

How to Prepare for Your District Civil Case*



This brochure covers District Civil cases only. Please refer to information covered in other brochures regarding Small Claims, County Court and District Domestic Relations, Juvenile, Probate and Mental Health cases.

Have you first spoken with the party in an effort to resolve the dispute?



- The other party(s) may be willing to come to an agreement that will satisfy you both without having to go to court.
- Mediation may be an option. **Mediation** is an informal process in which a neutral third party helps people in conflict to negotiate a mutually acceptable agreement. Negotiations that occur during mediation are confidential.

Did you reach an agreement?



- If you do reach an agreement, you will need to prepare a document called a “Stipulation” that sets out your agreement. Both parties should sign the agreement.
- Mediation will be required prior to going to trial.
- For mediation options contact the State Court Office of Dispute Resolution at www.coloradoODR.org, the ADR section of the Boulder Bar Association at www.boulder-bar.org or a private mediator.

If you have spoken with the other side and could not reach an agreement, the next question is . . .

Do I really want to go to court?



- Does it make sense economically?
- Do you have the time and money?
- Are you ready for the emotional investment?
- Are you ready for an outcome that might not be in your favor?
- There can be counterclaims and possible damage awards against you as the plaintiff. Attorneys fees and costs can also be awarded against you.
- Lawsuits take a lot of time – do not expect quick results. There are lots of rules to follow.

Do I need an Attorney?



- Although you may represent yourself, you should seriously consider seeking the assistance of an attorney.
- If the other party has an attorney, you may be at a disadvantage if you try to represent yourself.
- While court staff may answer questions about forms in some civil law matters, **they cannot provide legal advice.**
- **An attorney is the only person who can provide legal advice or tell you what is best for you in your individual situation.**
- Attorneys who provide “unbundled legal services” may be able to help you prepare for part of your case. They may assist with drafting pleadings or provide you with advice.
- If you do not contact an attorney, or are unable to find one to represent you, you are responsible for meeting all case deadlines and obligations.

WHAT IF I CHANGE MY MIND



▶ If you, as the Plaintiff, change your mind about pursuing the case against the other party **before** the other party files an answer or a responsive pleading, you can file a Notice of Dismissal.

▶ If an answer has been filed, parties can file a Stipulation of Dismissal signed by all parties or Request that the Court dismiss the action.

HOW DO I START A LAWSUIT?

The party filing the lawsuit is called the **Plaintiff** and the party being sued is called the **Defendant**.

If the **Plaintiff** or the **Defendant** is a legal entity such as a corporation or limited liability company, subject to narrow exceptions, the entity is required by law to hire an attorney to represent the entity in the lawsuit.

► To file a lawsuit you must complete a Civil **Complaint**. The District Civil Cover Sheet , Summons, and Affidavit of Service forms are available at:

- **Main Clerk's Office** on the 1st floor of the Courthouse;
- Online at www.courts.state.co.us → Self Help/Forms → Money cases → Cases over \$15,000

HOW IS THE DEFENDANT NOTIFIED OF THE LAWSUIT?

THE CASE CANNOT BEGIN UNTIL THERE IS PROPER SERVICE OF PROCESS.



- When a ***Complaint*** is filed in the Court, the Clerk will prepare copies for service. The packet will include a copy of the ***District Civil Cover Sheet, Complaint, Summons, and Affidavit of Service***.
- The law requires that the **Defendant** **MUST** be given notice that a lawsuit has been filed. It is the responsibility of the **Plaintiff** to make sure that the **Defendant** receives proper notice.

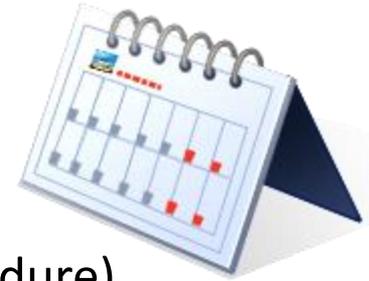
****YOU CANNOT SERVE THE DEFENDANT(S) YOURSELF****

What is proper service?

