

NOTICE TO ATTORNEYS

Re: Procedures in Pueblo County Court Civil Cases

SECTION 1: Assignment and Courtroom

All County Court civil matters, including FED's, civil protection order cases (excluding name changes) are currently handled by Judge Roberto A. Silva, Division 304 and conducted in courtroom 304. Case assignment rotates every 2-3 years between the three county court divisions. Every effort is made to inform the bar when case assignments are changed. Therefore, it is important to consult the Tenth Judicial District website or contact the Clerk of the Court for the current division assignment. Summons return dates may change when division assignment changes.

SECTION 2: Civil Return Schedule

Civil Summons may issue returnable on any Monday or Wednesday (excluding court holidays) at 1:30 p.m. or 2 p.m. in Division 304. Any changes to this schedule will be posted on the District website. Counsel for plaintiffs who have filed five (5) or less cases for return on any scheduled day need not appear in person, however, you may only seek default judgment by Motion after the return date AND after you have determined whether or not an Answer has been filed. Pre-trial conferences and Contempt Citation returns may also be set at these same times (M/W at 1:30 or 2 p.m.) (See Section 5.C. for Contempt Citation returns).

FED's: FED's pursuant to C.R.S. §13-40-101 *et seq.* are returnable every Monday and Thursday at 8:30 a.m. in Division 304. When a court holiday occurs on a Monday or Thursday, the Court may alter this schedule. Please consult the Tenth Judicial District website or contact the Clerk's Office for the schedule as changes will be announced at least 30 days in advance.

*Please use the *Summons in Forcible Entry and Unlawful Detainer* as provided in C.R.C.C.P. Form 1A (Rev 7/12). It contains the proper statutory advisement regarding claims of breach of warranty of habitability.

*Per C.R.S. 13-40-111(3), Plaintiff's counsel in FED's based on post-foreclosure demand for possession may appear by telephone AND shall follow the process outlined in Section 3. A. The Court will call these cases at the end of the 8:30 a.m. FED docket, therefore, counsel shall be available between 8:30 and 9:30 a.m. on the return date.

TRO's: Complaints for Civil Temporary Protection Orders per C.R.S. § 13-14-101 *et seq.* are held daily at 1:30 p.m. These may now be e-filed beginning Monday, August 15, 2016. If filed before 10:30 a.m., the Complaint will be considered the same day at 1:30 p.m. Verify with the Division Clerk when your e-filed Complaint for TRO will be considered by the Court.

SECTION 3: Civil Case Settings:

- A. Notices to Set for Trial/Hearing are held on Monday at 8:30 a.m. Counsel may appear in person or by telephone according to the following guidelines:

*Notice to Set/Motion to Appear by Telephone shall advise the Court and the opposing party that the Plaintiff intends to appear by telephone. Plaintiff SHALL provide the Court with the name of the attorney or his/her authorized representative who will make the appearance on behalf of Plaintiff AND the attorney/representative's phone number. The Court will call the named attorney/representative between 9:30 and 10:30 a.m. Counsel or its representative MUST be available. If Defendant's counsel wishes to appear by phone, they shall also advise the Court of this same contact information prior to the setting date. The Court will then initiate a conference call which includes all relevant parties.

*Notice to Set shall advise the Defendant or other self-represented party that it may appear in the courtroom at the date/time indicated on the Notice to Set if they wish to participate in the setting of the hearing or trial date. If they do not appear, the Plaintiff will advise them of the next court date by a Notice of Trial/Hearing. If a self-represented Defendant wishes to appear by telephone, they need to provide the Court with their contact information as well.

*If a Notice to Set/Motion to Appear by Telephone does not conform to these guidelines, it will be removed from the docket and the moving party will be notified via e-mail or telephone.

- B. If an Answer is filed, file a Notice to Set within 30 days of the return date to avoid the issuance of a Notice of Failure to Prosecute Dismissal Date.
- C. Mediation may be held by and through the services of the Tenth Judicial District Mediation Program if all parties consent to mediation. The Notice to Set process outlined herein may be used to schedule the mediation or the Mediation Program Administration may be contacted directly at (719) 404-8835. The Court will issue an *Order for Mediation or ADR Settlement Conference* once the mediation date is confirmed. Plaintiff must file a Notice to Set within 30 days after the mediation is held to avoid the issuance of a Notice of Dismissal.
- D. Pre-trial Conference and Trial Setting. If a jury trial has been demanded, set a Pretrial Conference first. Pretrial Conferences may be set for any Monday or Wednesday (excluding a court holiday) at 1:30 p.m. or 2 p.m. All parties must appear in person for a pretrial conference. After the parties discuss pretrial matters, the parties shall inform the Clerk that they are ready to set the next court date or trial date. If there are disputes regarding discovery, the Court will hear those issues on the record and then set the trial on the record. Court trials are typically set off the record with the Clerk when both parties are present OR the process for setting by phone as described in paragraph ¶A of this Section shall be followed.

