such requests upon a motion and notice as appropriate. An entire case cannot be suppressed (unavailable for viewing by anyone, except case parties) without a motion and the proper filing fee.

Redaction is a necessary tool to protect persons involved in cases. Whether the information is blacked out, erased, cut-out, scribbled over, whited-out, or simply left out, a "clean" document comes in many forms. But the bottom line is always the same: any information that may jeopardize a person's health or safety must be redacted in documents submitted to the court.

- James Skay Jr.

FREQUENTLY ASKED QUESTION:

Does the Denver Probate Court Accept Deposited Wills?

The short answer is, "Yes, Deposited Wills are accepted at the Denver Probate Court."

What is a deposited will? A deposited will is the Last Will and Testament (and perhaps codicils to the Will) that have been placed with the Court for safe keeping. The Wills are confidential and not available for public inspection. When the court receives proper notice that the Testator has died, the Will is then moved over to our Lodged Will Index and the documents are then available for public inspection.

In light of the budget issues that faced Colorado several years ago, Chief Justice Mullarkey issued a Chief Justice Directive saying that the Chief Judge of a judicial district could decide not to follow Colo. Rev. Stat. § 15-11-515 concerning deposited Wills. Pursuant to the Chief Justice Directive, many Chief Judges issued an order saying that his/her court would no longer accept wills for deposit under the statute. The Denver Probate Court has chosen to continue to take them as required by Colo. Rev. Stat. § 15-11-515.

Not surprisingly, due to the way that statute is written a will can be deposited in any court and so we accept them for all counties. A master index is kept in the Clerk's Office of the Deposited and Lodged Wills maintained by the court.

Recently Judge Stewart stated, "I not only felt it was important to follow the statute, but I felt that it was critical that some urban court continue to accept wills for deposit. Over the years we often had to accept large deposits when an active attorney died or became disabled and regulatory counsel called asking if the original Wills in his/her files could be deposited here."



- Lee V. Cole Jr.

Employee Spotlight & Farewell

Teresa Toomey

Teresa has been with the Denver Probate Court for 14 years and she is currently the staff assistant. However, she has decided to move on. As Teresa put it "Now is just a good time. My kids are away at college and I would like to travel more with my husband."

Judge Stewart alliterated: "Teresa Toomey is a true treasure. Having her retire adds an entirely new dimension to the meaning of the word "vacancy." We will miss her beautiful smile and her unflinching good humor, even as we listen with envy to her exciting plans for the future. The community will be enriched by having Teresa's energy and commitment in her new ventures."

Teresa is responsible for handling all accounts payable, maintaining and balancing the operating account, opening and maintaining special accounts, coordinating personnel functions including any payroll and benefit issues, and purchasing office supplies. That is just to name a few of her responsibilities.



I asked Teresa a few questions to give us a little insight into her life:

Family: Husband – Jim; kids Joe (21) and Bridget (18)

What is your idea of happiness: accepting and loving myself no matter what happens

When I'm not working, I'm...swimming, walking the dogs, bike riding, cooking, eating out, shopping, movies, you name it.

What is the quality you most like in a person: a good sense of humor

Best gift you ever received: Besides my incredible husband and kids?...probably a healthy life – and also a lite brite.

What's the most useless thing you ever bought: a food mill at Cooksmart (never used it – what the heck is it?)

Not many people know that I: Applied to the Peace Corps after college. (Was accepted but didn't go... long story!)

Toughest thing about your job: Trying to get it all done on a half time schedule.

Best memory at Denver Probate: Getting hired.

What would you do if you won the lottery: Invest some, spend some, give some away (boring, I know).

What did you want to be when you grew up: a veterinarian

What three individuals of historic or present would you like to have over for dinner: Jimmy Carter, Mother Teresa, and Kurt Vonnegut

What is your greatest luxury: a monthly day at the spa

What is the craziest thing you would do for a million dollars: stay up way past midnight

Describe your perfect day: sun up to sun down on a tropical beach (I'd wear sunscreen!)

