

AGENDA

COLORADO SUPREME COURT COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Friday, April 8, 2022, 1:30 p.m.
Ralph L. Carr Colorado Judicial Center
2 E.14th Ave., Denver, CO 80203

Fourth Floor, Supreme Court Conference Room

- I. Call to Order
- II. Approval of January 28, 2022, Minutes [Pages 1 to 4]
- III. Announcements from the Chair
 - A. General
- IV. Present Business
 - A. Proposed Amendments in FED Actions—(Judge Jones, Judge Espinosa) [Pages 5 to 42]
 - B. Summary of Other Pending Matters—(Judge Jones)
- V. Adjourn—**Next meeting is June 24, 2022, at 1:30 pm.**

Jerry N. Jones, Chair
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720-625-5335

**Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure
January 28, 2022, Minutes**

A quorum being present, the Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure was called to order by Judge Jerry N. Jones at 1:30 p.m. via WebEx. Members present at the meeting were:

Name	Present	Not Present
Judge Jerry N. Jones, Chair	X	
Mandy Allen	X	
Judge Michael Berger	X	
Judge Karen Brody	X	
Miko Ando Brown	X	
Chief Judge (Ret.) Janice Davidson	X	
Damon Davis	X	
David R. DeMuro	X	
Judge Paul R. Dunkelman	X	
Judge Stephanie Dunn	X	
Judge J. Eric Elliff	X	
Judge Adam Espinosa	X	
Peter Goldstein		X
Lisa Hamilton-Fieldman	X	
Michael J. Hofmann	X	
Judge Thomas K. Kane	X	
John Lebsack	X	
Bradley A. Levin	X	
Professor Christopher B. Mueller		X
Brent Owen		X
John Palmeri	X	
Chief Judge Gilbert M. Román	X	
Judge (Ret.) Sabino Romano	X	
Genevieve Rotella		X
Judge Stephanie Scoville	X	
Lee N. Sternal	X	
Magistrate Marianne Tims	X	
Jose L. Vasquez	X	
Judge Juan G. Villaseñor	X	
Ben Vinci	X	
Judge (Ret.) John R. Webb	X	
J. Gregory Whitehair	X	
Judge Christopher Zenisek	X	
Non-voting Participants		
Justice Richard Gabriel, Liaison	X	
Jeremy Botkins	X	

I. Attachments & Handouts

- January 28, 2022, agenda packet.

II. Announcements from the Chair

- The November 12, 2021, minutes were approved as submitted.
- Chair Judge Jones thanked Judge Berger for all his work as the former Chair of this Committee and announced new member Chief Judge Román from the Court of Appeals.

III. Present Business

A. Committee Records Policy

Chair Judge Jones said that the Supreme Court has directed its standing committees to come up with a records policy. Judge Jones requested additional volunteers for the Subcommittee.

B. C.R.C. P. 6

John Lebsack presented proposed language to the Committee to add the Juneteenth holiday to Rule 6. Mr. Lebsack shared that the Rules of Appellate Procedure Committee has already proposed this exact language in the corollary appellate rule to the Supreme Court. Justice Gabriel said that Juneteenth is a federal holiday, which is why it was also added as a state holiday. The Committee unanimously approved these proposed changes.

C. FED Actions

Judge Espinosa, Subcommittee Chair, shared that the group had been working hard to consider feedback regarding recent changes to certain rules and forms for eviction matters. The Subcommittee today brings proposed changes to C.R.C.P. 55 and 355 to include specific references to the new statutory language. The Subcommittee will perfect the proposals and will then submit these rules and a revised Summons for an email vote. The Committee also discussed the meaning of “close of business” in the age of e-filing. Justice Gabriel noted that the statutory language is “close of business.” One Subcommittee member noted that there are at least three semantical errors made by the legislature in drafting, and this group is trying to square the statutory language with the rule and form language—not an easy task. Chair Judge Jones thanked the Subcommittee for its work.

D. The Professionals and Legal Services Group

Judge Espinosa introduced Judge Arkin, who explained that in 2019, the Colorado Supreme Court created the Paraprofessionals and Legal Services Subcommittee (PALS) to study whether licensed paralegals specializing in domestic relations matters could provide limited legal services to family law litigants, and then asked PALS to develop a proposal for consideration by the Advisory Committee and the Colorado Supreme Court. The Subcommittee’s purpose is to substantially decrease the number of self-represented litigants in domestic relations cases to help increase access to justice. Many civil rules will need to be changed if the Supreme Court approves the next step of this process. Chair Judge Jones formed a subcommittee and asked people to volunteer via email.

E. C.R.C.P. 15(a)

John Lebsack, Subcommittee Chair, shared that the Subcommittee recommends not changing the rule after the Committee rejected earlier proposals. Judge Jones tabled this issue indefinitely. The Subcommittee also noted that several civil rules contain gendered pronouns. Judge Jones formed a subcommittee to consider how the rules can be updated to remove gender-specific pronouns. Members should email Judge Jones to join.

F. C.R.C.P. 5(g) and 305(g)

Subcommittee Chair David DeMuro reminded the Committee that these two proposals were approved by the Committee in 2020. Other issues arose to delay submitting them to the Court, such as the Court adopting Crim. P. 51.1 and another Subcommittee looking at the issue of public access in civil cases. Further, in November 2021, the Court adopted changes to CJD 05-01 that may impact 5(g) and 305(g). Additionally, Court Clerks have expressed concerns about how the adoption of the proposed changes might impact their work. Mandy Allen noted that the federal filing system is sufficiently different from the state system to make this rule proposal very difficult to implement. For example, the federal rules have three security levels, but the state has five. Chair Judge Jones said that he chairs the Public Access Committee and, on that group, many of the clerks said they would like to shift the burden of redaction from clerks to parties. Mr. DeMuro said that these proposals might have created some unintended consequences, and a simple rule change is a bit more complicated than once thought. Judge Jones will reach out to some clerks who are on the Public Access Committee to see if they will join this Subcommittee. Justice Gabriel noted that there is already a criminal rule in this arena, so having a similar rule might be worth considering. Judge Jones also noted that there is a Subcommittee considering a rule like Crim. P. 55.1 already formed, and he is the chair of that group. Judge Jones will follow this Subcommittee's work to make sure the two groups are working together.

G. C.R.C.P. 16.2

Judge Brody said that the rule originally sent to the Committee needs a lot of thought and noted that the details will be very important. The purpose of these proposed rule changes is to simplify divorce proceedings for those with low assets and few complications. The Subcommittee is meeting soon and looks forward to bringing a proposal to the full Committee soon.

H. C.R.C.P. 30(b)(7)

Lee Sternal noted that the question is, if you can be under oath or under affirmation, can you do it virtually at that time as well, and if you can, should that be put into Rule 7? Chair Judge Jones said that this might not require a rule change because it does not seem necessary. Chair Judge Jones tabled this issue indefinitely.

I. Crim. P. 55.1

Passed over.

J. C.R.C.P. 4(m)

Passed over.

At the request of a member, Magistrate Tims offered a brief update on the Magistrate Rules project. The Subcommittee is working and should have a draft for the next meeting.

Future Meetings

April 8, 2022; June 24, 2022; September 23, 2022; and November 4, 2022

The Committee adjourned at 3:34 p.m.

March 5, 2022

M E M O R A N D U M

TO: Colorado Supreme Court Advisory Committee on the Rules of Civil Procedure

FROM: The FED Subcommittee (Hon. Adam J. Espinosa, chair*, Hon. Christopher Zenisek*, Hon. Sabino Romano (ret.)*, Hon. Beth Faragher**, Hon. Andrea Paprzycki**, Lisa Hamilton-Fieldman, Esq.*, Jose Vasquez, Esq.*, Greg Whitehair, Esq.*, Reenie Terjak, Esq., Victor Sulzer, Esq., Mark Tschetter, Esq., Deborah Wilson, Esq., and Mandy Allen)¹

RE: FED Rules and forms, with proposed amendments (second round)

I. INTRODUCTION

Colorado’s forcible entry and detainer (FED aka eviction) rules and related forms have been the subject of much recent public debate. The Access to Justice Committee, chaired by Judge Lino Lipinski, published a series of suggested changes to the FED protocols in early 2021. It was in part to consider these recommendations that Judge Berger appointed the FED Subcommittee in early 2021.