SECTION 4: Document E-Filing Standards – (This section does not replace the C.R.C.C.P.)

- A. Format of Documents and Case Caption: See Rule 121, Section 1-20 and Section 1-26.
- B. Rule 305 requires that “every pleading subsequent to the original complaint... every written notice...shall be served upon each of the parties.” And, a *certificate of service* must be included on the Motion. See Rule 305(d).
- C. Be specific in your Document Title, for example, *Motion to Amend Complaint* is proper, versus a generic title of *Motion*. Likewise, title a proposed order with the same specificity. For example, state *Order Authorizing Amendment of Complaint*, not *Proposed Order*. Identify/name an Exhibit, not just *Exhibit*. For example, *Exhibit 1 - Lease* or *Exhibit 2 – Demand/Notice to Quit*.
- D. Please do not file a motion or proposed order for default judgment prior to the return date. Please do not file a proposed order that does not conform to the order that was entered in open court. For example, proposed orders that list alternative facts such as, *Defendant did/did not appear*. This results in the unnecessary use of clerk time and judicial officer time in amending proposed orders.
- E. Don’t file a *motion to place a case in suspense*. Cases will not be placed in suspense. A case can be administratively closed if a bankruptcy stay has been issued. The case can be reopened on motion if relief from stay is obtained or the bankruptcy is dismissed.
- F. Don’t file a *Notice of Dismissal* when a pleading or Answer has been filed by a Defendant or after judgment has entered. These situations require that a Motion with factual allegations and Proposed Order be filed instead.
- G. Don’t file a *Motion to Dismiss* if a judgment has entered. You may file a Motion to Vacate Judgment or a *Motion to Dismiss With/Without Prejudice*.
- H. If you are asking the Court to enter a judgment, provide the judgment breakdown (PRINCIPAL/INTEREST/COSTS/ATTORNEY FEES/INTEREST RATE) in the Motion and Proposed Order. Neither the Clerk nor the Judge will guess or calculate what the judgment should be, in particular, in Stipulations for Judgment. These proposed orders may be *denied* or given a “*no action taken*” ruling and thus delaying your request.
- I. Documents Containing Confidential Information: Pursuant to Chief Justice Directive 05-01, documents containing confidential information may not be available to the public until after being redacted. To facilitate compliance with this requirement, filing parties shall not include confidential information on pleadings. For example, social security numbers, driver’s license numbers, personal identification numbers (e.g. passport, student i.d., state i.d., etc.) and financial account numbers should not be included in any pleading or motion. The filer may identify an Exhibit which contains confidential information separately and *suppress* the

document so that only the parties may view it. Fugitive information sheets should always be *suppressed*.

- J. Forms: Use correct and updated forms. In particular, do not use outdated forms or language which provides the incorrect #number of days for response. For example, responses to interrogatories shall be filed within fourteen (14) days of service, not ten (10) days. See Section 1 regarding use of the correct FED Summons.
- K. Stipulations: Stipulations reached at a return date may be tendered to the Division Clerk who will scan and upload into the electronic record or counsel may e-file it subsequently with a Proposed Order.

SECTION 5: Contents of Pleadings (Summons, Complaint, Citations)

- A. Complaints: Complaint must comply with C.R.C.C.P. 303(a) and shall include:
 - 1. A “statement of claim setting forth briefly the facts and circumstances giving rise to the action. . .” This includes the disclosure of the original creditor. The Defendant must be able to ascertain from the Complaint the basis of the Plaintiff’s claims and the specific amount of alleged debt. If multiple creditor claims are included in the Complaint filed by a common Assignee/Collection Agency, each creditor by name and the alleged debt for each claim must be clearly outlined in the Complaint. The Court will not attempt to decipher these claims when considering a motion for default judgment and neither should a Defendant.
 - 2. Clearly state the amount of the debt allegedly owed.
 - 3. Evidence of debt shall be included as an Exhibit and identified in the Complaint. Stating that proof of debt is *attached* is insufficient.
 - 4. Enter the proposed judgment breakdown into ICCES when you open the case. Enter the Respondent/Defendant’s address into ICCES when you open the case AND update addresses as necessary.

- B. Summons:

- 1. Advisement in Summons re: Interpreter Availability: To assist the Court in providing interpreters as early in the process as possible, please add ONE of the following advisements to your Summons:

Pueblo County-specific Advisement:

To request an interpreter please contact the Managing Court Interpreter . Please call 719-404-8794 with your name, date of your appearance, and your case number or in an e-mail provide the above information to james.v.garcia@judicial.state.co.us .

Para solicitar un intérprete, comuníquese con el Coordinador de intérpretes. Favor de llamar al 719-404-8794 indicando su nombre, la fecha de su comparecencia y su número de causa o envíe un correo electrónico con la información anterior a james.v.garcia@judicial.state.co.us.

