

PRACTICE STANDARDS

(Civil cases)

**JUDGE PHILIP A. BRIMMER
UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

**Courtroom A601
Alfred A. Arraj United States Courthouse**

**Chambers A641, Sixth Floor
Alfred A. Arraj United States Courthouse
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Effective: November 2008

I. GENERAL PROCEDURES

A. Applicable Rules

Those appearing in the District Court must know and follow:

- a. The Federal Rules of Civil Procedure;
- b. The Federal Rules of Evidence;
- c. The Local Rules of Practice of the United States District Court for the District of Colorado; and
- d. The Electronic Case Filing Procedures (Civil Version 3.0 or the most current version).

B. Communications with Chambers

1. My judicial assistant is **Susan Shapiro**, who can be reached at **303-335-2794**.
2. For information about the status of a motion or document, please contact the assigned civil docketing clerk, **Jamie Phelps**, at **303-335-2466**.
3. For information about courtroom technology, trial preparation, or submission of trial exhibits, please contact my courtroom deputy clerk, **Kathy Preuitt-Parks**, at **303-335-2093**.
4. My realtime reporter is **Janet Coppock**, at **303-335-2106**.
5. Please do not contact the law clerks about procedural or scheduling matters.

C. Proposed orders

You may be directed to transmit proposed orders by electronic mail to brimmer_chambers@cod.uscourts.gov. The proposed order or document should be submitted as an attachment in Word Perfect format (Word Perfect 12 or a later version) or Word. The e-mail message should identify the case number and the document attached. Do not send documents directly to chambers by facsimile or electronic mail unless asked to do so.

D. Motions to Continue

Motions to continue (including motions to vacate or reset) hearings and trials will be determined pursuant to D.C.COLO.LCivR 6.1 and 7.1 and *United States v. West*, 828 F.2d 1468, 1469-70 (10th Cir. 1987). Oral or written motions to continue should not be made at the time of a hearing or trial. Stipulations for continuance are not effective unless and until approved by the court. When a motion to continue is granted, all parties will be notified as soon as practicable.

E. Motions for Extensions of Time

1. Motions for extension of time require a showing of good cause, which must be established with particularity. The following reasons do not constitute good cause: agreement of counsel, inconvenience to counsel or to the parties; the press of business; conflicts in scheduling; or practice as a sole practitioner.

2. Any motion for extension of time shall be filed no later than **three** business days prior to the date the motion, response, reply, or other paper is due.

3. This practice standard is subject to D.C.COLO.LCivR 6.1A, which governs extension by stipulation.

F. Settlement

1. If a settlement of a contested motion or a matter to be tried to the court is reached before the hearing or trial, please advise my judicial assistant, **Susan Shapiro**, at **303-335-2794**. A motion hearing or bench trial will be vacated only if pleadings sufficient to resolve the matter (e.g., motion, stipulation, and proposed order) are filed **no later than 5:00 p.m. two business days before the scheduled hearing or trial**. If counsel and any pro se party are unable to file the appropriate documents by this deadline, counsel and any pro se party shall appear as scheduled to recite the settlement terms on the record.

2. If a matter set for jury trial is settled, documents evidencing the settlement must be filed at least **fourteen days before trial**. If counsel and any pro se party are unable to file the appropriate documents by this deadline, counsel and any pro se party shall appear as scheduled to recite the settlement terms on the record.

3. Settlement discussions are encouraged; however, hearings, trials, and pretrial deadlines will not be continued or vacated to facilitate settlement negotiations or alternative dispute resolution.

4. Partial Case Settlement/Dismissal – If fewer than all claims, counterclaims, cross-claims, defenses, or parties are resolved or dismissed by settlement, then the court shall be notified promptly, and the notice of settlement and any paper requesting approval of the partial settlement or dismissal shall specify the claims, counterclaims, cross-claims, defenses, or parties affected by the partial settlement and which will remain.

II. COURTROOM PROCEDURES

A. Courtroom Protocol

1. Please observe traditional courtroom decorum: rise to address the court, address the court as “Your Honor,” and request permission to approach the bench. It will not

normally be necessary for counsel to approach a witness on the stand. The courtroom deputy, upon request of counsel, will hand a witness an exhibit.

