

# SMALL CLAIMS RULES

## Rule 501. Scope and Purpose

**(a) How Known and Cited.** These rules for the small claims division for the county court are additions to C.R.C.P. and shall be known and cited as the Colorado Rules of Civil Procedure, or C.R.C.P. These rules are promulgated pursuant to section 13-6-413, C.R.S.

**(b) Procedure Governed.** These rules govern the procedure in all small claims courts. They shall be liberally construed to secure the just, speedy, informal, and inexpensive determination of every small claims action.

**(c) Purpose.** Each small claims court shall provide for the expeditious resolution of all cases before it. Where practicable, at least one weekend session and at least one evening session shall be scheduled or available to be scheduled for trial in each small claims court each month.

**(d) Record of Proceedings.** A record shall be made of all small claims court proceedings.

## Rule 502. Commencement of Action

**(a) How Commenced.** A small claims action is commenced by filing with the court a short statement of the plaintiff's claim setting forth the facts giving rise to the action in the manner and form provided in C.R.C.P. 506 and by paying the appropriate docket fee.

**(b) Jurisdiction.** The court shall have jurisdiction from the time the claim is filed.

**(c) Setting of the Trial Date.** At the time the small claims action is filed, the clerk shall set the trial on a date, time and place certain. The first scheduled trial date shall not be less than thirty days from the date of issuance of the notice of claim by the clerk.

## Rule 503. Place of Action

**(a) Where Brought, Generally.** All actions in the small claims court shall be brought in the county in which at the time of filing of the claim any of the defendants resides, or is regularly employed, or has an office for the transaction of business, or is a student at an institution of higher education. In an action to enforce restrictive covenants or arising from a security deposit dispute, the action may be brought in the county in which the subject real property is located.

**(b) Consent to venue.** If a defendant appears and defends a small claims action on the merits at trial, the defendant agrees to the place of trial.

## Rule 504. Service of the Notice, Claim and Summons to Appear for Trial

**(a) Time for Serving the Notice, Claim and Summons to Appear for Trial.** A copy of the notice, claim and summons to appear for trial shall be served at least fifteen days prior to the trial date.

**(b) Personal Service of the Notice, Claim and Summons to Appear for Trial.** Personal service of the notice, claim and summons to appear for trial shall be in accordance with C.R.C.P.

304(c), (d) and (e), with proof of service filed in accordance with C.R.C.P. 304(g), and refusal of service dealt with as described in C.R.C.P. 304(j).

**(c) Clerk's Service of the Notice, Claim and Summons to Appear for Trial by Certified Mail.**

(1) Within three days after the action is filed, the clerk shall send a signed and sealed notice, pursuant to Forms appended to these rules, to the defendant(s), by certified mail, return receipt requested to be signed by addressee only, at the address supplied or designated by the plaintiff. If the notice is delivered, the clerk shall note on the register of actions the mailing date and address, the date of delivery shown on the receipt, and the name of the person who signed the receipt. If the notice was refused, the clerk shall note the date of refusal.

(2) When Service is Complete. Notice shall be sufficient even if refused by the defendant and returned. Service shall be complete upon the date of delivery or refusal.

(3) Notification by Clerk and Fees and Expenses for Service. If the notice is returned for any reason other than refusal to accept it, or if the receipt is signed by any person other than the addressee, the clerk shall so notify the plaintiff. The clerk may then issue additional notices, at the request of the plaintiff. All fees and expenses for the certified mailing by the clerk shall be paid by the plaintiff and treated as costs of the action. Issuance of each notice shall be noted upon the register of actions or in the file.

**Rule 505. Pleadings and Motions**

**(a) Pleadings.** There shall be a claim and a response which may or may not include a counterclaim. No other pleadings shall be allowed.

**(b) No Motions.** There shall be no motions allowed except as contemplated by these rules.

**Rule 506. General Rules of Pleading**

**(a) Claims for Relief and Responses.** Except as provided in subsection (b), claims and responses, with or without a counterclaim, in the small claims court shall be filed in the manner and form prescribed by Forms appended to these rules, and shall be signed by the party under penalty of perjury. Claims and responses, with or without a counterclaim, for an action to enforce restrictive covenants on residential property shall be filed pursuant to Forms appended to these rules, and shall be signed by the party under penalty of perjury.