Advisement Applicable to All Colorado Courts:

If you require a language interpreter, you must inform the court prior to your hearing to ensure that an interpreter is present at all future court appearances. A court appointed interpreter will be scheduled to assist you at no charge. Information about obtaining an Interpreter can be found at www.courts.state.co.us.

Si usted requiere la asistencia de un intérprete, debe informarle al tribunal antes de su audiencia para poder asegurar la presencia de intérprete en todas sus futuras comparecencias. Se le programará un intérprete asignado por el juez sin costo alguno. Puede obtener información sobre cómo obtener un intérprete en la página web www.courts.state.co.us.

2. Alias and Pluries Summons: If a Summons and Complaint have been filed but not properly served prior to the return date, Plaintiff may issue an Alias Summons and a subsequent Pluries Summons if necessary.
 3. Continuances of Return Dates: Return dates will be continued only twice. A return date may be set out no more than 30 days from the date of the previous return date. A Notice of Continued Return Date which advises the Defendant of the new date/time and advises that the Defendant may file an Answer prior to that date/time must be mailed to the Defendant(s) at least 14 days prior to the continued return date. Plaintiff shall provide a *certificate of service* with the Notice as required by Rule 305.
- C. Contempt Citation Hearings: Motions authorizing the issuance of a contempt citation shall be filed with the proposed date/time of hearing included in the Proposed Citation. The Plaintiff may select any Monday or Wednesday at 1:30 or 2 p.m. (excluding court holidays) for these returns. Plaintiff must appear on this date/time unless it has filed a motion to vacate the hearing due to non-service. If a Defendant appears for a contempt citation hearing, that contempt citation hearing will be continued only if authorized by the Court on the record. The hearing may also be continued to a date, no longer than 90 days in the future, if a signed Stipulation is filed before the hearing and the parties have filed a motion to vacate the hearing.
1. Bonds: Cash bonds posted by a party, which have not been forfeited, will not be applied to a judgment unless the posting party consents to the application in a written stipulation or on the record. If the defendant or a surety fails to appear for a bond forfeiture hearing, a cash bond will only be applied to the judgment if the attorney requests the case to be called and moves for application of the bond to the judgment on the record.
 2. Fugitive Information Sheets: We prefer that a Fugitive Information Sheet be filed with the Return of Service prior to the contempt citation hearing. In any event, if a warrant is requested, a Fugitive Information Sheet must be filed before a warrant may issue.

- D. Garnishee Liability Hearings: Plaintiff('s) must follow the process outlined in Rule 403, Section 7. Plaintiff must personally serve either a Subpoena or a Notice to Show Cause to the Garnishee. The Subpoena or Notice to Show Cause must set forth the relevant advisement pursuant to Rule 403, Section 7. Plaintiff's counsel must appear in person for these hearings. Relief from the Court will only be granted if the case is called on the record. Upon receipt of a Motion to Prove Liability of Garnishee, the Court's Order will give the Plaintiff the proposed date/time for their Subpoena or Notice to Show Cause. Alternatively, counsel/staff may call the Division Clerk and obtain a date/time.
- E. Replevin: Contact the Division Clerk to obtain a date for the Show Cause return date. This date must be scheduled within fourteen (14) days of issuance. Place this date on your proposed Citation and the Court will grant/deny/modify the date as needed.

SECTION 6: Vacation of Trial/Hearing Date:

- A. A scheduled trial will only be vacated, **if**:
 - a. A settlement stipulation has been approved by the judge in writing or on the record before the trial date; or
 - b. The trial date has been continued by the judge in writing or on the record before the trial date; or
 - c. A motion to dismiss has been granted by the judge in writing or on the record before the trial date.
- B. A phone message left with a clerk telling him/her the parties have reached an agreement and the trial can be vacated or requesting *new dates* is not appropriate. See paragraph C below.
- C. Failure to appear at the scheduled trial that has not been vacated as required above will result in dismissal of claims and/or default judgment.

SECTION 7: Notice to Attorney/Law Firm Staff

- A. Please do not call the Division Clerk for clarification of a Court Order. Attorneys should evaluate a Court Order and respond with an appropriate Motion or as directed in the Order. Judicial staff cannot give legal advice to anyone, including attorney/law firm staff.
- B. Please do call or e-mail with emergency matters, such as, bad weather or medical emergencies when attorneys are unable to be in court as scheduled and will be late or cannot appear at all. In bad weather situations, the court will make any reasonable accommodation such as authorizing appearances by phone. This applies to all counsel, local or out-of-town.
- C. Attorney staff may appear for settings either by telephone or in person, after Court approval has been granted.
- D. Division 304 Clerk is Melody Montoya and she may be reached at 719-404-8958 or by e-mail at melody.montoya@judicial.state.co.us