What three objects would you rescue from a burning house: photo albums, back-up disks to our computers...and a box of Kleenex for crying

What do you like most about Denver Probate: the old building

What do you like least about Denver Probate: the old building

- Sarah Solano



The Denver Probate Court invites all interested parties to an open house on Friday afternoon, August 31, 2007 at 3:00 p.m. to celebrate with Teresa Toomey on the occasion of her retirement. Refreshments will be served.

Denver Probate Court & Milestones

Being a history buff, I imagine that those brave, early American settlers who traveled west looked for milestones by which to measure their progress. Crossing the Mississippi River was a point of embarkment to the Wild West. Can you imagine their anticipation as they traveled over the Great Plains gazing intently on the horizon for a glimpse of the Rocky Mountains? To them, these milestones meant progress on their journey.

The statistics and projections are clear, our Colorado population is aging. Many of our citizens are enjoying a journey toward their senior years. Just as the early settlers set "milestones" to mark their progress West, we in the Colorado Judicial Branch -- more specifically, the Denver Probate Court --- must be looking ahead and preparing our courts to

one of our goals has been to incorporate technology, where possible, so that our work was more easily accessed, organized and available to those who rely on the court record.

more efficiently and effectively serve Colorado's aging population.

Consider the following statistics reported by the National Center for Health Statistics (*Health, United States, 1990*, Hyattsville, MD):

- In 1900, there were 3.1 million elderly in the United States. About 1 in 25 Americans were elderly. The average life expectancy for someone born in 1900 was 47 years. In 1990, there were 31.1 million elderly Americans, 10 times as many as in 1900. About 1 in 8 Americans were elderly in 1990. Life expectancy at birth in 1990 was 75 years --- more than a quarter of a century longer than those born in 1900.
- From 1990 to 2020, the elderly population is projected to increase to 54 million Americans. The growth rate of the elderly will be more than double that of the total population during this time period. In 2020, 1 in 6 Americans will be elderly. More children will know their great-grandparents, as the four generation family will become more common. About 6.5 million people will be 85 years old and over in 2020 --- more than double those in 1990. The number of Americans over 100 years old and over could increase eight times over those in

1990. (For a more detailed discussion, see: <http://www.census.gov/apspd/wepeople/we-9.pdf>)

We can look at other case types in the judicial system and deduce that where the population increases, the number of court cases will increase. Thus, we can infer that as the Colorado population ages, our case load serving the needs of elderly will inevitably increase.

This has caused a great deal of thought and concern here at the Denver Probate Court. With no possibility of increased staffing, what efficiencies could be put in place to free up additional staff time to assist with our clientele? No matter which direction the discussion headed, a common theme of making better use of technology emerged.

Thus, one of our goals has been to incorporate technology, where possible, so that our work was more easily accessed, organized and available to those who rely on the court record. It was envisioned that this would result in a "ripple effect" directly benefiting attorneys who practice in this court, guardians and conservators who rely on speedy turn around time to address their concerns and those who assist with the mental health docket in our court. While technology is not the entire answer, it does offer a solid foundation upon which we can continue to improve the services of this court.

Although we are still on our journey, it should be noted that the Denver Probate Court has accomplished some significant "milestones" in accomplishing its goal:

- One of those "milestones" occurred in 2003 when Judge Stewart declared that all documents would be submitted in an electronic format, rather than a paper format.
 - This provided attorneys with instant access to the court record without incurring travel costs to the court.
 - It resulted in the almost instantaneous distribution of Orders issued by the Court assisting in better communication with parties appearing before the court.
 - While the investment in technology was considerable, it was offset by the decreased time and expense of moving and of storing a paper record.

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Not Everyone You Work with is Using the Same Version Office XP, Office 2003 and Office 2007



Electronic documents do not just sit on your computer; they are shared within an organization, other organizations and agencies. Many of you may have already hopped on board with the 2007 Microsoft Office system. If so, you might want to keep in mind that a Word document created with Word 2007 may not open the same for the person you sent it to still running Word 2003 or even Word XP. It doesn't always work well when it comes to sharing files among your peers, clients, or the courts.

