
JEFFERSON COUNTY MEDIATION SERVICES
VOLUNTEER COLLOQUIUM MINUTES
March 15, 2011

Volunteers Present: Neila Achter, Patty Bortz, Peter Bowes, Jeanne Busacca, Laura Elliott, Diane Evans, Anita Gilbertson, Dick Gearke, Jim Gurley, Billy Harris, Katie Hester, Rita Hyland, Chari-Lynn Koppel, Georgine Kryda, Linda Lautiger, Stevie Lee, David Martinez, Sherrie May, Nan McDaniel, Robyn McDonald, Elaine Rains, Brooke Retherford, Cindy Savage, Rodella Wooten, Mary Zinn

Guests: Matt Bergles

Staff Present: Mark Loye, Julie Carter, Helena Jo Goldstein

I. Welcome:

Mark Loye welcomed everyone to the meeting and asked those present to introduce themselves.

II. Program

- A. Case Status Report: This report shows all open cases. If you have an open case, please remember to keep the office informed about case activity.
- B. Cases Available: Emails are sent regularly to inform volunteers about available cases. Please remember to respond only if you are volunteering for a case. (Please change the subject line if you are using the email to correspond about something else!)
- C. Statistics: We are on course to handle about as many cases in 2011 as we did last year. The number of complex cases has risen, requiring more staff and volunteer time to process the cases.

III. Presentation: Mediating in County Court Cases

Speaker: Judge Tammy Greene

Judge Greene began by giving some history of her time in Jefferson County courts, during which there has been a lot of turnover, varied ways of distributing cases among judges, and improved procedures. She added that there is no way a judge could handle 2,800 open cases without the assistance of mediators, and that Judge Randall really appreciates our services.

As a member of the Access to Justice Committee, she learned that we are the *only* county with a mediation program, and that the other counties out there are trying to figure out things that we have had down for years.

Judge Greene noted that Division H handles mainly landlord tenant cases and collections cases, and she gave us some general instructions:

1. The first item on the stipulation should be the amount of money one party is to pay to the other. If interest is included, the total can't go over \$15,000.
2. If a tenant wants to delay eviction, he should file an answer to the complaint, which he usually does not do until the day of the eviction hearing. The most common counterclaim is for "breach of warranty of habitability." Then there is a hearing date for the counterclaim, and a party can request a continuance to get legal advice, etc.
3. When the Sheriff does a civil assist for an eviction, the deputy is there only to keep the peace. The landlord must hire someone to move all the tenant's possessions to the curb.

Judge Greene then proceeded to her outline, as follows:

MEDIATING COUNTY COURT CIVIL CASES

Judge Tammy Greene

March, 2011

I. Caption

A. Parties

1. Named Parties vs. People Present

- a. What if a party is a corporate entity?
By Colorado statute 13-1-107, a corporation must have an attorney to represent it, or the corporation can represent itself, but to represent itself, it must first get a permit from the court.
- b. Can a spouse represent his/her spouse?
No.
- c. What happens if one of multiple defendants doesn't appear?
If the plaintiff wishes, we can write one stipulation for the party present, for half the amount owed, and ask for default judgment for the full amount against the absent party, in case the present party defaults.
- d. Can agreeing parties enter into a stipulation if it doesn't encompass all parties?
We can write separate stipulations for each party, if the agreement is not the same for all of them.
- e. What is "joint and several liability"?
It means that if the plaintiff cannot collect from both parties, he can go after one of them for the full amount.
- f. What about "other occupants" of a rental property?
There could be 22 occupants, but if you evict the parties listed on the lease or rental agreement, that is sufficient to remove all occupants.

II. Money Case

A. What is the total amount to be paid?

1. Always must be \$15,000 or less, excluding attorney's fees and costs, in county court.
2. Incentive: There can be an agreement by Plaintiff to accept less if payments are made according to a payment plan. (This works best if no judgment enters as part of the agreement.) Interest allowed only up to a total of \$15,000.