On a parallel, and to some extent superseding, track, the General Assembly passed significant changes to the FED statutes in their 2021 session, which were signed into law by Governor Polis in the summer of 2021. The effective date for the statutory changes was October 1, 2021, prompting the FED Subcommittee to speed its review to ensure that compliant rules and supporting forms were in place as close to the statutory deadline as feasible.

To that end, the Subcommittee deliberated on several occasions in the Fall of 2021 to consider both the ATJC proposals and the statutory mandates.

¹ * denotes Civil Rules Committee appointee; ** denotes Subcommittee members added in October 2021. The Subcommittee also wishes to thank Judge Espinosa’s law clerk, Tomas Manriquez-Hernandez, for his support in memorializing Subcommittee deliberations.

The Subcommittee prepared and recommended amendments to County Court Rules 304, 312.5 (all new), and 316.5 (all new), as well as a significant expansion of the CRCCP Form 1A *Summons in FED Actions* and a new *Request for Documents in an Eviction Case*. These proposals, with one friendly amendment, were adopted 18-1 by the Civil Rules Committee; they were then reviewed and adopted *en banc* by the Colorado Supreme Court on October 13, 2021, without a public hearing.

Based upon subsequent feedback to Committee members as well as seeing modifications to the FED *Summons* made in several jurisdictions by county court clerks, it soon became apparent that clarifying changes to the *Summons* form would be in order. About that time, on October 29, 2021, in a somewhat unusual development, a cohort of four legislators and several legal services groups wrote a letter directly to the Supreme Court Justices expressing concern that the revised FED *Summons* did not properly implement the FED statutes as amended.

These matters were considered by the Civil Rules Committee in November 2021 and the Subcommittee was directed to revisit the FED *Summons* and any related rules or forms to respond to these concerns. To strengthen Subcommittee deliberations, two additional non-Committee members were added, each presiding over significant eviction dockets in Denver and Colorado Springs.

The Subcommittee first invited a spokesperson for the legislative/legal services cohort to share the cohort's concerns and recommendations. The Subcommittee also entertained amendments from its members. The Subcommittee has met online nine ~~X~~ times since November and now proffers the attached proposed amendments to Rules 55 and 355, and to the FED *Summons 1A*. (The Subcommittee is still considering changes to the *Request for Documents in an Eviction Case* form and will soon take up needed changes in the District Court rules).

II. ISSUES WITH THE OCTOBER 2021 AMENDMENTS

Three main issues were raised by the legislative/legal services cohort: clarifying in the *Summons* the new statutory "close of business" deadline for answering an FED complaint, providing more detail regarding the new right

to cure nonpayment of rent, and providing more information on new indigency waivers in cases requiring a warranty of habitability bond. In addition, Subcommittee members identified concerns with existing Rules 55 and 355 on default judgments, problems created by the newly revised Certificate of Service at the bottom of the FED Summons, the overall length and “legalese” of the Summons, desirable parallel changes in the District Court rules, and improvement of the new document request form.

Subcommittee members worked diligently to sort through and ameliorate the conflicting interests of the landlord-bar and the tenant-bar, and to square the language of somewhat inconsistent statutory changes. Several challenging themes arose during deliberations:

- Should we simply restate the statutory language in the FED *Summons*, with little or no plain-English translation?
- On the other hand, should all the language in the *Summons* be screened through a plain-English reviewer, at the risk of misstating or misinterpreting legislative directives?
- To what extent should the FED *Summons* provide step-by-step guidance for defendants in eviction cases, or is that tipping the playing field unfairly against landlords?
- Should tenants be advised in the *Summons* of the right to seek certain fee waivers, or their right to bring counterclaims or crossclaims, or indeed any rights that can be found in the statutes?

III. FURTHER AMENDMENTS FROM THE SUBCOMMITTEE

The Subcommittee started with the October 2021 Rules changes and the approved FED *Summons 1A*:

A. **Changes to Default Rules 55 and 355.** The Subcommittee realized that the default rules do not presently address the special situation of FED possession cases. Newly revised C.R.S. § 13-40-111(1) reads: “A court shall not enter a default judgment for possession before the *close of business* on the date upon which an appearance is due.” (emphasis added – note that “close of business” is not defined by statute).

To address this, the Subcommittee made several suggested changes at the January 28, 2022 Civil Rules Committee meeting. Upon review and feedback from Justice Gabriel and others, further modifications were subsequently considered by the Subcommittee, and we now recommend as follows (in red):

CRCP 55:

(1) A party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, guardian ad litem, conservator, or such other representative who has appeared in the action. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 7 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper. However, before judgment is entered, the court shall be satisfied that the venue of the action is proper under Rule 98.

(2) In forcible entry and detainer cases, a court may enter default pursuant to subsection (1) above; however, the court shall not enter a default judgment for possession before the close of business on the date upon which an appearance is due as set forth by C.R.S. 13-40-111(1).

CRCP 355:

(a) Entry at Time of Appearance. Upon the date and at the time set for appearance, if the defendant has filed no answer or fails to appear and if the plaintiff proves by appropriate return that the summons was served at least 14 days before the appearance date, the judge may enter judgment for the plaintiff for the amount due, including interest, costs and other items provided by statute or the agreement. However, before judgment is entered, the court shall be satisfied that the venue of the action is proper under Rule 398(c).

(b) Judgment for possession in forcible entry and detainer cases. A court may enter judgment pursuant to statute; however, the court shall not enter a default judgment for possession before the close of business on the date upon which an appearance is due as set forth by C.R.S. 13-40-111(1) and if the court is satisfied that service is complete pursuant to C.R.S. 13-40-112.

(c) At Time of Trial.

Essentially, the core of both rules is unaffected; we propose to add only a paraphrase of the new statutory language.² The added reference to subsection -112 on service is useful because the standard county court default judgment issues on a period of “at least 14 days” from service-to-appearance, rather than the shorter 7-to-14-day period provided in FED cases for

²The Subcommittee is aware of the Committee's resistance to placing oft-amended statutes in the Civil Rules but felt that the special case provided here merits an exception.

possession (those general rules would apply to any non-possessory, money damages phase of an eviction proceeding).

B. The FED Summons: Modification of the Certificate of Service. The Subcommittee originally considered whether the traditional Certificate of Mailing found in *Summons Form 1A* should be eliminated altogether since the standard county court summons has no such provision. Which is not surprising because merely mailing a copy is never by itself complete service, whether under Rule 304 (or under Rule 4) or under the posting statute discussed below.

A compromise of sorts was passed last October, eliminating the mailing language and purporting to recite the personal-service-or-posting rules. In retrospect, that was a mistake the Subcommittee now wishes to correct. ~~Specifically~~, Specifically, there are essentially only two statutory due process paths of service to regain possession *in rem* in an FED action under C.R.S. § 13-40-112:

- Subsection -112(1): Personal service of the summons and complaint on the tenant by traditional means. See also C.R.S. § 13-40-111(5), (6) (redefining summons to include list of available tenant resources, a blank answer form, and a document request form); CRCP 304 (b)(2), (d) (rev. 2021) (new Rule requiring personal service of not only the summons and complaint in FED possession cases but also a blank answer form, a JDF 186 with information for eviction cases, a JDF 185 request for documents (all per statute), and a JDF 205 and 206 regarding fee waivers for indigents (at the suggestion of the ATJC).
- Subsection -112(2): “Posting” the summons³ and complaint on the premises “in a conspicuous place,” but only after making “diligent effort” towards personal service, and then only if the plaintiff also first-class mails the summons (as enlarged) and complaint “no later than the next business day” after filing the complaint.⁴ Note:

³ Presumably as redefined to include the statutory packet.

⁴ Implying a rather brisk period of attempted diligence in the usual case of first filing then attempting service of the summons and complaint. This might warrant statutory revision,

there is no Rule regarding the posting packet or the mailing service packet, other than the general statement in Rule 304(f) allowing for mail service where “provided by law.”

