

MEMO

To: Civil “Money Case” Counsel
From: Magistrate Annette J. Kundelius
Date: June 5, 2024

Re: NOTICE TO ATTORNEYS AND PARTIES - WELD COUNTY COURT CIVIL
MONEY RETURN PROCEDURES¹

THIS MEMO SUPERSEDES AND REPLACES ALL PRIOR MEMOS AND NOTICES

General / Magistrate / Initiating an Action / CCE

Please see the 19th Judicial District website for the most up-to-date information on “WebEx rooms” and Administrative Orders.

All “money” cases are heard initially in Division C of the Weld County Court (915 10th Street Greeley, CO 80631 2nd floor of the Centennial Building). A Magistrate presides in Division C. By submitting your PPJ² you are acknowledging you have the right to have the case heard by a County Court Judge and that you consent to the Magistrate.

Pursuant to the 19th Judicial District Administrative Order 13-06, Weld County is a mandatory e-file jurisdiction (Colorado Courts E-Filing System / CCE). To facilitate compliance with CJD 05-01 please refrain from including confidential information in pleadings (i.e. social security number, driver’s license numbers, personal identifying information, financial account numbers, etc.) When filing a case through CCE you must input your proposed judgment amounts. Also, one attorney must be designated as the primary attorney. And the defendant’s address information should be input as well.

¹ These procedures do not apply to Civil Restraining Orders, FED’s, Replevin, or Agister’s Lien cases.

² “PPJ” is a court Case Management System (CMS) code sometimes referred to as “print-proposed-judgment-docket”. These are the printouts provided by the court.

Pre-summons return procedures – Information Sheet:

An informational notice in a form substantially similar to Attachment A should be served with each summons and complaint in County Court civil “money” cases and actions to enforce restrictive covenants. This informational notice will prevent unnecessary travel to the courthouse.

No appearance at summons return / Summons return procedures:

All summons return dates are held on Fridays at either 8:30 a.m. or 1:30 p.m. Unless otherwise directed by the Court, summons return times are as follows:

- Plaintiff’s attorney last name A-L (by the last name on the firm letterhead) 8:30am
- Plaintiff’s attorney last name M-Z (by the last name on the firm letterhead) 1:30pm

The summons return is a **non-appearance** event. No party (Plaintiff, Plaintiff’s counsel or Defendant) is expected to appear for summons return. The parties are **strongly** encouraged to engage in good-faith discussion and attempt to resolve the case before summons return.

Any Defendant who wishes to dispute the claim must file a written Answer on or before the date listed on the Summons. *See, Attachment A - Information Sheet.* Once an Answer is filed, the Court will likely order the parties to mediate (and share the cost of mediation). A motion for judgment on the pleadings is automatically authorized pursuant to C.R.C.P. 312(d).

ALL supporting documents (assignments, chains of title, contracts, promissory notes, evidence of debt, affidavits of indebtedness, affidavits in support of fees, etc.) must be on file prior to the summons return. **Do not file a written motion for default judgment unless requested by the Court.**

Stipulations: Good-faith negotiations and stipulations are **strongly** encouraged. If the parties are actively negotiating they should file an unopposed motion for continued summons return or request a continued summons return on the PPJ. If a stipulation has been reached by or before the summons return, then the Plaintiff should mark the PPJ accordingly and file the stipulation immediately. Stipulations should be accompanied by a separate order. However, if your stipulation has order language incorporated (a “tagged order”), you need not e-file a separate editable proposed order. Notwithstanding Rules 121 §1-26(15)(c), 305.5 (q)(3), and CJD 11-01, this Court’s practice is to allow the use of “tagged orders” so that Plaintiff’s counsel may use their own forms. The order adopting the stipulation will be signed in the ordinary course. If the Defendant’s address is not entered into the CCE system already, the Plaintiff shall provide a copy of the ordered stipulation to the Defendant(s).