**(b) Availability of Forms; Assistance by Court Personnel.** The clerk of the court shall provide such assistance as may be requested by a plaintiff or defendant regarding the forms, operations, procedures, jurisdictional limits, and functions of the small claims court; however, court personnel shall not engage in the practice of law. The clerk shall also advise parties of the availability of subpoenas to obtain witnesses and documents. All necessary and appropriate forms shall be available in the office of the clerk.

**Rule 507. Responses and Defenses**

Each defendant shall file a written and signed response on or before the trial date. At the time of filing the response or appearing, whichever occurs first, each defendant shall pay the docket fee prescribed by law.

## Rule 508. Counterclaim

**(a) When Counterclaim to be Filed; Effect on Hearing Date.** If at the time of the trial date it appears that a defendant has a counterclaim within the jurisdiction of the small claims court, the court may either proceed to hear the entire case or may continue the hearing for a reasonable time, at which continued hearing the entire case shall be heard.

**(b) Counterclaim Within the Jurisdiction of the Small Claims Court.** If at the time the action is commenced a defendant possesses a claim against the plaintiff that: (1) is within the jurisdiction of the small claims court, exclusive of interest and costs; (2) arises out of the same transaction or event that is the subject matter of the plaintiff's claim; (3) does not require for its adjudication the joinder of third parties; and (4) is not the subject of another pending action, the defendant shall file such claim as a counterclaim in the answer or thereafter be barred from suit on the counterclaim. The defendant may also elect to file a counterclaim against the plaintiff that does not arise out of the transaction or occurrence.

**(c) Counterclaim Exceeding the Jurisdiction of the Small Claims Court.** If at the time the action is commenced the defendant possesses a counterclaim against the plaintiff that is not within the jurisdictional limit of the small claims court, exclusive of interest and costs, and the defendant wishes to assert the counterclaim, the defendant may:

(1) file the counterclaim in the pending small claims court action, but unless the defendant follows the procedure set forth in subsection (2) below, any judgment in the defendant's favor shall be limited to the jurisdictional limit of the small claims court, exclusive of interest and costs, and suit for the excess due the defendant over that sum will be barred thereafter; or

(2) file the counterclaim together with the answer in the pending small claims court action at least seven days before the first scheduled trial date and request in the answer that the action be removed to county court or district court, whichever has appropriate jurisdiction, as selected by the defendant, to be tried pursuant to the rules of civil procedure applicable to the court to which the case has been removed. Upon filing the answer and counterclaim, the defendant shall tender the filing fee for a complaint in the court to which the case has been removed. Upon compliance by the defendant with the requirements of this subsection (2), all small claims court proceedings shall be discontinued and the clerk of the small claims court shall deliver the case and fee to the appropriate court.

**(d) Defendant Notified if Counterclaim Exceeds Court's Jurisdiction.** All counterclaims asserted over the jurisdictional limit of the small claims court shall be subject to the provisions of Section 13-6-408, C.R.S., and all defendants shall be advised of those provisions on Forms appended to these rules.

## Rule 509. Parties, Representation and Intervention

**(a) Parties.** Any natural person, corporation, partnership, association, or other organization may commence or defend an action in the small claims court, but no assignee or other person not a real party to the transaction which is the subject of the action may commence an action therein, except as a court-appointed personal representative, conservator, or guardian of the real party in interest.

**(b) Representation.**

(1) **Partnerships and Associations.** Notwithstanding the provisions of article 5 of title 12, C.R.S., in the small claims court, an individual shall represent himself or herself; a partnership shall be represented by an active general partner or an authorized full-time employee; a union shall be represented by an authorized active union member or full-time employee; a for-profit corporation shall be represented by one of its full-time officers or full-time employees; an association shall be represented by one of its active members or by a full-time employee of the association; and any other kind of organization or entity shall be represented by one of its active members or full-time employees or, in the case of a nonprofit corporation, a duly elected nonattorney officer or an employee.