As one can see, neither of these service options is ideally captured in the October amendment to the Certificate of Service at the bottom of the existing FED *Summons*. Moreover, this recital is redundant to JDF 100, the very functional *Affidavit of Service* for both personal service generally and (at the bottom) for posting-after-diligence in FED cases specifically.

Yet, the JDF 100 does not have a space for certifying the mandatory proof of mailing of the summons and complaint (and statutory packet) required for service by posting under subsection -112(2). Consequently, the Subcommittee saw salutary merit in returning to the pre-2021 version with its Certificate of Mailing in *every* case, though only required (or indeed availing) as a step in service in posting cases. Moreover, the Subcommittee saw value in requiring the mailing of all items listed in the statutory and Rules packet, even if those items might already have been served personally or posted timely in their entirety, a belt-and-suspenders approach in this tumultuous environment.

CERTIFICATE OF MAILING

I/we, the undersigned Plaintiff(s) (or agent for Plaintiff(s)), certify that on _____ (date) I/we mailed a copy of the Summons, Complaint, blank answer form, request for documents form, fee waiver forms, and an eviction information form by postage prepaid, first class mail, to _____, the Defendant(s) at the following address(es):
_____.

Plaintiff/(s)/Agent for Plaintiff(s)

Certificate of Service

I/we, certify that a copy of the summons, complaint, blank answer form, request for documents form, fee waiver forms, and an eviction information form were:

Served personally upon the following person on the following date and time:
_____.

OR

_____ if only to support more than cursory efforts to effect personal service in FED cases, but the issue was not addressed by the Subcommittee.

~~After diligent efforts, on (date) _____ were posted in some conspicuous place on the premises, and mailed by first class mail to the Defendants at the following address:~~

~~_____
Signature of: Plaintiff(s) / Agent for Plaintiff(s)~~

This is also in keeping with subsection -112(3), which provides that “the time and manner” of service by posting “shall be endorsed upon such summons by the person making service thereof.” (emphasis added)⁵

C. **The Summons: Mandatory Legislative Insert.** In an apparent effort to ensure that its directives made it into each service packet, the General Assembly in subsection -111(1) directed that the *FED Summons* “must also contain a statement addressed to the defendant stating:

"If you do not respond to the landlord's complaint by filing a written answer with the court on or before the date and time in this summons or appearing in court at the date and time in this summons, the judge may enter a default judgment against you in favor of your landlord for possession. A default judgment for possession means that you will have to move out, and it may mean that you will have to pay money to the landlord. In your answer to the court, you can state why you believe you have a right to remain in the property, whether you admit or deny the landlord's factual allegations against you, and whether you believe you were given proper notice of the landlord's reasons for terminating your tenancy before you got this summons. When you file your answer, you must pay a filing fee to the clerk of the court. If you are claiming that the landlord's failure to repair a residential premises is a defense to the landlord's allegation of nonpayment of rent, the court will require you to pay into the registry of the court, at the time of filing your answer, the rent due less any expenses you have incurred based upon the landlord's failure to repair the residential premises; unless the court determines that you qualify to have this requirement waived due to your income." “

The Subcommittee did not tackle whether the General Assembly may dictate Supreme Court forms content. Neither did we address whether the mandated insert was itself statutory “law,” or merely a warning label without the force of law. A compromise was reached back in October 2021: the quote was simply inserted in its entirety at the foot of the *FED Summons*, and much of its content was lifted into the body of the *Summons*, though generally only where a statutory source outside of the insert could be identified.

⁵ That statutory subsection also mandates a similar time/place endorsement “upon such summons” in the case of personal service, but the Subcommittee did not take up that issue.

D. The Summons: Return Date Actions and Time of Default.

As background, the non-FED *Summons Form 1 SC* for County Courts provides open slots for a date and a time by which an answer must be filed or “the Court may be asked to enter judgment” for default. If the defendant does “not agree with the complaint,” the defendant “must” either go to the Court in person at that date and time “and file the answer” OR “file the answer with the Court before that date and time.” This written filing redundancy has long existed in the County Court summonses, both for general money cases and in FED matters.

Notably, no such personal appearance is suggested or even provided for in district court. See CRCP 12.

This anachronistic personal appearance option in County Court probably persists because it brings together parties in comparatively low-dollar cases who might reach stipulations in lieu of proceeding further. According to the eviction court judicial officers and many of the practicing attorneys on the Subcommittee, this is can be especially efficacious in FED cases, where tenants often appear with their back rent and landlords appear who can negotiate and settle the case on the spot, without a court referral to mediation. Consequently, many members of the Subcommittee hoped to preserve this personal appearance feature. Indeed, a slight majority of the Subcommittee voted to add supporting language to paragraph 2b: “if you choose not to reach a written settlement agreement with plaintiff,” etc.⁶

The trouble is, according to access to justice advocates and the most recent General Assembly, many tenants cannot physically make their way to court in time for an early morning return and negotiation session, often working jobs that require more than seven ~~day's notice~~ days' notice for time off or struggling with bus schedules or childcare arrangements. To help ameliorate this disconnect, some County Courts (Denver, El Paso County) have an unwritten rule that defendants have until noon or later to file their

⁶This final recommendation was not without controversy. Some Subcommittee members felt that this language elides the opportunity for a defendant to appear “and be heard” without filing an answer, while others felt that it coerces parties to engage in often-unproductive settlement talks as a mandatory step. On balance, the majority felt that the two options were each equally available, with no mandate other than to file a written answer to avoid default.

answer or attempt to reach a written stipulation with the landlord, thus violating the “time” deadline.

The General Assembly chose an indirect route to this same end: providing that no default judgment for possession can be entered “before the close of business” on the appearance date. See subsection -111(1), third sentence. (Alternative language might have extended the answer time to close of business, or eliminated the “time” references all together, or dropped the personal appearance option as with District Court).

Unfortunately, the General Assembly preserved the date “and time” language in the summons provision: “The summons must command the defendant to appear before the court at a place named in the summons and at a time on a day not less than seven days but not more than fourteen days from the day of issuing same to answer the complaint of plaintiffs.” *Id.* -111(1) (emphasis added) (this language is repeated in the insert quotation). But the General Assembly then only removed the “time” reference from the answer provision: “The defendant shall file with the court, at or before the ~~time~~ DAY specified for the defendant’s appearance in the summons, an answer in writing.” *Id.* -113(1).

This problem is compounded by the fact that many of our state courts have differing closing hours (or days). Compounded further by the Colorado Supreme Court’s e-filing rules defining the end of the court day as 11:59 p.m. See CRCP 121 §1-26[5.] (“A document transmitted to the E-System Provider by 11:59 p.m. Colorado time shall be deemed to have been filed with the clerk of the court on that date.”) (emphasis added); *accord* Rule 305.5(e). See generally CRCP 77(a) (the courts “shall be deemed always open for the purpose of filing any pleading”); *accord* Rule 377(a). Some Subcommittee members raised the apparent inequality of allowing private attorneys to file until midnight while pro se litigants may be scrambling to find an open filing counter at 4 or 5 o’clock.

In the end, the Subcommittee chose to eliminate the “Court date” header in ¶ 1 of the FED Summons but preserve the date “and time” provision; left in ¶ 2’s redundancy of appearing and filing an answer, or filing an answer without appearance; and paraphrased the statute at the end of ¶ 4: “However, the Court is not allowed to enter a default judgment for

possession before the close of business on the date upon which your answer is due.” No effort was made to define or otherwise rely upon a specific “close of business” time.

E. The Summons: The Jury Fee. The standard money damages case *Summons 1 SC* provides that “[i]f you want a jury trial, you must ask for one in the answer and pay the jury fee in addition to the filing fee.” The Subcommittee heard reports that many tenants tendered a jury fee in their FED case, only to learn that possession actions are equitable, and that jury fees are nonrefundable, even if they should not have been collected.⁷

To help address this, the Subcommittee modified that language in the October 2021 version at ¶ 5: “if you are eligible for a jury trial,” etc. Upon further reflection, and to avoid any implied position on the right to a jury in the possession context, the Subcommittee now recommends referring only to “applicable” filing fees and deleting the jury fee reference altogether.