2. If you have a question about courtroom protocol, please contact my courtroom deputy clerk, **Kathy Preuitt-Parks**, at **303-335-2093**.

B. Recording of Proceedings

1. The official record of all trials and proceedings will be taken either by a realtime reporter or by electronic sound recording (audiotape). Prior to the beginning of any proceeding, please provide the court reporter with your business card.

2. The realtime reporter assigned to the court is **Janet Coppock**, at **303-335-2106**. Transcripts of proceedings may be ordered from Ms. Coppock. Requests for realtime, daily, or hourly copy must be made at least **thirty days** before the trial or hearing. Further details can be obtained from Ms. Coppock.

C. Exhibits

1. Each party must pre-mark all exhibits that will be used or identified for the record in a hearing or trial. Each party must provide a copy of each exhibit to opposing counsel or any pro se party before a hearing or trial. Exhibits not timely pre-marked or exchanged before a hearing or trial may not be admitted. Any stipulation of fact should be formatted as a pleading and marked as an exhibit.

2. Exhibit labels can be obtained from the clerk's office before trial. Plaintiff's exhibits should be marked with yellow labels, using numbers. Defendant's exhibits should be marked with blue labels, using alphabetical letters for the first twenty-six exhibits. If there are more than twenty-six exhibits, mark them as A-1 through A-99, then B-1 through B-99, etc. Do not use double or triple letters. The civil action number should also be placed on each of the exhibit stickers.

3. Exhibits must be bound, e.g., in three-ring notebooks or folders, and the notebook or folder labeled with the following information: (i) caption, (ii) nature of proceeding, (iii) scheduled date and time, and (iv) "original" or "copy." If exhibits are not bound and labeled properly, the hearing or trial may be delayed or continued until they are. If a party has fewer than five exhibits, such exhibits need not be bound.

4. Number of Sets of Exhibits – For hearings and trials, each party should bring separate sets of bound exhibits for (a) the court, (b) the courtroom deputy clerk, (c) the court reporter, (d) opposing counsel, and (e) the witness stand.

5. Each party shall file its Witness List and Exhibit List via CM/ECF. The form of such lists are found at <http://www.cod.uscourts.gov/Judges/Judges.aspx>. Each party should also bring five sets of each list to the hearing or trial.

D. Depositions

1. Together with Fed.R.Civ.P. 32, this practice standard governs the use of depositions in court proceedings.

2. Evidence to be presented by deposition shall be designated with specificity, i.e., by page(s) and line(s).

3. Initial designations of deposition testimony shall be made not later than 45 days before trial, and counter designations shall be made not later than 30 days before trial.

4. Objections to any properly designated portion of a deposition shall be filed and determined in the time and manner prescribed by D.C.COLO.LCivR 7.1C and these Practice Standards. Objections shall be presented in a table that has four columns (see sample table below): 1) item number; 2) testimony (identified with specificity, i.e., by page(s) and line(s) of an accompanying transcript); 3) objection; and 4) ruling. Objections may be resolved before trial to facilitate appropriate redaction.

Item #	Testimony	Objection	Ruling
1.			

5. For jury trials, parties must provide a person to read the deposition answers.

6. For bench trials, depositions will not be read in open court. Instead, the court will read them in chambers in any requested sequence. At the beginning of the trial, the offering party shall provide the courtroom deputy clerk with **two copies** of the relevant deposition transcript marked as an exhibit with plaintiff's designated portions highlighted in yellow, the defendant's in blue, and any other party's in green.

E. Videotaped Depositions

1. Together with Fed.R.Civ.P. 32, this practice standard governs the use of videotaped depositions in court proceedings:

2. Evidence to be presented by videotaped deposition shall be designated with as much specificity as practicable.

3. Initial designations shall be made not later than 45 days before trial, and counter designations shall be made not later than 30 days before trial.

4. Objections to any properly designated portion of a videotaped deposition shall be filed and determined in the time and manner prescribed by D.C.COLO.LCivR 7.1C and these Practice Standards. Objections shall be presented in a table that has four columns (see sample table below): 1) item number; 2) testimony (identified with specificity, i.e., by page(s) and line(s) of an accompanying transcript); 3) objection; and 4) ruling. Objections may be resolved before trial to facilitate appropriate redaction.