(2) **Attorney Representatives of Entities.** No attorney, except pro se or as an authorized full-time employee or active general partner of a partnership, an authorized active member or full-time employee of a union, a full-time officer or full-time employee of a for-profit corporation, or a full-time employee or active member of an association, which partnership, union, corporation, or association is a party, shall appear or take any part in the filing or prosecution or defense of any matter in the small claims court, except as permitted by rule 520(b).

(3) **Property Managers.** In actions arising from a landlord-tenant relationship, a property manager who has received security deposits, rents, or both, or who has signed a lease agreement on behalf of the owner of the real property that is the subject of the small claims action, shall be permitted to represent the owner of the property in such action.

(4) **Defendants in the Military.** In any action to which the federal "Soldiers' and Sailors' Civil Relief Act of 1940", 50 U.S.C. App. §§ 501 et seq., is applicable, the court may enter a default against a defendant who is in the military without entering judgment, and the court shall appoint an attorney to represent the interests of the defendant prior to the entry of judgment against the defendant.

(c) **Intervention.** There shall be no intervention, addition, or substitution of parties, unless otherwise ordered by the court in the interest of justice.

### **Rule 510. Discovery and Subpoenas**

(a) Depositions, discovery, disclosure statements, and pre-trial conferences shall not be permitted in small claims court proceedings.

(b) Subpoenas for the attendance of witnesses or the production of evidence at trial shall be issued and served pursuant to C.R.C.P. 345.

### **Rule 511. Magistrates - No Jury Trial**

(a) **No Jury Trial.** There is no right to a trial by jury in small claims court proceedings.

(b) **Magistrates.** Magistrates may hear and decide claims and shall have the same powers as a judge, except as provided by C.R.M. 5. A party objecting to a magistrate pursuant to Section 13-6-405 (4), C.R.S., shall file the objection seven days prior to the first scheduled trial date. Cases in which an objection to a magistrate has been timely filed shall be heard and decided by a judge pursuant to the rules and procedures of the small claims court.

## **Rule 512. Trial**

**(a) Date of Trial.** The trial shall be held on the date set forth in the notice, claim, and summons to appear for trial unless the court grants a continuance for good cause shown. Good cause for a continuance may include a defense made in good faith raising jurisdictional grounds or defects in service of process. A plaintiff may request one continuance if a defendant files a counterclaim.

**(b) Settlement Discussions.** On the trial date, but before trial, the court may require settlement discussions between the parties, but the court shall not participate in such discussions. If a settlement is achieved, the terms of such settlement shall be presented to the court for approval. If an approved settlement is not achieved, the trial shall be held pursuant to subsection (a) of this rule.

## **Rule 513. Evidence**

The hearing of all cases shall be informal, the object being to dispense justice promptly and economically between the parties. Rules of evidence shall not be strictly applied; however, all constitutional and statutory privileges shall be recognized. The parties may testify and offer evidence and testimony of witnesses at the hearing.

## **Rule 514. Judgment**

At the end of the trial, the court shall immediately state its findings and decision and direct the entry of judgment. Judgment shall be entered immediately pursuant to the provisions of C.R.C.P. 358. No written findings shall be required.

## **Rule 515. Default and Judgment**

**(a) Entry at the Time of Trial.** Upon the date and at the time set for trial, if the defendant has filed no response or fails to appear and if the plaintiff proves by appropriate return that proper service was made upon the defendant as provided herein at least fifteen days prior to the trial date, the court may enter judgment for the plaintiff for the amount due, as stated in the complaint, but in no event more than the amount requested in the plaintiff's claim, plus interest, costs, and other items provided by statute or agreement. However, before any judgment is entered pursuant to this rule, the court shall be satisfied that venue of the action is proper pursuant to C.R.C.P. 503 and may require the plaintiff to present sufficient evidence to support the plaintiff's claim.