5. When you file your answer, you must pay all applicable filing fees to the Clerk of the Court. ~~If you are eligible for a jury trial, you must ask for one in the answer and pay a jury fee in addition to the filing fee.~~ If you cannot afford the filing fee or the jury fee, file *JDF 205 - Motion to Waive Fees* and *JDF 206 - Order for Fee Waiver*.

F. The Summons: Fee Waiver Provisions. The Subcommittee struggled to achieve consensus on how far to go to advise tenants of their right to seek fee waivers. Some members felt that the October 2021 version went too far. They noted that the General Assembly already required the FED *Summons* to contain a list of available tenant resources that could be assumed to contain explicit guidance on indigent rights. In addition, revised Rule 304(2) mandates service with the summons of “blank copies of Forms JDF 205 and 206 (fee waiver forms),” not a provision found in the statutes

Interestingly, the language found in the standard *Summons 1SC* provides that “if you want to file an answer or a request for a jury trial and you are indigent, you must appear at the above date and time and fill out a financial affidavit, and ask the court to waive the fee.”

⁷ It is not within the Subcommittee’s scope to address clerk’s office fee refund policies.

In the end, the Subcommittee left alone the rest of the fee waiver references: the recitation in ¶ 1 that the necessary attachments include fee waiver forms, echoed in the recommended amended Certificate of Mailing; and the directions in ¶ 5 to file a fee waiver form (with accompanying order) “if you cannot afford the filing fee.”

G. The Summons: Right to Cure Nonpayment - Possession Cases Only. The General Assembly added an entirely new provision to subsection -115 on judgments:

- CRS 13-40-115(4) A landlord who provides a tenant with proper notice of nonpayment shall accept payment of the tenant's full payment of all amounts due according to the notice, as well as any rent that remains due under the rental agreement, at any time until a judge issues a judgment for possession pursuant to subsection (1) or (2) of this section. A tenant may pay this amount to either the landlord or to the court. Once a court has confirmation that the full amount has been timely paid, the court shall:
- (a) Vacate any judgments that have been issued; and
 - (b) Dismiss the action with prejudice.
- (5) The rights provided in subsection (4) of this section may not be waived by any written agreement.

Although this provision does not direct its recitation in the *FED Summons*, the legislative/legal services cohort felt strongly that there should be some reference to this alternative means to “answer” the Complaint. After much discussion about overlarding the *FED Summons* with readily available statutory language, a majority of the Subcommittee felt that a short recitation of the option was warranted in a new ¶ 3:

3. To avoid being evicted for non-payment of rent, you can pay all amounts you owe in the Notice plus any other amounts due under your rental agreement. You must pay this amount prior to the Court entering an eviction order.

This rendition leaves out the reference to paying either the plaintiff or the court, as it was unclear how to provide a mechanism in a summons to alert the court to a “defense” where a tenant payment mandates judgment vacatur and case dismissal. This recommended addition also merely implies that this option is available only in possession cases (“for non-payment of rent”). In addition, this addition does not define “Notice,” trusting that it will be understood to be the original notice-to-quit first posted to permit suit.

H. The Summons: Warranty of Habitability Bond Waiver for Indigents. The FED Summons that existed before the Subcommittee first convened in early 2021 contained a detailed provision regarding mandatory rent deposit by a tenant claiming the defense of “failure to repair.” (The statutory language is actually “landlord’s alleged breach of the warranty of habitability” found in § 38-12-507(1)(c)(I)).

The General Assembly amended this subsection in 2021 to allow for waiver of the full rent deposit where the tenant had provided certain repair notices to the landlord and can further prove indigency to the court under a very elaborate subsection (II). When the Subcommittee reconvened, the legislative/legal services cohort urged insertion of these detailed criteria.

The Subcommittee was reluctant to recite such detail, if only because these indicia do not necessarily align with the JDF 205 criteria for filing fee waivers. On the other hand, several Subcommittee members were concerned that the October 2021 summons appeared to *mandate* the filing of a JDF 109 in every case. Concerns were also expressed that the JDF 109 was excessive in its detail and directions toward tenants.

The Subcommittee ultimately compromised on a more open-ended advisory:

7. If you are claiming that the landlord’s failure to repair the residential premises is a defense to the landlord’s allegation of nonpayment of rent, the Court will require you to pay into the registry of the Court, at the time of filing your Answer, the rent due less any expenses you have incurred based upon the landlord’s failure to repair the residential premises. If you cannot pay this amount, you may be eligible for a waiver by filing a motion. (See JDF 109). ~~In addition to filing an answer, you are required to complete an Affidavit (JDF 109) to support the amount you will need to pay into the registry of the Court or to seek waiver of this requirement.~~

I. The Summons: Shortening the Summons. There was near Subcommittee consensus on wanting to shorten dramatically the FED *Summons*. Indeed, the Subcommittee heard many stories of how few defendants read the entire *Summons* and its attachments, and how so much of the FED paperwork is written in challenging legalese. By the same token, the Subcommittee was mindful that the General Assembly has mandated a broad array of literal insertions, and insertions and expanded an array of tenants’ rights that should not be “interpreted” by a rules subcommittee.

The Subcommittee does recommend foregoing several lines at the bottom of the body of the *Summons*, mainly those referring to using the form only for FED actions (this should be implied by the title), directions to the clerks about their seal placement, and the non-refundability of fees and jury trial options.

* * *

MOTION

To expedite email review of the proposed amendments to Rules 55 and 355, as well as the amended FED *Summons*, Rules Committee member Greg Whitehair MOVES, and Rules Committee member Judge Espinosa SECONDS, the attached redline revisions for approval by the full Civil Rules Committee.

Court <input type="checkbox"/> County Colorado County: _____ Court Address: _____	
Plaintiffs: _____ v. Defendants: _____ <input type="checkbox"/> Any and all other occupants	↑ Court Use Only ↑
My Name: _____ Address: _____ Phone _____ Fax: _____ Email: _____ Atty. Reg.#: _____	Case Number: _____ Division: _____ Courtroom: _____
Court Summons: Eviction / Forcible Entry and Detainer	

To the above-named Defendant(s), take notice that [your landlord is attempting to evict you. Your options are below:](#)

1. [On \(enter date\)](#) _____, [at \(enter time\)](#) _____.

Court Date

[On \(enter date\)](#) _____,

[at \(enter time\)](#) _____,

at the court above in [\(enter location/room number\)](#) _____,

[you need to take an action or an eviction order will enter against you. A copy of the Ceomplaint against you, a blank answer form, blank request for documents form, blank fee waiver forms, and an eviction information form are attached for your use.](#)

[the Plaintiff may ask the Court to enter judgment against you. This means you will have to move out and it may mean you have to pay money to the landlord.](#)

2. [If you do not agree with the Ceomplaint, then you must either:](#)

- a. File your Answer with the Court at or before the court date specified above stating any legal reason you have why judgment should not be entered against you,
or
- b. Attend the court at the date and time above and, if you choose not to reach a written settlement agreement with the Plaintiff, file your Answer that same day file your answer.

3. To avoid being evicted for non-payment of rent, you can pay all amounts you owe in the Notice plus any other amounts due under your rental agreement. You must pay this amount prior to the Court entering an eviction order. A copy of the complaint against you, a blank answer form, blank request for documents form, blank fee waiver forms, and an eviction information form are attached for your use.

~~3. If you do not agree with the complaint, then you must either:~~

- ~~a. File your answer with the Court at or before the court date specified above stating any legal reason you have why judgment should not be entered against you, or~~
- ~~b. Attend the court date and time above and file your answer.~~

4. If you take no action, the Plaintiff may ask the Court to enter an eviction order against you. If the Court grants that request, that means you will have to move out and it may mean you have to pay money to the landlord. However, the Court is not allowed to enter a default judgment for possession before the close of business on the date upon which your appearance is due.