The PPJs by e-mail: The Judicial Assistant will provide you the PPJ’s in advance by e-mail. PPJ’s must be returned to the Judicial Assistant by e-mail by no later than 4:30 p.m. 5 days after the summons return (by the Wednesday after the Friday). In most cases the PPJ is the record. Accordingly, the information stated on the PPJ is a statement by counsel to the Court; statements must be specific, accurate, complete, understandable, legible, and consistent with the duties under the Rules of Professional Conduct. Attached are PPJ examples for your review. Any un-clarity, illegibility, deficiency, or PPJ that does not address service and appearance may be rejected and a deficiency order may issue. If there have been filings after the PPJs were sent (e.g. motion to dismiss, stipulation) please note that on the PPJ. **Failure to return the PPJ’s will result in the case being dismissed for failure to prosecute and without further notice.**

Signing the PPJ: The Plaintiff must sign the PPJ in at least one place on every page of the PPJ packet.

The PPJs are distributed to the Division C Magistrate on the Friday following the return date on summons. The magistrate will review the PPJ's that have been returned and issue appropriate orders. Orders granting a default judgment will be indicated on the PPJ by the magistrate and the clerk will enter the judgment and a minute order stating the judgment has been granted. The minute order will be the record. For orders other than a default judgment, the court will issue a written order which will be served through the e-filing system.

The magistrate will review the file to confirm you are the proper plaintiff; proper venue; proper service (times and methods); the sufficiency of any and all assignments or transfers; the sufficiency of your proofs and calculations (e.g. documents evidencing debt, affidavits of indebtedness, verifications, bills, contracts, your math etc.); proof, if any, of a contractual interest rate or entitlement to other charges such as late fees or attorney's fees; and any required notices (e.g. notice to cure, notice of default). These documents and support must be e-filed prior to the summons return. Failure to e-file documents necessary for your claim, or failure to comply with these requirements, will result in a deficiency order being issued.

Additional / "Alias" & "Pluries" Summons: If a summons and complaint have been filed, but not properly served prior to the return date, the Court will automatically authorize two additional summonses (one "alias" and one "pluries" summons). Prior to the summons return you may issue and file one "alias" summons and one "pluries" summons to re-set the summons return. If you have service on one, but not all, Defendant(s), you must request an alias as to the non-served Defendants. The Court will not close or "CLAD" non-served Defendants. Failure to ask for some relief as to non-served Defendants will result in the non-served Defendant being dismissed. If you request an automatic "alias" or "pluries" on your PPJ, the "alias" or "pluries" must be issued and filed no later than 28 days after the request. Any other authorized summons must be issued and filed no later than 28 days after the request is granted. Failure to issue and file an authorized additional ("alias" or "pluries") summons within the time allowed will result in the case / party being dismissed without prejudice and without further notice. If the Defendant has not been served prior to the third-additional ("pluries") summons return date, you **must** file a motion and state good cause as to why a further summons should be authorized.

Continuances: You may request a continuance on the PPJ (a request for a continued summons return date). The Rule and case law still say that continuances will be granted **only for good cause**. Any request for a continuance on a PPJ must state a reason. Requests based on the need to obtain documents or affidavits will not, generally, be favorably considered. Failure to state good cause on the PPJ may result in denial of the request and requirement for immediate written motion for dispositive relief. When a case is continued, the Plaintiff shall issue and serve a notice to the Defendant of the next summons return date. Such notice must be filed and state that failure to appear may result in default. Failure to serve and file a notice may prejudice the plaintiff; judgment may not be granted.

Attorney Fees: Generally, the Court will favorably consider attorney fee requests on default judgment without an affidavit for up to \$500.00 on "money" cases and up to 600.00 on HOA cases. The Court always reserves the authority, pursuant to Rule 1.5, to consider the reasonableness of any request for attorney fees.

Most other procedures will be by WebEx:

Most other procedures (other than summons return) will be conducted by WebEx. This includes, but is not limited to, any of the following: pre-trial conferences, status conferences, motions hearings, appearance

on citation for contempt, appearance on bond for contempt, and post-judgment procedures including garnishment procedures. For any trial to the court, the Court will liberally consider oral and written requests for any counsel, witness or party to appear via WebEx pursuant to C.R.C.P. Rule 343(h). The court may require video appearance for trials to the court.