**(b) Entry at the Time of Continued Trial.** Failure to appear at any other date set for trial shall be grounds for entering a default and judgment against the non-appearing party, whether on a plaintiff's claim or a defendant's counterclaim.

**(c) Default and Judgment - Soldiers' and Sailors' Civil Relief.** If a defendant is a member on active duty in the United States military services, and if the defendant fails to appear on the trial date without having requested a stay of proceedings, the court shall enter the defendant's default and it shall appoint an attorney to represent the defendant's interests in accordance with the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. §§ 501, et seq. Judgment shall enter three business days after the appointment of the attorney unless the attorney shall have filed a written objection to the entry of judgment, stating the legal and factual bases for such objection. The fees of the attorney shall be paid by the plaintiff and shall be assessed as costs in accordance with C.R.C.P. 516.

**(d) Setting Aside a Default.** For good cause shown, within a reasonable period and in any event not more than thirty days after the entry of judgment, the court may set aside an entry of default and the judgment entered thereon.

#### **Rule 516. Costs**

The prevailing party in the action in a small claims court is entitled to costs of the action and also the costs to enforce the judgment as provided by law.

#### **Rule 517. Stay of Proceedings to Enforce Judgment**

**(a) No Automatic Stay.** If upon rendition of a judgment payment is not made forthwith, an execution may issue immediately and proceedings may be taken for its enforcement unless the party against whom the judgment was entered requests a stay of execution and the court grants such request. Proceedings to enforce execution and other process after judgment and any fees shall be as provided by law or the Colorado Rules of Civil Procedure applicable in county court.

**(b) Stay on Motion for Relief From Judgment or Appeal.** In its discretion the court may stay the commencement of any proceeding to enforce a judgment pending the disposition of a motion for relief from a judgment or order made pursuant to C.R.C.P. 515(d), or pending the filing and determination of an appeal.

#### **Rule 518. Execution and Proceedings Subsequent to Judgment**

**(a) Judgment Debtor to File List of Assets and Property.** Immediately following the entry of judgment, the party against whom the judgment was entered, if present in court, shall complete and file the information of judgment debtor's assets and property, pursuant to forms appended to these rules, where appropriate and as ordered by the court, unless the judgment debtor tenders immediate payment of the judgment or the court orders otherwise.

**(b) Enforcement Procedures.** (1) Execution and the proceedings subsequent to judgment shall be the same as in a civil action in the county court. (2) In addition, at any time when execution may issue on a small claims court judgment, the judgment creditor shall be entitled to an order requiring the judgment debtor to appear before the court at a specified time and place to answer concerning assets and property.

**(c) Enforcement of Nonmonetary Judgments.** The judgment may compel delivery, compliance, or performance or the value thereof, and damages or other remedies for the failure to comply with the judgment, including contempt of court.

#### **Rule 519. Post Trial Relief and Appeals**

No motion for new trial shall be filed in the small claims court, whether or not an appeal is taken. Appeal procedures shall be as provided by Section 13-6-410, C.R.S., and C.R.C.P. 411.

#### **Rule 520. Attorneys**

**(a) No Attorneys.** Except as authorized by Section 13-6-407, C.R.S., rule 509(b)(2) and this rule, no attorney shall appear on behalf of any party in the small claims court.

**(b) When Attorneys are Permitted in Small Claims Court.** On the written notice of the defendant that the defendant will be represented by an attorney, pursuant to forms appended to

these rules filed not less than seven days before the first scheduled trial date, the defendant may be represented by an attorney. The Notice of Representation shall advise the plaintiff of the plaintiff's right to counsel. Thereupon, plaintiff may also be represented by an attorney. If the notice is not filed at least seven days before the date set for the first scheduled trial date in the small claims court, no attorney shall appear for either party.

**(c) Cases Heard by County Court Judge.** Cases in which attorneys will appear may be heard by a county court judge pursuant to a standing order of the chief judge of any judicial district or of the presiding judge of the Denver county court.