5. When you file your answer, you must pay all applicable filing fees to the Clerk of the Court. If you are eligible for a jury trial, you must ask for one in the answer and pay a jury fee in addition to the filing fee. If you cannot afford the filing fee or jury fee, file JDF 205 - Motion to Waive Fees and JDF 206 - Order for Fee Waiver.

56. If you file an your Answer, you must provide a copy to the Plaintiff or the attorney who signed the complaint.

~~6. If you do not respond to the landlord's complaint by filing a written answer with the Court, as set forth above, or appear in court at the date and time in this summons, the judge may enter a default judgment against you in favor of your landlord for possession. A default judgment for possession means that you will have to move out, and it may mean that you will have to pay money to the landlord.~~

7. In your Aanswer to the Ccourt, you can state:

- Why you believe you have a right to remain in the property,
- Whether you admit or deny the landlord's factual allegations against you and your legal defenses,
- Whether you believe you were given proper notice of the landlord's reasons for terminating your tenancy before you got this summons, and
- Whether you have a counterclaim or cross_claim against ~~the landlord~~a party.

87. If you are claiming that the landlord's failure to repair the residential premises is a defense to the landlord's allegation of nonpayment of rent, the Court will require you to pay into the registry of the Court, at the time of filing your Aanswer, the rent due less any expenses you have incurred based upon the landlord's failure to repair the residential premises. If you cannot pay this amount, you may be eligible for a waiver by filing a motion. (See JDF 109). ~~In addition to filing an answer, you are required to complete an Affidavit (JDF 109) to support the amount you will need to pay into the registry of the Court or to seek waiver of this requirement.~~

89. Any records associated with the action are suppressed and not accessible to the public until an order is entered granting the Pplaintiff possession of the premises.

10. If the Pplaintiff is granted possession of the premises, the court records may remain suppressed if both parties agree to suppress the records.

Dated: _____

Signed: _____ Dated: _____

Deputy Clerk of Court or Attorney for Plaintiff(s) (if applicable)

Address(es) of Plaintiff(s) (if applicable): _____

Telephone Number(s) of Plaintiff(s) _____

This Ssummons is issued pursuant to C.R.S. § 13-40-111. A copy of the Ccomplaint together with a blank answer form, blank request for documents form, blank fee waiver forms, and an eviction information form must be served with this sSummons. ~~This form should be used only for actions filed under Colorado's Forcible Entry and Detainer Act.~~

~~To the clerk: If this summons is issued by the Clerk of the Court, the seal of the Court should be provided by stamp, or typewriter, in the space to the right of the signature.~~

~~WARNING: ALL FEES ARE NON-REFUNDABLE. IN SOME CASES, REQUEST FOR A JURY TRIAL MAY BE DENIED PURSUANT TO LAW EVEN THOUGH A JURY FEE HAS BEEN PAID.~~

- By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.
- By checking this box, I am acknowledging that I have made a change to the original content of this form.

CERTIFICATE OF MAILING

I/we, the undersigned Plaintiff(s) (or agent for Plaintiff(s)), certify that on _____ (date) I/we mailed a copy of the Summons, Complaint, blank answer form, request for documents form, fee waiver forms, and an eviction information form by postage prepaid, first class mail, to _____, the Defendant(s) at the following address(es):
_____.

Plaintiff(s)/Agent for Plaintiff(s)

~~Certificate of Service~~

~~I/we, certify that a copy of the summons, complaint, blank answer form, request for documents form, fee waiver forms, and an eviction information form were:~~

- Served personally upon the following person on the following date and time:

_____.

OR

- After diligent efforts, on (date) _____ were posted in some conspicuous place on the premises, and mailed by first class mail to the Defendants at the following address:

_____.

Signature of: Plaintiff(s) / Agent for Plaintiff(s)

Resources

- Colorado Judicial Branch Self Help Center
 - Your local Self Help Center can be found by following this link:
https://www.courts.state.co.us/Self_Help/center.cfm
- Colorado Legal Services

- Free legal services to low income tenants facing evictions.
 - Call (303) 837-1313 ext. 444 or visit <https://www.coloradolegalservices.org/>
 - Colorado Department of Local Affairs
 - The Division of Housing can help with rental assistance programs, housing counseling, eviction and foreclosure prevention, and other programs.
 - Call (303) 864-7810 or visit <https://cdola.colorado.gov/housing>
 - Colorado Housing Connects
 - Free housing, eviction, and foreclosure resources for tenants, landlords, homeowners, and homebuyers.
 - Call (844) 926-6632 or visit <https://coloradohousingconnects.org/>
 - Colorado Poverty Law Project
 - Free legal services to fight eviction and housing insecurity.
 - <https://www.copovertylawproject.org/>
 - COVID-19 Eviction Defense Project
 - Free legal aid and guidance to tenants facing eviction and housing insecurity.
 - Visit <https://www.cedproject.org>
-

Relevant Colorado Statutes

~~Colorado Revised Statutes section 13-40-111, as amended.~~

13-40-111. Issuance and return of summons.

(1) Upon filing the complaint as required in section 13-40-110, the clerk of the court or the attorney for the plaintiff shall issue a summons. The summons must command the Defendant to appear before the Court at a place named in the summons and at a time and on a day not less than seven days but not more than fourteen days from the day of issuing the same to answer the complaint of plaintiff. A court shall not enter a default judgment for possession before the close of business on the date upon which an appearance is due. The summons must also contain a statement addressed to the Defendant stating: "If you do not respond to the landlord's complaint by filing a written answer with the court on or before the date and time in this summons or appearing in court at the date and time in this summons, the judge may enter a default judgment against you in favor of your landlord for possession. A default judgment for possession means that you will have to move out, and it may mean that you will have to pay money to the landlord. In your answer to the court, you can state why you believe you have a right to remain in the property, whether you admit or deny the landlord's factual allegations against you, and whether you believe you were given proper notice of the landlord's reasons for terminating your tenancy before you got this summons. When you file your answer, you must pay a filing fee to the clerk of the court. If you are claiming that the landlord's failure to repair a residential premises is a defense to the landlord's allegation of nonpayment of rent, the court will require you to pay into the registry of the court, at the time of

filing your answer, the rent due less any expenses you have incurred based upon the landlord's failure to repair the residential premises; unless the court determines that you qualify to have this requirement waived due to your income."

13-40-112. Service.

(1)—Such summons may be served by personal service as in any civil action. A copy of the complaint must be served with the summons.

(2)—If personal service cannot be had upon the Defendant by a person qualified under the Colorado Rules of Civil Procedure to serve process, after having made diligent effort to make such personal service, such person may make service by posting a copy of the summons and the complaint in some conspicuous place upon the premises. In addition thereto, the Plaintiff shall mail, no later than the next day following the day on which he/she files the complaint, a copy of the summons, or, in the event that an alias summons is issued, a copy of the alias summons, and a copy of the complaint to the Defendant at the premises by postage prepaid, first class mail.

(3)—Personal service or service by posting shall be made at least seven days before the day for appearance specified in such summons, and the time and manner of such service shall be endorsed upon such summons by the person making service thereof.

Court <input type="checkbox"/> County Colorado County: _____ Court Address: _____	
Plaintiffs: _____ v. Defendants: _____ <input type="checkbox"/> Any and all other occupants	↑ Court Use Only ↑
My Name: _____ Address: _____ Phone _____ Fax: _____ Email: _____ Atty. Reg.#: _____	Case Number: _____ Division: _____ Courtroom: _____
Court Summons: Eviction / Forcible Entry and Detainer	

To the above-named Defendant(s), take notice that your landlord is attempting to evict you. Your options are below:

1. On *(enter date)* _____, at *(enter time)* _____, at the court above in *(enter location/room number)* _____, you need to take an action or an eviction order will enter against you. A copy of the Complaint against you, a blank answer form, blank request for documents form, blank fee waiver forms, and an eviction information form are attached for your use.
2. If you do not agree with the Complaint, then you must either:
 - a. File your Answer with the Court on or before the day specified above **or**
 - b. Attend court at the date and time above **and**, if you choose not to reach a written settlement agreement with the Plaintiff, file your Answer that same day.
3. To avoid being evicted for non-payment of rent, you can pay all amounts you owe in the Notice plus any other amounts due under your rental agreement. You must pay this amount prior to the Court entering an eviction order.
4. If you take no action, the Plaintiff may ask the Court to enter an eviction order against you. If the Court grants that request, that means you will have to move out and it may mean you have to

pay money to the landlord. However, the Court is not allowed to enter a default judgment for possession before the close of business on the date upon which your appearance is due.