If the hearing will be on WebEx, Plaintiffs shall include a notice substantially similar to the below when giving notice of any hearing or trial and/or serving any citation.

The most current Webex Information can always be found on the court's website: coloradojudicial.gov

The hearing will be a WebEx video-capable conference / virtual courtroom. For more information about Cisco WebEx go to www.webex.com. You may join via video or phone. (If you participate by phone only, you will not be able to present or see exhibits). Follow the instructions below.

- From the WebEx App, click “Join A Meeting”; the meeting room number is 2598 002 2612
- Enter the following address into your browser: <https://www.coloradojudicial.gov/m/62-C>
- If the audio on your device does not work, please use the alternate audio option of calling in (in addition to video). If you do not have a device that will support a video connection, you may still participate by audio/phone only.
- To join by phone, call 720-650-7664 and enter the code 2598 002 2612 followed by # and then # again (you do not have an attendee ID).

The above notice is for Division C / Magistrate Kundelius. If your hearing / trial is in another Division, see the Court's webpage for the Division's virtual courtroom. <https://www.coloradojudicial.gov/courts/trial-courts/weld-county> and click on “Virtual Courtroom Information”.

WebEx Conference Ground Rules:

WebEx hearings are court proceedings and all participants shall follow ordinary standards of decorum. Participants should ensure they are appropriately dressed, that their surroundings are quiet and well lit, that their electronic devices are functioning correctly, that they have an adequate internet connection, and that distractions in home environments are minimized. Attorneys shall forward the virtual courtroom information to clients and any witnesses. Unrepresented parties shall forward the virtual courtroom information to any witnesses. The Court may also forward information to any member of the public upon request. Any subpoenas served shall include a notice consistent with the WebEx connection language above. Call or join at the scheduled time. Do not interrupt any ongoing proceedings (just like an in-person courtroom). The Court often has more than one case on the docket at the same time (you may be on the line with other people not associated with your case). Wait to be acknowledged by the Court. The Court is located in the Mountain Time Zone and you are responsible to call/join at the correct time. Speak clearly into a microphone or phone. If on video, face the camera when speaking. Only one person may speak at a time. Microphones / phones should be muted unless you are speaking. Background noise (side conversations, paper shuffling, typing) must be kept to a minimum. If an interpreter is involved, pause periodically to allow interpretation and allow the interpreter to render the interpretation before speaking again. Make and keep a good record. The

hearing is open to the public and the public may attend via WebEx. In certain cases, the Court reserves the authority to “close” the courtroom including removing participants from the conference and/or employ a “lock meeting” option for any particular hearing. Anyone who is participating via video may be placed into a “lobby” or “breakout room” temporarily excluding them. Parties **may not** utilize the chat function to accomplish any communication. Audio and/or video recording of any portion of the hearing by any means is **strictly prohibited**. Violation of these prohibitions will result in the imposition of sanctions which may include contempt of court. The Court keeps the official record and recording of all proceedings.

Other Issues/Miscellaneous:

Interpreters: If any party has any information that a party requires a language interpreter, that party must inform the Court prior to the hearing (even if you are not the one who requires an interpreter). Pursuant to CJD 06-03 a court-appointed interpreter will be scheduled to assist at no charge. Interpreters may appear by WebEx. Interpreters appearing by WebEx may provide sequential (not simultaneous) interpretation. Accordingly, if an interpreter is involved, pause periodically to allow interpretation and allow the interpreter to render the interpretation before speaking again. Make and keep a good record.

Mediation: See, “Stipulations” above. Good-faith negotiations and settlement discussions are **strongly** encouraged. After an Answer is filed, absent good cause or statutory exception, the Court will likely order the parties to mediate and share the cost of mediation.