YOU CANNOT SERVE THE DEFENDANT(S) YOURSELF

- However, the following persons can deliver a copy to the **Defendant**: The County Sheriff; or a private process server; or any person 18 years of age or older who is not a party in the lawsuit. *Note: The Sheriff's office and private process servers charge a fee for their services.*
- There are specific rules that **must** be followed to give proper notice of a lawsuit to the **Defendant**.
- After a copy of the Complaint, Summons and Answer form is properly served on the **Defendant**, the **Return of Service** or **Affidavit of Service must be** completed by the person who delivered the copy to the **Defendant** and **filed** with the **Court**. If the **Return of Service** is not returned to and filed with the Court, the Judge will not take any action and the case will be delayed and could be dismissed.

TIMELINES



C.R.C.P. 16.1 (Simplified Civil Procedure)

(generally applies to cases involving less than \$100,000 at issue)

- ◇ **Answer** must be filed and served within 21 days of service of the complaint.
- ◇ **Initial Disclosures** – within 35 days of the “at issue” date. The “at issue” date is generally the date the Defendant files an Answer.
- ◇ **Case Management Conference (CMC)** – scheduled once an Answer is filed.
- ◇ **Mediation** – generally must be conducted within 3 months of the CMC.
- ◇ DISCOVERY IS GENERALLY NOT PERMITTED
- ◇ **Written Disclosure Statements** – Plaintiff’s must be served at least 91 days before the trial date; Defendant’s must be served at least 56 days before the trial date; and any rebuttal statements must be served at least 35 days before the trial date.
- ◇ **Exhibits** must be exchanged at least 35 days before the trial date.
- ◇ **Trial** – generally conducted about 9 months after the Complaint is filed.

TIMELINES



C.R.C.P. 16

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- ◇ **Case Management Conference** – scheduled once an Answer is filed.
- ◇ **Discovery** – may begin 42 days after the “at issue date” and must be completed at least 49 days before the trial date.
- ◇ **Mediation** – must be conducted at least 35 days before the trial date.
- ◇ **Trial Management Order** – must be filed at least 28 days before the trial date.
- ◇ **Trial Management Conference** – conducted within a month or so prior to trial.
- ◇ **Trial** – generally conducted 9 months – 15 months after the Complaint is filed.

WHAT IS DISCLOSURE?

In Colorado, the idea is that each party should know what the other party's arguments, theories and evidence are prior to trial. In short, there should be no surprises at trial like there are on television. Parties have a continuing duty to disclose information to each other as it becomes available.

▶ Thirty-five (35) days from the date the Defendant files an Answer each party must provide an Initial Disclosure Statement to the other party(s). The Initial Disclosure Statement need not be filed with the court.

▶ The Initial Disclosure Statement must contain information on the categories identified in Colorado Rules of Civil Procedure 26(a)(1). The Court will discuss the disclosure requirements at the Case Management Conference.



WHAT IS THE DIFFERENCE BETWEEN DISCLOSURE AND DISCOVERY?



Disclosure: Each party is required to make disclosures to the other party. Disclosures are written statements listing (1) people with relevant information regarding the issues in the case (2) relevant documents and (3) if damages are sought, a calculation of the damages.

Discovery: Discovery is the process by which a party seeks to find out information about the other party's case. There are two principal forms of discovery: (1) written discovery such as interrogatories, production of documents and requests for admissions and (2) depositions: sworn testimony of a witness taken before trial held out of court.

WHAT IS A CASE MANAGEMENT CONFERENCE?

- The Magistrate will conduct a Case Management Conference (CMC) shortly after the Answer is filed. The CMC will last about 30 minutes.
- The following is typically covered at the CMC:
 - Court will advise un-represented parties about resources and obligations.
 - Court will provide information regarding case deadlines and obligations.
 - Court will enter a Case Management Order.
 - Trial date will be set.



PRETRIAL MOTIONS



If you want to bring an issue to the Court's attention, you may not call or email the Judge or Magistrate. You must put your request in writing (Motion), file your request with the Court, and provide a copy to the other party by mail.