**(d) Sanctions.** If the defendant appears at the trial without an attorney or fails to appear at the trial, and the court finds that the defendant's notice of representation by an attorney was made in bad faith, the court may award the plaintiff any costs, including reasonable attorney fees, occasioned thereby.

**(e) Small Claims Court Rules to Apply.** Any small claims court action in which an attorney appears shall be processed and tried pursuant to the statutes and court rules governing small claims court actions.

#### **Rule 521. Special Procedures to Enforce Restrictive Covenants on Residential Property**

**(a)** The small claims division shall dismiss without prejudice any claim to enforce a restrictive covenant if it affects the title to the real property.

**(b)** The owners of the residential property, subject of the action, shall be joined as codefendants to the action.

**(c)** Upon the filing of a claim under oath (see Forms appended to these rules) alleging that the defendant has violated any restrictive covenant regarding residential property, where the cost to comply with such restrictive covenant is not more than \$7,500.00, the clerk shall issue the notice and summons to appear. The notice shall be served pursuant to C.R.C.P. 504.

**(d)** The general procedures applicable to the small claims court, C.R.C.P. 501 through 520, shall apply to actions to enforce a restrictive covenant on residential property, except as they are modified by this Rule.

**(e)** On the date set for appearance and trial pursuant to C.R.C.P. 512, the court shall proceed to determine the issues and render judgment and enter appropriate orders according to the law and the facts operative in the case.

**(f)** If the defendant fails to appear at the trial, the court may proceed pursuant to C.R.C.P. 514 and the provisions of this Rule, except that the court shall require the plaintiff to present sufficient evidence to support the plaintiff's claim.

**(g)** An order enforcing a restrictive covenant on residential property shall be reduced to writing by the magistrate and shall be personally served upon every party subject to the order (see Forms appended to these rules). If any party subject to the order is present in the courtroom at the time the order is made, the magistrate or judge shall at that time serve a copy of the order on such party

and shall note such service on the order or file. Any party subject to the order who is not present shall be served as provided by C.R.C.P. 345, except that no fees or mileage need be tendered.

**(h)** If the plaintiff requests a temporary order directing the defendant to immediately comply with the restrictive covenant before the defendant has had an opportunity to be heard, the plaintiff shall attach to plaintiff's complaint a certified copy of the current deed showing ownership of the residential property, and a certified copy of the restrictive covenant. The request for temporary order shall be heard by the court, ex parte, at the earliest time the court is available. If the court is satisfied from the claim filed and the testimony of the plaintiff, that there is a substantial likelihood that the plaintiff will prevail at a trial on the merits of the claim and that irreparable damage will accrue to the plaintiff unless a temporary order is issued without notice, the court may issue a temporary order and citation to the defendant to appear and show cause, at a date and time certain, why the temporary order should not be made permanent, see Forms appended to these rules.

(1) A copy of the claim and notice with the attachments and with a copy of the temporary order and citation shall be served on the defendant as provided by C.R.C.P. 504, and the citation shall inform the defendant that if the defendant fails to appear in court in accordance with the terms of the citation, the restraining order may be made permanent.

(2) On the trial date or any date to which the matter has been continued, the court shall proceed as provided in subsections (e) and (g) of this Rule.

**(i)** A temporary order shall not be an appealable order. A permanent order shall be an appealable order.

**(j)** When it appears to the court by motion supported by affidavit that a violation of the temporary or permanent order issued pursuant to this Rule has occurred, the court shall immediately order the clerk to issue a citation to the defendant so charged to appear and show cause before a county judge at a time designated why the defendant should not be held in contempt for violation of the court's order. The citation shall direct the defendant to appear in the county court. Such contempt proceedings shall be governed by C.R.C.P. 407. The citation and a copy of the motion and affidavit shall be served upon the defendant in the manner required by C.R.C.P. 345. If such defendant fails to appear at the time designated in the citation, a warrant for the defendant's arrest may issue to the sheriff. The warrant shall fix the time for the production of the defendant in court. A bond set in a reasonable amount not to exceed \$7,500.00 shall be stated on the face of the warrant.