B. Do parties agree to a payment plan? If not, judgment should enter now.

C. Does judgment enter now or upon default in the payment plan?

1. Judgment enters now (Stipulation to Judgment):

- a. You can stop there and let Plaintiff collect according to rules of procedure, i.e., garnishment, levy, etc. (no payment plan); or
- b. Parties can agree not to execute upon judgment so long as payments are made according to plan; or
- c. Parties can agree to a stay on collection proceedings.

NOTE: If payment made in full, Plaintiff should file a satisfaction of judgment.

2. Judgment enters upon default in payment plan (Stipulation to Non-judgment):
Parties can agree that, if Defendant defaults on the payment plan,
Plaintiff may apply to the court for entry of judgment in the amount of
the unpaid balance.

NOTE: If payment made in full, Plaintiff should file a motion to dismiss.

Be sure you write down:

- D. When are payments due?
- E. How are payments to be made? (Cash, check, money order?)
- F. Payable to whom?
- G. Where are payments to be sent?
- H. Right to Cure: If a payment is missed, will Plaintiff give Defendant notice of default and opportunity to cure?
 1. If judgment enters now, parties can agree that:
 - a. Upon default in payment, Plaintiff can execute on its judgment without prior notice or opportunity to cure, or
 - b. Plaintiff will give Defendant notice of default and X days after notice to cure the default; if not cured, Plaintiff can proceed with collection without court order.
 2. If judgment enters upon default, parties can agree that, upon default in payment:
 - a. Plaintiff can obtain a judgment (without opportunity to cure); or
 - b. Plaintiff will give Defendant notice of default and X days after notice to cure the default. If not cured, Plaintiff can obtain a judgment.

NOTE: Before judgment can enter, Plaintiff will need to file a “motion for judgment on default on stipulation” and send Defendant a copy of that motion.
 3. If judgment enters now, but the parties agree to a stay on the judgment, parties can further agree that, upon default in payment:
 - a. Plaintiff can obtain relief from the stay (without opportunity to cure); or
 - b. Plaintiff will give Defendant notice of default and X days after notice to cure the default; if not cured, Plaintiff can obtain relief from the stay.

NOTE: Before the stay on collection is lifted, Plaintiff will need to file a “motion for relief from stay” and send Defendant a copy of that motion.

III. FED/Eviction Case

- A. Does judgment for possession enter?
 1. No. Parties can agree that Defendant will pay \$X by Y date(s) and remain in the property. If Defendant does not pay according to the plan, Plaintiff may file a motion for judgment for possession and get immediate possession.
 - a. DON'T leave the agreement open-ended. In other words, don't write an agreement that says, “If Defendant doesn't pay all future rents, Plaintiff may obtain an immediate judgment for possession.” If Defendant does not pay future rents, Plaintiff will need to file a new eviction action.
 2. Yes. Parties can agree: “Judgment for possession of the subject property is awarded to the Plaintiff, and a writ for restitution will issue in 48 hours in accordance with statute. However, the Defendant may remain on the property until X date.”
 - a. DON'T write that parties agree to a “stay on the writ” as this requires the Plaintiff to file a motion for relief from the stay before he can proceed with the eviction.
 - b. DON'T write an agreement that provides that judgment for possession enters, but that the Plaintiff will not execute on the writ so long as

Defendant complies with the lease, i.e., pays all future rents, doesn't have future law violations, etc.

- B. What about money issues?
If the parties can agree to what is owed at the time of the mediation, they can come to an agreement as provided above re: money cases. If not, just get an agreement re: possession and the Court will set a trial re: the money issues.
- C. What about the security deposit?
If the Defendant is in possession of the property on the date of the mediation, don't "add in" the security deposit. The Plaintiff will need to deal with the security deposit according to statute. In other words, the Plaintiff will need to get into the property, determine if there are damages to the property and apply any security deposit to the damages. If the security deposit exceeds the amount of the damages, the Plaintiff must apply the balance to the money judgment. If the security deposit is insufficient to cover the amount of the damages, the Plaintiff may file a motion to amend the money judgment and the Court will set that motion for hearing.
- D. Are there other, non-monetary issues to deal with?
The parties will often want to stipulate re: what fixtures are staying, how the fish pond will be left, etc. Feel free to include these agreements, but they should be specific and compliance easily determined.