Here are a couple of ways to make sure that everyone is able to read, view, and work with Office 2007 documents:

- If you are the one who created the Office 2007 file, you can save a copy of it that is compatible with Word 97-2003 (Word is the only application being mentioned since that is the most common document type shared between courts and attorneys).
- If you are the one who is opening a Word 2007 file with an earlier version, you can download the Microsoft Office Compatibility Pack for Word, Excel, and PowerPoint 2007 File Formats, (<http://www.microsoft.com/downloads/>), which will allow you to do just that. Note that certain 2007 features are lost or changed when you open a document.

If you have Word 2007 but receive a document that was created in a previous version of Word, when you open it, Compatibility Mode is turned on automatically. This ensures that no new or enhanced features in Word 2007 are available while you're working with the document. Thus, people who are using previous versions of Word will have the full editing capabilities of those versions.

You can also convert this document to Word 2007 so that you can take full advantage of the new features in Word 2007 that aren't available in other versions.

We can all work together and get along. It's just a matter of those who have Office 2007 being sensitive to the fact that not everyone else does, and those not yet using Office 2007 being sensitive and aware that some already are.

- Micki L. Harris



ATTENTION: Personal Injury Attorneys

NEW PROGRAM FOR DEPOSIT OF FUNDS TO RESTRICTED ACCOUNTS

The Denver Probate Court has instituted a new program to allow parents and other custodians of restricted funds to deposit the funds into a separate interest-bearing account in the Court Registry.

See our website for more details: <http://www.denverprobatecourt.org/pi.htm>

Non-Appearance Hearings. Continued from page 1

This process can take several months. When a motion is fully briefed or after the deadline for a responsive pleading runs, the matter is ripe for ruling. Of course, Colorado courts have busy dockets. Few courts have the resources to delve into the substance of motions during the aging process, and the press of everyday business often prevents courts from ruling at the first available moment.

Courts tend to address motions in turn, so routine or uncontested issues often sit in the queue behind matters that require more exhaustive study and attention. Meanwhile, court staff use their limited time and energy to track motions in a labor intensive process that is occasionally prone to error.

The Colorado Probate Code makes available non-appearance hearings as an alternative² way of efficiently handling the routine matters relating to decedents estates, protective proceedings, and trust administration. Non-appearance settings segregate the numerous routine matters from the more controversial ones. The judicial branch's

The Court is not responsible for deadlines that are beyond its control.

automated system tracks non-appearance motions. Automation reduces the potential for human error, and it saves staff time. On the date of the non-appearance hearing, Court staff only need to verify that all interested persons have been given proper notice and to strike the setting if objections are filed.³ As a result, non-appearance hearings provide an efficient and sure way to get routine matters before the judge in a timely fashion.

The Denver Probate Court's Approach to Non-Appearance Proceedings

Judge Stewart personally reviews all non-appearance matters. When considering a non-appearance matter, Judge Stewart operates on the assumption that it involves issues that are "routine and [that are] expected to be unopposed." Colo. R. Prob. Proc. 8.8(a). She recognizes that an expeditious ruling on uncontested matters is an efficient use of judicial resources that satisfies the reasonable expectations of parties who are otherwise in agreement. As such, she diligently prioritizes non-appearance matters above matters

that are not set on the non-appearance docket. She considers other motions as time permits but only after addressing the non-appearance docket and after the conclusion of appearance proceedings.

Judge Stewart scrutinizes all non-appearance matters with the same level of dedication that she would any other matter, so a non-appearance setting is not a fast track to the rubber stamp. The Court encounters frequent confusion on this point, especially when the Court takes a course of action that is in some way unexpected.

A court retains its full discretion when deciding on the merits of a non-appearance matter. Rule 8.8(a)(3) provides that "[The] court *may* take action on the motion or petition without further notice or hearing." Italics added. Thus, despite the fact that the date for a non-appearance hearing passes without objection, the Court is under no obligation merely to grant the proposed form of order. A court is generally within its right to require a hearing or further briefing, to take its time in considering a motion, or to deny the motion on the merits.

Parties are advised to take this into account, especially when dealing with some extraneous deadline. The Court is not responsible for deadlines that are beyond its control. The Court will not cut corners or leave legitimate concerns unaddressed, merely because the date of the non-appearance hearing runs against a related deadline such as a real estate closing or an IRS filing date. A contrary policy would invite abuse of the system.