Contempt of Court: Contempt hearings on citation will be by WebEx at 1:30 or 2:30 p.m. on Fridays. File your motions, orders and proposed citations in accordance with Rule 407. Compliance with Rule 407 is required for all contempt proceedings. The Judicial Assistant will issue citations. Judgement creditors shall serve a WebEx connection notice consistent with the above with the citation. Unless a hearing on citation is continued by written motion and order, the Plaintiff’s counsel must appear by WebEx. Failure of the Plaintiff to appear will result in the motion being deemed withdrawn, any bond discharged and released, the citation discharged and the case closed with judgment in place. If the defendant was not served with the citation and you are requesting an alias citation you may do so orally on the record, or by written motion at least 7 days prior to the hearing. Generally, the Court will allow an “alias” motion within 365 days (allowing you time to locate the defendant). However, the Court reserves the authority to deny “alias” requests if it is apparent you cannot locate (or are not attempting to locate) the defendant. The Court reserves the authority to deny requests for warrants and/or set bond conditions and bail as it deems just and appropriate. Generally, only PR bonds will be authorized. A fugitive information sheet must be on file before a warrant is issued; the Court will not issue a warrant unless it has the necessary information.

Requests for judgment must be specific; interest and interest rate must be specific: If you are asking the Court to enter a judgment, you must state the breakdown of the judgment components (principal, costs, attorney fees, pre-judgment interest, post-judgment interest rate). You must also state clearly who is/are the judgment debtor(s). Requests for judgment with 2 or more defendants, without stating who, may result in judgment against a single defendant only. You **must** write a number on the PPJ for a post-judgment interest rate (even if it is 0%). Failure to do so will result in the post-judgment rate being 0%. If you are requesting a post-judgment amendment, alteration, or modification, you must be specific as to which components (principal, costs, fees, interest, interest rate, and who) are being adjusted, by how much, and why. Failure to do so may result in your request being denied.

Bankruptcy and placing a case “in suspense”: Although a common phrase in money cases, the Court does not have a procedure for, or status of, placing a case in “suspense”. The Court can either dismiss a case without prejudice, or administratively close a case (CLAD) and allow the case to be re-opened upon a showing of good cause. Some plaintiffs prefer one option over the other. But we don’t know which one you prefer when you write “bankruptcy” or “BR” on the PPJ. If you want something done with a case in light of a bankruptcy, please state clearly which of the two options you want. Failure to indicate which option will result in the case being dismissed without prejudice.

Original notes/contracts must be submitted (including electronically signed instruments):

Notwithstanding changes to C.R.C.P. Rule 121 §1-14(1)(f), the Court finds electronic (non-paper-based) contracts no-less at risk than a lost, stolen or destroyed document. *See, C.R.C.P Rule 121 §1-14 (1)(f), §4-3-309, and 13-25-113 C.R.S.* The Court recognizes that many financial transactions are made electronically or bear electronic signatures. The absence of an “original” contract (because the “original” is “electronic” or not paper-based) means that the “original” has been lost, destroyed, stolen or never existed. The Court requires the original note or a statement or undertaking by the Plaintiff providing adequate protection to the Defendant. Generally, the Court will accept an affidavit or verified statement by the Plaintiff or counsel that the Plaintiff will indemnify and hold the Defendant harmless against claims by another to enforce the instrument. *Id.* Original contracts/notes must be submitted in advance by mail with appropriate cover letter. Send a separate cover letter and contracts for each summons return date. The Court no longer accepts original contracts on the summons return date. Failure to submit original contracts, or an affidavit of lost instrument and an undertaking, will result in denial of any request for judgment.

Post-jurisdiction or post-judgment dismissal: If a defendant has answered, appeared, or signed a stipulation, the Court has jurisdiction over the defendant and a “notice of dismissal” is not appropriate under Rule 341(a)(1)(i). If a defendant has appeared, answered, or signed a stipulation, the appropriate method of dismissal is a motion pursuant to Rule 341(a)(2).

Examples of writings/markings on PPJ's:

The following are only examples and not intended to be an exclusive list, nor a definition of any fixed requirements; writings must simply be complete, address service and appearance, be clear, be legible, and be understandable. If you are not requesting a judgment you must strike out the judgment amounts. (Failure to do so results in confusion and could possibly result in a judgment you did not request).

