

## DENVER PROBATE COURT POLICY REGARDING NON-APPEARANCE HEARINGS

The Denver Probate Court hears non-appearance matters at 8:00 a.m., Monday through Friday; however, non-appearance matters are not heard on legal holidays. Please set your non-appearance hearings accordingly. The Colorado Probate Code Form CPC 2-N notice sent to interested persons and to the Court is sufficient to set the matter; movants need not contact the division clerks. The responsibility to notice both the Court and all of the interested parties of the non-appearance setting rests on the movant. Failure to properly set and notice a non-appearance hearing may result in no response from the Court.

### COLORADO RULES OF PROBATE PROCEDURE RULE 8.8 NON-APPEARANCE HEARINGS

- (a) Unless otherwise required by statute, these rules or order of Court, matters that are routine and which are expected to be unopposed may be set for a Non-Appearance Hearing. Such Non-Appearance Hearings shall be conducted as follows:
- (1) Attendance at the hearing is not required or expected.
  - (2) Any interested person wishing to object to the requested action set forth in the motion or petition attached to the notice must file a specific written objection with the court at or before the hearing, and shall furnish a copy of the objection to the person requesting the court order.
  - (3) If no objection is filed, the court may take action on the motion or petition without further notice or hearing.
  - (4) If any objection is filed, the objecting party shall, within 10 days after filing the objection, set the objection for an Appearance Hearing.
  - (5) Failure to timely set the objection for an Appearance Hearing as required by section (4) of this rule shall result in the dismissal of the objection with prejudice without further hearing.
- (b) The notice of a Non-Appearance Hearing shall include a clear statement of the rules governing such hearings. Form 2-N in the Appendix to these Probate Rules may be used and shall be sufficient. The authorization of this Form shall not prevent use of another Form consistent with this rule.

## ADVICE TO COUNSEL RE: NON-APPEARANCE HEARINGS

Because non-appearance hearings are set by you without Court staff involvement, the Notice of Non-Appearance Hearing is the only notice we receive of the scheduling of this event. The date, time and other relevant information is entered electronically on the Court's docket when you e-file your notice. On rare occasions, the system fails (just like it did in the paper and clerk world). This results in inconvenience to you and your client and erodes the public's confidence in the judicial system.

You should expect to receive some notice from the Court promptly after the setting of any non-appearance matter. In order to improve our efficiency and to provide you and your clients with prompt action on pending matters, we suggest the following:

- IF YOU HAVE NOT HEARD FROM THE COURT WITHIN ONE (1) WEEK FOLLOWING THE DATE ON WHICH A NON-APPEARANCE HEARING WAS SET, PLEASE CALL THE CLERK'S OFFICE OR ONE OF OUR DIVISION CLERKS.
- REMEMBER: ALWAYS E-FILE YOUR PROPOSED ORDER IN THE FORMAT OF C.R.C.P. RULE 10(e)(2) OR (f)(2) AS A SEPARATE DOCUMENT TO ENSURE PROMPT ACTION. THIS DOCUMENT NEEDS TO BE SUBMITTED TO THE COURT IN EITHER A MICROSOFT WORD OR WORD PERFECT DOCUMENT.
- NOTE: ALTHOUGH C.R.S. § 15-10-401 REFERS TO MAILING NOTICE "AT LEAST TEN DAYS BEFORE THE TIME SET FOR HEARING", THE DENVER PROBATE COURT APPLIES THE REQUIREMENTS OF C.R.C.P. RULE 6(a) WHEN CALCULATING TIME OF NOTICE. ADDITIONALLY, SEE C.R.C.P. RULE 121 § 1-26 FOR ELECTRONIC FILING GUIDELINES.

## CHANGES TO NOTICE REQUIREMENTS IN PROBATE PROCEEDINGS

Under the Colorado Probate Code (“CPC”) (e.g., C.R.S. §15-10-401) and the Colorado Rules of Probate Procedure (“C.R.P.P.”) (e.g., Rule 8.8) litigants must give 10 days notice for hearings in probate court. Because neither CPC nor C.R.P.P. addresses the actual counting of days, probate courts have always applied the counting rules in the Colorado Rules of Civil Procedure (“C.R.C.P.”) as directed in C.R.P.P. 1(a). E.g., historically C.R.C.P. 6(e) required a litigant to add 3 days when counting a notice requirement for notice through the U.S. mails. This rule was always applied to probate notices as well.

In the fall of 2005 the Civil Rules Committee adopted a change to C.R.C.P. 6(a). Under the revised rule, commencing on January 1, 2006, any notice period less than 11 days is to be counted by excluding weekends and holidays. Where the notice requirements under CPC and C.R.P.P. provide for 10-days’ notice, you must now exclude weekends and holidays pursuant to C.R.C.P. Rule 6(a) in computing time limits for notice and service.

Until further notice, the following policy will govern notice in the Denver Probate Court:

**Non-appearance hearings.** If you gave only 10 calendar days’ notice + 3 calendar days for mailing and did not exclude weekends and holidays as required by the revised C.R.C.P. 6(a), your petition for relief, regardless of when set to be heard by the Court, will not be considered until the first date on which the counting requirements of C.R.C.P. 6(a) have been complied with in order to provide the full time period for filing of objections.

**Appearance hearings:** If you fail to follow the revised C.R.C.P. 6(a), your appearance hearing will be vacated and must be reset and proper notice under CPC and revised C.R.C.P. 6(a) must be given.

Litigants and counsel are expected to apply the correct notice rules to both appearance and non-appearance hearings, and unless the revised Rule 6(a) and 6(e) are modified, even non-appearance hearings will be vacated for improper notice after December 31, 2006.

Another amendment has been made to C.R.C.P. 6(e) regarding counting notice time. Under revised C.R.C.P. 6(e) 3 additional days must be added to whatever time is required for notice whether notice is given by mail, by fax or electronically. Accordingly, until further notice, the prior policy of the Denver Probate Court allowing only 10 days notice when all interested parties have been served electronically, is no longer in effect.

C. Jean Stewart, Presiding Judge

June 2006



\_\_\_\_\_  
Type or Print name of Attorney for Person Giving Notice

\_\_\_\_\_  
Signature of Person Giving Notice or Attorney for Person Giving Notice (Type or print name, address and telephone number of Person giving Notice)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTE: This form cannot be used for notice of formal proceedings terminating an estate. Form CPC24-N or CPC24-NA must be used. Use of this form is limited to notice of a non-appearance hearing.

**Certificate of Service**

I certify that on (date) \_\_\_\_\_, a copy of this (title of pleading)\_\_\_\_\_ was served on each of the following at the indicated address by:

- hand delivery\*
- first class U.S. mail, postage pre-paid
- certified U.S. mail, postage pre-paid
- registered U.S. mail, postage pre-paid

For each person or entity served, indicate below the address that person's/entity's connection to the subject of the case.

Name	Address
	/ Relationship to case
	/ Relationship to case
	/ Relationship to case
	/ Relationship to case
	/ Relationship to case
	/ Relationship to case
	/ Relationship to case
	/ Relationship to case

\_\_\_\_\_  
Signature of Person Making Service (Type or print name, address and telephone number of Person Making Service below)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NOTE: This certificate of service cannot be used in cases where personal service is required or used. Use CPC7-P (*Personal Service Affidavit*) or CPC8-A (*Waiver of Service*) for each person required to be served personally.

\* Hand delivery must be accomplished by a disinterested person over age 18. See Colorado Rule of Civil Procedure 4.