Further, the fact that an objecting party fails to timely set a hearing within 10 days of an objection does not limit the court's discretion under Rule 8.8(a)(3). Rule 8.8(a)(5) requires that, if the objecting party fails to timely set a hearing on the objection, the Court shall dismiss the *objection* "without further hearing." But the term "hearing" referred to in (a)(5) refers to the hearing *on the objection* (see Rule 8.8(a)(4)), not the non-appearance hearing. Given the bold print on CPC Form 2N, there is no excuse for failing to set an objection for an appearance hearing pursuant to Rule 8.8(a)(5), but an objecting party's failure to comply with the rule does not cut off the Court's discretion to require further proceedings in an effort to address its *own* concerns.

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Non-Appearance Hearings. Continued from page 6

Finally, bear in mind that Rule 8.8(a) provides for a non-appearance setting if the matter is “routine ... [or] expected to be unopposed.” If the matter does not reasonably fall under either element, the court may strike the setting. The lesson: Do not set a Rule 56 Motion for Summary Judgment in a contested case on the non-appearance docket.

Concluding Remarks and Practical Advice

Every week, Judge Stewart grants as presented approximately eight out of every ten matters set for a non-appearance hearing. The high grant rate confirms the notion that most non-appearance matters are, in fact, routine and not opposed. Unfortunately, numerous routine and unopposed

The lesson: Do not set a Rule 56 Motion for Summary Judgment in a contested case on the non-appearance docket.

matters fail to make it onto the non-appearance docket, resulting in needless delays and inefficiencies. Of the class of cases where the Court does not grant relief requested as presented, perhaps the matter requires further briefing or an evidentiary hearing before the judge will issue the proposed order; perhaps the proposed order needs revision. A small percentage of cases involve matters that do not belong on the non-appearance docket. The Court employs its best efforts in revealing such cases and addressing the issues presented by the improper setting.

With the foregoing in mind, consider the following when filing a motion or a petition with the court.

- Before filing a motion, take some time to consider whether it belongs on the non-appearance docket, and set it there if the matter meets the requirements of Rule 8.8(a).
- When possible, file the notice of non-appearance hearing simultaneously so that Court staff immediately see that your motion has been set.
- Please put stipulated and unopposed motions on the non-appearance docket, and give notice to all interested persons unless some exigency requires an earlier ruling. Recall that unless statutory notice is given to all interested persons, the Court will incorporate the following into the Order: “This Order binds the parties who signed the Stipulation and no one else.” See fn. 2 above.
- If an objecting party fails to timely set an objection for a hearing, consider filing a Motion for Ruling rather than calling in your request. Obviously, this motion should not be set on the non-appearance docket as it will, on its face, alert the Court that objection has been dismissed and that the underlying matter needs immediate attention.
- The Denver Probate Court diligently attempts to stay on top of the non-appearance docket. Occasionally, non-appearance settings fall out of the automated system, so we appreciate a call if your matter has not been ruled on within a week of the non-appearance hearing. If they know, Court staff will tell you whether the matter fell out of the system or whether the matter is “under advisement.” Further calls are not necessary.
- Err on the side of caution when considering setting a controversial matter for a non-appearance hearing.
- Bear in mind that the Court may have concerns that are not addressed by the mere non-objection of the parties given notice of the proceeding, especially in the context of protective proceedings.

Matthew L. Trinidad Esq.

¹In the Denver Probate Court the party setting the non-appearance matter is responsible for selecting the date for the hearing and as long as applicable rules regarding notice are observed, all non-holiday dates are available for settings at 8:00 a.m.

²Generally, probate proceedings are proceedings *in rem*, so “[where] statutory notice has been given, all who are interested, and, in fact, all the world, are bound by all orders or decrees duly entered.” James R. Wade, *Colorado Law of Wills, Trusts, and Fiduciary Administration* § 1.7 (5th ed. 2006). Non-appearance hearings and the orders issuing from them have the same effect as an order following an appearance hearing with notice to interested parties.

³If the objecting party fails to set the hearing within 10 days, the objection is dismissed with prejudice. Rule 8.8 (a)(5).