- SVS E-FILED DEFAULT REQUESTED IN THE FOLLOWING AMOUNTS....
- SVS E-FILED D1 ONLY, REQUEST DEFAULT IN THE FOLLOWING AMOUNTS, REQUEST ALAIS ON D2
- SVS E-FILED ON D1&D2; DEFAULT JUDGMENT REQUESTED IN THE FOLLING AMOUNTS J&S.....ALSO REQUEST JUDGMENT SOLELY ON D2 FOR....
- SVS E-FILED; STIP SIGNED; REQUEST TO ADOPT STIP
- SVS E-FILED ON D1; REQUEST DISMISS W/O PREJ PENDING CLEARANCE OF PAYMENT
- SVS E-FILED ; D APPEARED; PTF REQ CONTINUANCE UNTIL ___ FOR FURTHER ACCOUNT INVESTIGATION
- NO SVS; REQ ALIAS

Other Examples are attached.

Conclusion:

Should you have any questions or concerns, please contact the Division C Judicial Assistant at 970-475-2470. The Judicial Assistant may require that future communications or correspondence be by e-mail. Notwithstanding the end of various emergency orders, the courts continue to operate with reduced staff due to the COVID-19 pandemic. The Judicial Assistant may not be working in Division C every day. Leave one message. The Judicial Assistant will get back to you.

These procedures may be supplemented, amended or terminated at any time in light of any changes to Chief Justice orders, Chief Judge orders, government recommendations or orders, or future developments in the COVID-19 situation. Thank you in advance for your cooperation.

ATTACHMENT A - INFORMATION SHEET

Parties to all Weld County Court Civil “money” cases and actions to enforce restrictive covenants,

TAKE NOTICE:

The Plaintiff in this case has initiated a lawsuit against the Defendant in this case. A summons return date and time has been set and will be docketed with the Court.

NEITHER PARTY IS REQUIRED TO APPEAR IN PERSON at the date and time listed on the Summons. However, action is required by the named Defendant if the Defendant wishes to contest the claims brought in the Complaint (please read instructions below).

The parties are **strongly** encouraged to speak with one another prior to the date listed on the Summons to see if any of the issues arising out of the case can be resolved. The contact information for the opposing party or his/her/its attorney may be found on the Complaint itself.

To the Defendant: if you dispute the claim, you must file a written Answer on or before the date listed on the Summons with which you may have been served. If you do not file an Answer or make a procedural request on or before the date listed in the Summons, the Court may enter a judgment against you for the relief requested in the Complaint. The Answer form attached to the Complaint must be filled out completely, including your name, case number, and a good email address and phone number, if you have them. Finally, you must also set forth a legal defense to the claim stated in the Complaint. Any Answer must be accompanied by the appropriate filing fee. The filing fees are available on the Court’s website, <https://www.coloradojudicial.gov/>; click on Self Help / Resources; select “Money Cases” ; click on “Cases for \$25,000 or Less” ; click on “What do I do if I’m the one being sued?”; click on “Respond to the Summons: then click on “filing fee””; or go to <https://www.coloradojudicial.gov/self-help/cases-25000-or-less>. If you want to apply to have the filing fee waived, then click on “File Without Payment page”.

You may use any of the following methods to file your Answer with the Court:

1. Send your Answer and filing fee via US Mail so it is received by the summons return date to the following address: P.O. Box 2038, Greeley Colorado 80632. PLEASE DO NOT SEND CASH. You may check the above website for filing fees associated with filings.
2. If an attorney is filing the Answer for you, your attorney may utilize the CCE computer system.
3. File your Answer at the Weld County Courthouse (Centennial Building) in Greeley located at 915 10th Street, Greeley Colorado 80631.

Upon your timely filing of an Answer, the court will issue appropriate scheduling orders. The Court no longer accepts e-mail filings.

FOR MORE INFORMATION YOU MAY VISIT THE COURT’S WEBPAGE AT:

<https://www.coloradojudicial.gov/courts/trial-courts/weld-county>