Item #	Testimony	Objection	Ruling
1.			

F. Special Equipment (Audio/Video)

The court has audio, video, audio-visual, evidentiary presentation, and other special equipment that may be used by the parties. A listing of available equipment can be found on the District Court’s website at <http://www.co.uscourts.gov/Judges/Judges.aspx> under “Courtroom Technology Manual for Attorneys.” Notify the courtroom deputy clerk, **Kathy Preuitt-Parks at 303-335-2093**, no later than **fourteen days** before a hearing or trial of the date and time you need such equipment or need your own equipment to be brought through security for use in the courtroom.

III. MOTIONS PRACTICE

A. Page Limitations

Except motions for summary judgment, all other motions, objections (including objections to the recommendations or orders of United States Magistrate Judges), responses, and briefs shall not exceed **fifteen pages**. Motions and briefs shall be combined and will be considered one paper for purposes of computing page limitations. Replies shall not exceed **ten pages**. These page limitations include the cover page, jurisdictional statement, statement of facts, procedural history, argument, authority, closing, signature block, and all other matters, except the certificate of service.

B. Untimely Or Noncomplying Motions, Objections, Responses, or Replies

1. Motions that are untimely, noncomplying, or filed without a certification pursuant to D.C.COLO.LCivR 7.1A may be denied without prejudice or stricken *sua sponte*.
2. Untimely or noncomplying objections, responses, or replies may be denied without prejudice, stricken, or ignored.

C. Unopposed Motions

An unopposed motion shall be designated as required by D.C.COLO.LCivR 7.1B. A proposed order shall be submitted with **all** unopposed motions. (**Please do not include the word “proposed” in the title of the tendered order.**) Do not submit proposed judgments, since judgments are prepared by the clerk of the court.

D. Responses and Replies

A response shall identify by title and court CM/ECF docket number the motion or petition to which it responds. Similarly, a reply shall identify by title and court CM/ECF docket number the response to which it replies.

E. Motions *In Limine*

Motions *in limine* are discouraged when the motion is evidence driven and cannot be resolved until evidence is presented at trial. Instead, the issue can be flagged in a trial brief.

F. Dispositive Motions

1. Procedures for motions seeking relief pursuant to Fed.R.Civ.P. 12 or 56 are governed by D.C.COLO.LCivR. 7.1C and 56.1, respectively. Deadlines will be applied strictly.

2. FED. R. CIV. P. 12(b) – Motions to Dismiss

a. Rule 12(b) motions are discouraged if the defect is correctable by the filing of an amended pleading. Counsel should confer prior to the filing of the motion if the deficiency is correctable by amendment (e.g., failure to plead fraud with specificity) and should exercise their best efforts to stipulate to appropriate amendments. For Rule 12(b) motions, the following format should be used:

i. For each claim for relief that the movant seeks to have dismissed, clearly enumerate each element *that movant contends must be alleged, but was not*.

ii. The respondent should utilize the same format for each challenged claim. If the respondent disputes a particular element, the element should be identified as “**DISPUTED**” and briefed. If the respondent contends that a sufficient factual allegation has been made in the complaint, the respondent should identify the page and paragraph containing the required factual allegation.

iii. If matters outside the pleadings are submitted in support of or opposition to a Rule 12(b) motion, an order to show cause why the motion

should not be treated as a Rule 56 motion may be issued. In such event, the case will proceed to scheduling conference without prior determination of the motion.

b. If a party elects to file more than one Rule 12(b) motion, then opening briefs and response briefs shall not exceed **fifteen pages** total for all such motions (not each such motion) filed by that party.