5. When you file your answer, you must pay all applicable filing fees to the Clerk of the Court. If you cannot afford the filing fee, file *JDF 205 - Motion to Waive Fees* and *JDF 206 - Order for Fee Waiver*.

6. If you file your Answer, you must provide a copy to the Plaintiff or the attorney who signed the complaint. In your Answer to the Court, you can state:

- Why you believe you have a right to remain in the property,
- Whether you admit or deny the landlord’s factual allegations against you and your legal defenses,
- Whether you believe you were given proper notice of the landlord’s reasons for terminating your tenancy before you got this summons, and
- Whether you have a counterclaim or cross claim against a party.

7. If you are claiming that the landlord’s failure to repair the residential premises is a defense to the landlord’s allegation of nonpayment of rent, the Court will require you to pay into the registry of the Court, at the time of filing your Answer, the rent due less any expenses you have incurred based upon the landlord’s failure to repair the residential premises. If you cannot pay this amount, you may be eligible for a waiver by filing a motion. (See JDF 109).

8. Any records associated with the action are suppressed and not accessible to the public until an order is entered granting the Plaintiff possession of the premises. If the Plaintiff is granted possession of the premises, the court records may remain suppressed if both parties agree to suppress the records.

Signed: _____ Dated: _____

Deputy Clerk of Court or Attorney for Plaintiff(s) (if applicable)

Address(es) of Plaintiff(s) (if applicable): _____

Telephone Number(s) of Plaintiff(s) _____

This Summons is issued pursuant to C.R.S. § 13-40-111. A copy of the Complaint together with a blank answer form, blank request for documents form, blank fee waiver forms, and an eviction information form must be served with this Summons.

- By checking this box, I am acknowledging I am filling in the blanks and not changing anything else on the form.
 By checking this box, I am acknowledging that I have made a change to the original content of this form.

CERTIFICATE OF MAILING

I/we, the undersigned Plaintiff(s) (or agent for Plaintiff(s)), certify that on _____ (date) I/we mailed a copy of the Summons, Complaint, blank answer form, request for documents form, fee waiver forms, and an eviction information form by postage prepaid, first class mail, to _____, the Defendant(s) at the following address(es):
_____.

Plaintiff/(s)/Agent for Plaintiff(s)

Resources

- Colorado Judicial Branch Self Help Center
 - Your local Self Help Center can be found by following this link: https://www.courts.state.co.us/Self_Help/center.cfm
- Colorado Legal Services
 - Free legal services to low income tenants facing evictions.
 - Call (303) 837-1313 ext. 444 or visit <https://www.coloradolegalservices.org/>
- Colorado Department of Local Affairs
 - The Division of Housing can help with rental assistance programs, housing counseling, eviction and foreclosure prevention, and other programs.
 - Call (303) 864-7810 or visit <https://cdola.colorado.gov/housing>
- Colorado Housing Connects
 - Free housing, eviction, and foreclosure resources for tenants, landlords, homeowners, and homebuyers.
 - Call (844) 926-6632 or visit <https://coloradohousingconnects.org/>
- Colorado Poverty Law Project
 - Free legal services to fight eviction and housing insecurity.
 - <https://www.copovertylawproject.org/>
- COVID-19 Eviction Defense Project
 - Free legal aid and guidance to tenants facing eviction and housing insecurity.
 - Visit <https://www.cedproject.org>

Relevant Colorado Statutes

13-40-111. Issuance and return of summons.

(1) Upon filing the complaint as required in section 13-40-110, the clerk of the court or the attorney for the plaintiff shall issue a summons. The summons must command the Defendant to appear before the Court at a place named in the summons and at a time and on a day not less than seven days but not more than fourteen days from the day of issuing the same to answer the complaint of plaintiff. A court shall not enter a default judgment for possession before the close of business on the date upon which an appearance is due. The summons must also contain a statement addressed to the Defendant stating: "If you do not respond to the landlord's complaint by filing a written answer with the court on or before the date and time in this summons or appearing in court at the date and time in this summons, the judge may enter a default judgment against you in favor of your landlord for possession. A default judgment for possession means that you will have to move out, and it may mean that you will have to pay money to the landlord. In your answer to the court, you can state why you believe you have a right to remain in the property, whether you admit or deny the landlord's factual allegations against you, and whether you believe you were given proper notice of the landlord's reasons for terminating your tenancy before you got this summons. When you file your answer, you must pay a filing fee to the clerk of the court. If you are claiming that the landlord's failure to repair a residential premises is a defense to the landlord's allegation of nonpayment of rent, the court will require you to pay into the registry of the court, at the time of filing your answer, the rent due less any expenses you have incurred based upon the landlord's failure to repair the residential premises; unless the court determines that you qualify to have this requirement waived due to your income."

13-40-112. Service.

(1) Such summons may be served by personal service as in any civil action. A copy of the complaint must be served with the summons.

(2) If personal service cannot be had upon the Defendant by a person qualified under the Colorado Rules of Civil Procedure to serve process, after having made diligent effort to make such personal service, such person may make service by posting a copy of the summons and the complaint in some conspicuous place upon the premises. In addition thereto, the Plaintiff shall mail, no later than the next day following the day on which he/she files the complaint, a copy of the summons, or, in the event that an alias summons is issued, a copy of the alias summons, and a copy of the complaint to the Defendant at the premises by postage prepaid, first class mail.

(3) Personal service or service by posting shall be made at least seven days before the day for appearance specified in such summons, and the time and manner of such service shall be endorsed upon such summons by the person making service thereof.

Rule 55. Default

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

(b) Judgment.

(1) A party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, guardian ad litem, conservator, or such other representative who has appeared in the action. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 7 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper. However, before judgment is entered, the court shall be satisfied that the venue of the action is proper under Rule 98.

(2) In forcible entry and detainer cases, a court may enter default pursuant to subsection (1) above; however, the court shall not enter a default judgment for possession before the close of business on the date upon which an appearance is due as set forth by C.R.S. 13-40-111(1).

(c) - (f) [NO CHANGE]

Rule 55. Default

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default.

(b) Judgment.

(1) A party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, guardian ad litem, conservator, or such other representative who has appeared in the action. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least **7** days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper. However, before judgment is entered, the court shall be satisfied that the venue of the action is proper under Rule 98.

(2) In forcible entry and detainer cases, a court may enter default pursuant to subsection (1) above; however, the court shall not enter a default judgment for possession before the close of business on the date upon which an appearance is due as set forth by C.R.S. 13-40-111(1).

(c) - (f) [NO CHANGE]

Rule 355. Default

(a) Entry at Time of Appearance. Upon the date and at the time set for appearance, if the defendant has filed no answer or fails to appear and if the plaintiff proves by appropriate return that the summons was served at least 14 days before the appearance date, the judge may enter judgment for the plaintiff for the amount due, including interest, costs and other items provided by statute or the agreement. However, before judgment is entered, the court shall be satisfied that the venue of the action is proper Under Rule 398(c).

(b) Judgment for Possession in Forcible Entry and Detainer Cases. A court may enter judgment pursuant to statute; however, the court shall not enter a default judgment for possession before the close of business on the date upon which an appearance is due as set forth by C.R.S. 13-40-111(1) and if the court is satisfied that service is complete pursuant to C.R.S. 13-40-112.

(c) At Time of Trial. Failure to appear on any date set for trial shall be grounds for entering a default and judgment thereon against the non-appearing party. For good cause shown, the court may set aside an entry of default and the judgment entered thereon in accordance with Rule 360.