IV. What happens if there is no agreement?

- A. If the mediation fails on the return date, the Answer must be filed by 4:00 that day.
- B. Money case – trial by judge or jury.
- C. FED – Case can be bifurcated.
 - 1. Possession hearing
 - a. Preferably within 5 business days of the return date – no jury trial
 - 2. Trial re: money issues (rent, late fees, damages to property, application of security deposit, etc.)
 - a. Trial by judge or jury - set in normal course

V. Sample Agreements

- A. FED
 - 1. Judgment for possession enters. A writ of restitution may issue in 48 hours. However, the Defendant may remain on the property until May 1, 2011.
 - 2. The Defendant shall commit no waste on the property.
 - 3. The Defendant can take the ceiling fans, but not the kitchen sink.
 - 4. If there is an agreement re: the money issues, deal with money issues as provided in "Stipulation to Judgment" below.
 - 5. If Defendant is still in possession of the premises and he posted a security deposit, write: "The security deposit will be dealt with according to statute." (Then explain to the parties what that means.)
- B. Money Cases
Stipulation to Judgment
 - 1. Judgment enters in the amount of \$1,000. Plaintiff will not execute on the judgment so long as payments are made as provided below:

2. Defendant will pay Plaintiff \$50 dollars on or before the 1st day of each month, beginning April 1, 2011.
3. Payments shall be made by check, payable to Bill Smith, and mailed to 111 So. 11th St., Golden, CO 80401.
4. If Plaintiff does not receive a payment by the 4th day of each month as provided above, Plaintiff may collect the unpaid balance by all legal means, without prior notice to Defendant. OR
If Plaintiff does not receive a payment by the 4th day of a month as provided above, Plaintiff will give Defendant written notice of the default and 5 days to cure the default. Plaintiff will not give notice and opportunity to cure more than 2 times. If the default is not cured, Plaintiff may collect the unpaid balance by all legal means.
5. If the money judgment is paid in full, Plaintiff will file a satisfaction of judgment with the Court.

Stipulation to Non-judgment

1. Parties agree the Plaintiff owes the Defendant \$1,000. Defendant will make payments on that amount as provided below:
2. Defendant will pay Plaintiff \$50 dollars on or before the 1st day of each month, beginning April 1, 2011.
3. Payments shall be made by check, payable to Bill Smith, and mailed to 111 So. 11th St., Golden, CO 80401.
4. If Plaintiff does not receive a payment by the 4th day of each month as provided above, Plaintiff may apply to the Court for entry of judgment in the amount of the unpaid balance without prior notice to Defendant. OR
If Plaintiff does not receive a payment by the 4th day of a month as provided above, Plaintiff will give Defendant written notice of the default and 5 days to cure the default. Plaintiff will not give notice and opportunity to cure more than 2 times. If the default is not cured, Plaintiff may apply to the Court for entry of judgment in the amount of the unpaid balance.
5. If the \$1000 is paid in full, Plaintiff will file a motion to dismiss this case with the Court.

Mark Loye thanked Judge Greene for her presentation and thanked everyone who attended for participating in the discussion.

IV. Next Colloquium: Tuesday, May 17, 2011, 6:00 – 8:00 p.m. in the Open Space Hearing Room (Ponderosa Room). The topic will be Mediating Inter-Culturally, presented by Ed Ladon, who works with Mediators Beyond Borders. Suggestions for Colloquium topics are always welcome!

The meeting was adjourned.

Submitted by: *Julie Carter*
Julie Carter, Deputy Director

Approved by: *Mark Loye*
Mark Loye, Director