Historical Fact:

Denver's city hall, the City and County Building, balances the Colorado State Capitol to the east and is the greatest monument of Mayor Speer's City Beautiful. Conceived as part of the original Robinson Plan of 1906, it took 26 years to build (1932) and incorporates the design efforts of 39 leading local architects. The Beaux-Arts Neoclassical façade has three-story Corinthian entry columns of travertine atop a grand staircase and massive bronze doors. Upper walls are Stone Mountain, Georgia, granite. Eleven varieties of marble are featured inside this impressive home to mayor, city council and other municipal offices. In the main entry lobby, works by Denver artist Susan Cooper depict Denver's architectural heritage. Despite charges of bad taste, the City and County building has been decorated riotously with colored lights every holiday season since 1832.

http://www.denvergov.org/aboutdenver/today_walking_civiccenter.asp

Denver Probate Court and Milestones. Continued from page 4

- Another "milestone" included the creation of a part-time Protected Person Facilitator position at our court. This has helped greatly with better service to the public as well as improved judicial economy.
- Denver Probate Court has for sometime maintained its own web site, providing timely and up to date information about the Probate process. This has served as a resource for the public, the court and courts in the surrounding counties.
- Another "milestone" was reached on May 14, 2007, at 4:44 p.m. when the Denver Probate Court transmitted it's first record on appeal to the Colorado Court of Appeals electronically. The days of tedious document preparation encompassed in preparing a record on appeal in the paper world was reduced to about 90 minutes of work and a press of a button.
- This year, the Denver Probate Court equipped it's court with sound attenuation panels to reduce the echo in the courtroom. Hearing devices to amplify the sound were added. Improved ability to hear by the elderly has increased their understanding and participation in hearings concerning their rights.
- This year, Judge Stewart ordered that all exhibits at trial be submitted electronically. A wall size display unit was added a few months ago for the purposes of viewing electronic exhibits while at trial. Electronic exhibits reduce expensive storage space of paper records and speed the process of preparing Records on Appeal.

These technological accomplishments represent only "early milestones" in our journey. But, these milestones were necessary in order to free time for our staff to attend to the human needs and concerns in our court as well as prepare for the future. For example, Judge Stewart and many of the court staff are currently participating on Probate Task Force meetings to help the courts become more effective and more efficient in the areas in non-technological areas.

It is clear that this is a journey that we make together. "Progress" cannot be made without sacrifice. Taking time to celebrate our accomplishments that we made together --- our milestones, if you will --- should encourage us on our journey to make progress where we can for the betterment of those we will serve in the coming years.

- Lee V. Cole Jr.



Denver Probate Court is Going Green

And we're keeping cars off the road too. Really!

By maintaining ecologically friendly practices through-out the office our efforts are basically equal to keeping one car off the road a year. On a global level we extract resources, manufacture products and deliver services in a way that is threatening our unique environment and our personal health. These are big issues for a small court, but every workday each of us makes decisions that affect all of these issues.

Some of the things that the Denver Probate Office is doing:

- We are doing our part to recycle. Thanks to the City and County of Denver, we have purple recycle bins located all over. Nary a piece of paper, aluminum can, or cardboard box goes in the trash anymore.
- We are recycling our print cartridges. Some of the manufactories we purchase from provide self-addressed plastic bags to return the cartridges in for recycling. Others we donate to charities that accept them.
- We encourage flex schedules for the employees. Not only for employee moral, but this cuts down on energy and time spent on commuting.
- We actually utilize the power-management settings for our monitors and pcs. A monitor uses roughly 60 to 90 watts when active but only 2 to 5 watts when in a low-power sleep mode. That may not seem like a big deal, but look at it this way - Denver Probate Court has 15 monitors. 15 monitors in low-power sleep mode when inactive is equal to taking one car off the road in one year's time.



- Digitize. The greenest paper is no paper at all. DPC is a paper-on-demand court, so there is a lot less paper used here. When we do need to print, two-sided printing is encouraged.

We are proud of our efforts and the baby steps that are being taken towards becoming more environmentally conscious.

Good for the earth, good for our health, and good for the bottom line.

- Micki L. Harris

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Calendar

Monday, September 3, 2007 Labor Day
Monday, October 8, 2007 Columbus Day
Monday, November 12, 2007 Veterans Day
Thursday, November 22, 2007 Thanksgiving Day

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