Rule 355. Default

(a) Entry at Time of Appearance. Upon the date and at the time set for appearance, if the defendant has filed no answer or fails to appear and if the plaintiff proves by appropriate return that the summons was served at least 14 days before the appearance date, the judge may enter judgment for the plaintiff for the amount due, including interest, costs and other items provided by statute or the agreement. However, before judgment is entered, the court shall be satisfied that the venue of the action is proper under Rule 398(c).

(b) Judgment for Possession in Forcible Entry and Detainer Cases. A court may enter judgment pursuant to statute; however, the court shall not enter a default judgment for possession before the close of business on the date upon which an appearance is due as set forth by C.R.S. 13-40-111(1) and if the court is satisfied that service is complete pursuant to C.R.S. 13-40-112.

(c) At Time of Trial. Failure to appear on any date set for trial shall be grounds for entering a default and judgment thereon against the non-appearing party. For good cause shown, the court may set aside an entry of default and the judgment entered thereon in accordance with Rule 360.

COMMENTS

Brent Owens

Judge Jones,

I vote yes with two comments:

- Form 1A –Summons FED: Paragraph 5, the sentence that begins “when you file your . . . “ the word “Answer” needs a capital A, for consistency
- For Rule 55, should we refer to as set forth in “statute,” or in “Title 13, Article 40” so that we do not cause confusion if there are minor amendments to the FED rules?

Hope you are doing well.

Regards,

Brent

Peter Goldstein

i have two concerns which cause me to vote, "no".

the first is the term, "close of business". i assume, although it does NOT says so, that this means the clerk's office in the judicial district. while i would agree 56a and 377a need to be redone in light of efilng and the fact that close of business does mean different things on different days. that is, i have been in district court until 11PM waiting for a civil jury verdict. 56a, 377a, and this language about close of business must be fixed. as an aside, why is 377 not 356? right now there is no 356.

the second is this language from page 9 of the report:

To help ameliorate this disconnect, some County Courts (Denver, El Paso County) have an unwritten rule that defendants have until noon or later to file their answer or attempt to reach a written stipulation with the landlord, thus violating the “time” deadline.

with respect, it is very clear that there are no enforceable unwritten local rules in colorado. C.R.C.P. 121(a) and (b). such rules in denver and el paso cannot be enforced. while i fully agree with the idea, we need to fix the term and 56a and 377a. please believe we do don't want to lend credence to unapproved and/or unwritten local rules.

i am very sensitive about the amount of time and work spent of this. i fear without the fix we are just inviting extra litigation.

Peter Goldstein

Judge Dunn

I vote to approve the recommended changes.

I have one minor language comment. Since I'm new to the committee, I don't know what focus is placed on plain language (I am on the civil jury instruction committee and it is something we look for).

So if that is something the committee considers, I suggest we change (1) "pursuant to" to "under" (in Rules 55(b)(2)) and (2) "prior to" to "before" in paragraph 3 on page 1 of the summons. Though "pursuant to" is also used in Rule 355, a change to "under" may not work there because no statute is identified (unless we say "under a statute").

But I also recognize that the FED subcommittee has worked tirelessly on these revisions and it needs to get done, so if these type of edits will delay that process, it may not make sense.

Thanks,
Stephanie

Judge Scoville

Judge Jones & Kathryn – I vote to approve. I would have preferred that "close of business" be defined. In my courtroom, I am interpreting that phrase as meaning 11:59 pm and I am not entering an order of possession until the following day, but I believe that there are a variety of practices among civil judges on this. I do not believe my preference, however, should hold up approval of these forms. It's important that this get resolved quickly. Many thanks to Judge Espinosa and his committee for the good work under challenging circumstances –
-Stephanie

Lee Sternal

Count me as a “yes” vote but with the suggestion that the word “court” be added just before “business” in the several places it appears. While, of course, I have no idea as to whether it is an already discussed issue, I mention it out of the sense of relief I recently experienced when a Monday disclosure deadline was automatically extended because all government offices had been granted “holiday” status.

Judge Berger

I vote in favor of the proposals. However, because I agree with some of the comments that the term close of business should be defined and because there is an upcoming meeting of the civil rules committee not too far down the road, I recommend that the matter (and only the matter) of a definition of close of business be taken up and resolved at the upcoming meeting.

Jose Vasquez

Please note the following regarding the proposals made by the FED eviction subcommittee:

I vote FOR the amendments to both Rule 55 and the analogous Rule 355.

I vote AGAINST approval of the Summons, as I do not agree to the proposed changes.

First, I commend the Chair of the Subcommittee, Judge Espinosa, for coordinating the various meetings we had and trying to find agreement between the members. I was a member of the subcommittee, and it was very challenging work, but this task was important because of the impact it might make on Colorado tenants facing eviction. While the subcommittee invited Jack Regembogen, an attorney with the Poverty Law Project to speak to the subcommittee, it should be noted that he was speaking primarily on behalf of the legislators who had concerns that the summons approved by the Rules Committee did not include important new provisions which were included by the statutory changes, all meant to assist tenants in eviction actions. The legislators cited that the statutory changes were meant to *"to ensure that tenants/defendants in FED actions have the opportunity to file an answer in response to an eviction summons at any time of day on the date they are due to appear in court."* As a result, the letter written by Mr. Regembogen included the following paragraph that is at the heart of the concerns raised:

"Despite the new statutory language, which we had believed was unambiguous in its direction, we are concerned that some parties may be misinterpreting this dictate, and that the new revised summons form continues to suggest that a default judgment may occur if a defendant fails to appear by a certain time on the date that their answer is due, other than by the end of business on that day."

First it is worth noting that the subcommittee had much discussion on the changes to the summons but in very few instances were those changes unanimous. The members of the subcommittee who presented feedback in support of the tenant's rights (namely, my colleague

Reenie Terjak and myself) expressed significant concerns that the subcommittee's amendments to the summons did not truly address the legislators concerns that the summons would be clear enough to tenants. Regrettably, the summons which is being submitted for approval does not remove the ambiguity about whether the tenant can file his/her answer any day before the close of business and instead, what was proposed seemed to shy away from what the statute permitted, which was that a tenant had until the end of that day to file an answer. While this is what the statutory amendments permitted, strong voices from the landlord attorneys on the subcommittee argued that the statute did not specify that a tenant could file his/her answer by the end of the day but only that the court could not enter a default before the close of business on the date that the answer was due. This argument, however, completely dismissed the reality of the new statute's impact, that if the court did not have the statutory authority to enter a default before the close of business, then legally the tenant does have the ability to file an answer before any default, in the statute, by the close of business. It is established Colorado law that a party is able to file an answer prior to entry of default. A court may not properly enter a default judgment if an answer has been filed before entry of default by either the clerk or the court. *Colo. Comp. Ins. Auth. v. Raycomm Transworld Indus.*, 940 P.2d 1000, 1001 (Colo. App. 1996). The subcommittee, by not including clear and specific language in the summons, did not take the next step further by making it clear that the defendant can file an answer by the close of business, as reflected in the relevant portion of the summons as follows:

1. On (*enter date*) _____, at (*enter time*) _____,

at the court above in (*enter location/room number*) _____,

you need to take an action or an eviction order will enter against you. A copy of the Complaint against you, a blank answer form, blank request for documents form, blank fee waiver forms, and an eviction information form are attached for your use.

2. If you do not agree with the Complaint, then you must either:

1. File your Answer with the Court on or before the day specified above **or**
2. Attend court at the date and time above **and**, if you choose not to reach a written settlement agreement with the Plaintiff, file your Answer that same day.