WHAT IS A TRIAL?



A trial is a fact-finding process before a judge or a jury and where the final decisions are made in your case. Trials are open to the public. You may want to watch a civil law trial in the courtroom of your assigned judge so you can see what a trial is like.

WHEN AND WHERE IS THE TRIAL?

You will receive a written notice from the court informing you of the courtroom, day, and time of your trial.

OPENING STATEMENTS



- When the trial starts, the Plaintiff's attorney (or Plaintiff if she has no lawyer) usually is the first to give an opening statement. She tells the judge what she intends to prove during the trial.
- The Defendant's attorney (or Defendant if she has no attorney) then gives her opening statement.

WITNESSES



DO YOU NEED WITNESSES BESIDES YOURSELF?

Witnesses are people with firsthand knowledge about important things you need to prove in your case.

Talk to them first to find out what they know. Call them well before the trial so that they can make plans to be there on that day.

You must disclose the identity of witnesses to the opposing party. The deadline for this disclosure will be discussed at the CMC.

Witness Testimony



Presenting witness testimony usually follows this pattern:

- A party calls a witness to the stand, and the witness is "sworn in" (swears or affirms to tell the truth).
- "**Direct examination**" You must ask the witness questions. The witness cannot simply "tell their story". Prepare your questions ahead of time. Make sure they are relevant and will help your case.
- After direct examination, the opposing party can question the witness through "**cross-examination.**" Cross-examination usually must be limited to the matters covered during direct examination.
- Next, the party who originally called the witness to the stand has another opportunity to question the witness through "**re-direct examination.**" The questions are limited to the matters covered during cross-examination.

EVIDENCE/ EXHIBITS



- **Prepare.** You must prepare each exhibit for the trial. Documents and photos must be duplicated in order to provide a copy to the opposing side and a copy to the Court. In addition, each court exhibit must be properly labeled so an accurate record can be made by the court.
- **Lay a foundation.** The party who wishes to introduce an exhibit must first lay a foundation for its introduction. For instance, he or she must explain what the exhibit is, how it was created, and why it is relevant to the case at hand. Permission must then be granted from the court to officially introduce the exhibit into evidence in the court record.
- **How to.** How evidence is presented will be addressed at a Trial Management Conference.

Rebuttal



- After the Plaintiff finishes presenting her case-in-chief (after she "rests"), the Defendant presents her evidence in her case-in-chief.
- Once the Defendant has rested, the Plaintiff will have a chance to respond to the Defendant's arguments through "**rebuttal**," a time when she can contradict the Defendant's evidence. It must be limited to the matters raised in Defendant's case in chief.

OBJECTION

Throughout the trial, either party may make an objection about questions asked of witnesses, the answers given, or other evidence being offered.

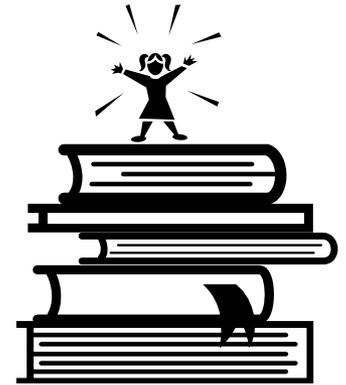
The Judge may ask you what the basis for your objection is or may deny or sustain the objection.

CLOSING ARGUMENTS AND JUDGMENT

- After testimony each party may make a “closing argument,” which is a summary of the testimony and evidence that supports the party’s position.
- The judge may make a ruling from the bench, or may “take the case under advisement” and issue a written ruling later.



NOTICE



Remember that the law is always changing. **This brochure is not a substitute for talking to an attorney.**

Civil cases can be complicated, and the judge will be making important decisions. Before representing yourself, you should do everything you can to get legal help.

If you need help finding an attorney, you may call the Boulder County Bar Association Lawyer Referral Service at (303)440-4758 or visit their website at

http://www.boulder-bar.org/find_lawyer.htm