The changes made to the summons as put forth by the subcommittee do not make it clear that a defendant can file their answer by the close of business, which is the period of time that an answer can be filed, and no default can be entered by the court. Thus, the subcommittee's proposed summons evades making this clear, by not specifically stating with clarity the time period that a defendant has for filling an answer. The summons is confusing by paragraph 1 stating to a defendant that "*you need to take an action*" in order to prevent the entry of an eviction order. Then, the tenant may wonder what action he or she is to take and by when. The next paragraph (at 2.1) states that if the defendant does not agree with the complaint that they can file their answer "*on or before the day specified above.*" Thus, the defendant must refer to the date and time in paragraph 1 and then review paragraph 2 to file their answer either before the

date and time on the summons or on the day of the date and time in paragraph 1. Nowhere in the revised summons does it affirmatively inform the defendant that they can file their answer anytime before the close of business. The only reference to a tenant being able to do this is found in later in the summons, at paragraph 4, where it states that "*the Court is not allowed to enter a default judgment for possession before the close of business on the date upon which your appearance is due.*" Thus, this extremely important deadline is pushed down to the fourth paragraph and the second page of the summons. During the subcommittee meetings, various members made comments that defendants often do not read the entire document or stop after reading only the first few lines. Thus, the revisions which push down the close of business language to the fourth paragraph of the summons is troubling.

The other concerning part of the revised summons is also found in section 2 of the summons, reproduced again below:

2. If you do not agree with the Complaint, then you must either:

1. File your Answer with the Court on or before the day specified above **or**
2. Attend court at the date and time above **and**, if you choose not to reach a written settlement agreement with the Plaintiff, file your Answer that same day.

The concern with paragraph 2.2 is the inclusion of the language which states "*if you choose not to reach a written settlement agreement with the Plaintiff...*" then the defendant can file his/her answer. I raised to the subcommittee my concerns about the inclusion of that language that it could be interpreted that to file an answer with the court the defendant must talk to the plaintiff's (or most likely, the plaintiff's attorney) before being able to file their answer. The memo, which was wonderfully drafted by Mr. Whitehair, states the following regarding the practice of defendants coming to court in person to talk to the opposing counsel:

This anachronistic personal appearance option in County Court probably persists because it brings together parties in comparatively low-dollar cases who might reach stipulations in lieu of proceeding further. According to the eviction court judicial officers and many of the practicing attorneys on the Subcommittee, this is can be especially efficacious in FED cases, where tenants often appear with their back rent and landlords appear who can negotiate and settle the case on the spot, without a court referral to mediation.

While bringing parties together to meet in court and talk about a resolution is on its face a beneficial thing, it is fraught with many issues which may not be favorable to tenants.

It is indisputable that most defendants are *pro se*, which means that in this setting (an appearance on the return date) that the balance of power is uneven. An unrepresented defendant often times is under the impression when coming to court that they are obligated to talk to the attorney for the plaintiff. This has been the practice in many county courts for years. Unfortunately, that practice has resulted in mostly *pro se* defendants entering into settlement agreements which provided no benefit (a landlord attorney granting a defendant time to move out, even though if no answer was filed and a default was entered that they would have to move out in

approximately the same period of time), or where defendants believed that from talking to plaintiff's counsel that they had either continued the return date or come to some agreement, only to find out days later that the plaintiff's attorney had requested an entry of default which was entered. These are only two examples of troubling results from personal interaction with plaintiff's counsel at the court return date but there are many more which have occurred from Colorado Legal Services' interactions with numerous tenants, and such events may continue if the impression is once again drilled into a defendant's mind that they are first obligated to talk to plaintiff's counsel. Many defendants who choose to come to court are intimidated by the process and are without knowledge about the purpose of the court return date (to contest the summons and complaint). Pushing pro se defendants to talk to landlords' attorneys may result in many of them not getting the chance to obtain legal counsel to review their case for any possible defenses or counterclaims. Thus, this notion that defendants must be encouraged to talk to the other side is not always beneficial to tenants and may result in their loss of rights they are entitled to.

Accordingly, the language "*if you choose not to reach a written settlement agreement with the Plaintiff*" should be removed since it has no place in a summons. The current summons has no such language, and it really makes no sense to include it here now, especially given the lack of understanding on the part of *pro se* defendants about the purpose of the return date. Further, the information sheet which is required to be served on defendants already contains language about the possibility of talking to the landlord to work out a settlement. The summons is simply not a proper place to include language about the defendant settling or encouraging them to settle, as the purpose of the summons is primarily to provide notice.

I was happy to be a part of this subcommittee and by writing this email with my concerns I do not wish to take anything away from the hard work done by all of its members. However, for the above reasons, I cannot agree to the proposed revised summons.

Thank you.

Jose L. Vasquez

County Court _____ County, Colorado Court Address: _____ <hr/> Plaintiff(s): v. Defendant(s):	▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____	Case Number: Division _____ Courtroom _____
REQUEST FOR DOCUMENTS IN EVICTION CASES	

I, _____, am the Plaintiff Defendant in this case.

I ask that the court order the other party in this case to give me all documents that the party has that are relevant to this case including: [\(Relevant documents may include: A lease, the rent ledger or payment history, the eviction notice, and any other documents that you believe are necessary to be presented at trial.\)](#)

[Please send documents to me at the following location and manner:](#) _____

Dated: _____

 Printed name of Plaintiff/Petitioner Defendant/Respondent

 Signature of Plaintiff/Petitioner Defendant/Respondent

CERTIFICATE OF SERVICE

I certify that on _____ (date) a true and accurate copy of this *REQUEST FOR DOCUMENTS IN EVICTION CASES* was served on the other party by:

Hand Delivery E-filed Faxed to this number _____ or by placing it in the United States mail, postage pre-paid, and addressed to the following:

 Signature

FOR COURT USE ONLY BELOW THIS LINE:

ORDER

The Court orders that the party who was asked to provide documents in the above Request for Documents in Eviction Case must provide all documents related to this case to the party that made the request ~~within the earlier of (a) two business days after this Order is received or (b) two days before the trial in this case is scheduled to begin~~ [before trial occurs](#).

Dated: _____

 Judge Magistrate

County Court _____ County, Colorado Court Address: _____ <hr/> Plaintiff(s): _____ v. Defendant(s): _____	▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): _____ Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____	Case Number: _____ Division _____ Courtroom _____
REQUEST FOR DOCUMENTS IN EVICTION CASES	

I _____, am the Plaintiff Defendant in this case.

I ask that the court order the other party in this case to give me all documents that the party has that are relevant to this case.

Dated: _____

 Printed name of Plaintiff/Petitioner Defendant/Respondent Signature of Plaintiff/Petitioner Defendant/Respondent

CERTIFICATE OF SERVICE

I certify that on _____ (date) a true and accurate copy of this *REQUEST FOR DOCUMENTS IN EVICTION CASES* was served on the other party by:

Hand Delivery E-filed Faxed to this number _____ or by placing it in the United States mail, postage pre-paid, and addressed to the following:

 Signature

FOR COURT USE ONLY BELOW THIS LINE:

ORDER

The Court orders that the party who was asked to provide documents in the above Request for Documents in Eviction Case must provide all documents related to this case to the party that made the request within the earlier of (a) two business days after this Order is received or (b) two days before the trial in this case is scheduled to begin.

Dated: _____

 Judge Magistrate

County <u> </u> District <u> </u> Court _____ County, _____ Colorado Court Address: _____ <hr/> Plaintiff(s): _____ v. Defendant(s): _____	▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): _____ Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____	Case Number: _____ Division _____ Courtroom _____
REQUEST FOR DOCUMENTS IN EVICTION CASES	

I, _____, am the Plaintiff Defendant in this case.

I ask that the court order the other party in this case to give me all documents that the party has that are relevant to this case including: _____.
 (Relevant documents may include: A lease, the rent ledger or payment history, the eviction notice, and any other documents that you believe are necessary to be presented at trial.)

Please send documents to me at the following location and manner: _____.

Dated: _____

 Printed name of Plaintiff/Petitioner Defendant/Respondent

 Signature of Plaintiff/Petitioner Defendant/Respondent

CERTIFICATE OF SERVICE

I certify that on _____ (date) a true and accurate copy of this *REQUEST FOR DOCUMENTS IN EVICTION CASES* was served on the other party by:

Hand Delivery E-filed Faxed to this number _____ or by placing it in the United States mail, postage pre-paid, and addressed to the following:

 Signature

FOR COURT USE ONLY BELOW THIS LINE:

ORDER

The Court orders that the party who was asked to provide documents in the above Request for Documents in Eviction Case must provide all documents related to this case to the party that made the request before trial occurs.

Dated: _____

 Judge Magistrate