3. **FED. R. CIV. P. 56 – Motions for Summary Judgment**

a. Motions and response briefs shall not exceed **twenty pages**. Reply briefs shall not exceed **ten pages**. These page limitations shall include the motion for summary judgment, cover page, jurisdictional statement, statement of facts, procedural history, argument, closing, signature block, and all other matters, except the certificate of service. If a party elects to file more than one Rule 56 motion, then the motions and response briefs shall not exceed **twenty pages** total for all such motions (not each such motion) filed by that party.

b. For all Rule 56 motions, the following format shall be used:

Because of the voluminous factual materials which are frequently submitted with motions for summary judgment, all such motions must comply with the following requirements:

i. In a section of the brief required by rule 56.1A of the United States District Court for the District of Colorado Local Rules of Practice (Civil) styled “Statement of Undisputed Material Facts,” the movant shall set forth in simple, declarative sentences, *separately numbered and paragraphed*, each material fact which the movant believes is not in dispute and which supports movant's claim that movant is entitled to judgment as a matter of law.

ii. Each separately numbered and paragraphed fact *must* be accompanied by a specific reference to material in the record which establishes that fact. General references to pleadings, depositions, or documents are insufficient if the document is over one page in length. A “specific reference” means:

– In the case of materials filed with the court, the title of the document, the date on which it was filed or served, and a specific paragraph or page and line number; or, if the document is attached to the motion, the paragraph or page and line number;

– In the case of interrogatories or requests for admission (the pertinent parts of which must be filed with the motion), the number of the interrogatory or request;

– In the case of depositions or other documents bearing line numbers, the specific page and line(s) establishing the fact;

– In the case of affidavits submitted in support of the motion, the specific paragraph number establishing the fact;

– In the case of other materials not numbered by paragraph, line, or page, a reference which will enable the court to ascertain the fact without reviewing the entire document; the effort at specificity may be made by highlighting, manual underscoring, or pagination supplied by the movant.

iii. Only if the nature of the material fact does not permit a specific reference (*e.g.*, “The contract contains no provision for termination.”), is a general reference sufficient.

iv. Any party opposing the motion for summary judgment shall, in a section of the brief required by rule 56.1A of the United States District Court for the District of Colorado Local Rules of Practice (Civil) styled “Response to Statement of Undisputed Material Facts,” admit or deny the asserted material facts set forth by the movant. The admission or denial shall be made in separate paragraphs numbered to correspond to movant's paragraph numbering. Any denial shall be accompanied by a *brief* factual explanation of the reason(s) for the denial and a *specific reference* to material in the record supporting the denial.

v. If the party opposing the motion believes that there exist additional *disputed* questions of fact which it has not adequately addressed in the submissions it has made pursuant to subparagraph (iv) above (for example, disputed facts concerning an affirmative defense), the party shall, in a separate section of the party's brief styled “Statement of Additional Disputed Facts,” set forth in simple, declarative sentences, *separately numbered and paragraphed*, each additional, material disputed fact which undercuts movant's claim that it is entitled to judgment as a matter of law. Each separately numbered and paragraphed fact shall be accompanied by a *specific reference* to material in the record which establishes the fact or at least demonstrates that it is disputed.

vi. Any reply brief must comply with the following requirements:

--In a separate section styled “Reply Concerning Undisputed Facts,” include any factual reply which movant cares to make regarding the facts asserted in its motion to be undisputed, supported by *specific references* to material in the record. The reply will be made in

separate paragraphs numbered according to the motion and the opposing party's response.

--In a separate section styled "Response Concerning Disputed Facts" (with respect to each fact which the opposing party, pursuant to subparagraph (v) above, claims to be in dispute), either admit that the fact is disputed or supply a *brief* factual explanation for its position that the fact is undisputed, accompanied by a *specific reference* to material in the record which establishes that the fact is undisputed. This will be done in paragraphs numbered to correspond with the opposing party's paragraph numbering.

vii. The sole purpose of these procedures is to establish facts and determine which of them are in dispute. *Legal* argument is not permitted here and should be reserved for separate portions of the briefs. If, for example, a party believes that an established fact is immaterial that belief should be expressed in the part of the brief devoted to legal argument, and the fact should be admitted. If, on the other hand, a party believes that the reference to material in the record does not support the claimed fact that *factual* argument may appropriately be made pursuant to these procedures.

viii. Failure to follow these procedures will result in an order striking or denying the motion or brief, and it will have to be re-submitted. Repeated failure to follow them may result in an order granting other proper relief.

IV. TRIALS

A. Final Pretrial Conference

1. A final pretrial conference will be held as prescribed by Fed.R.Civ.P. 16(d) and D.C.COLO.LCivR 16.3 by the assigned magistrate judge.

B. Trial Settings

1. Whenever practicable, the case will be set for trial and for Trial Preparation Conference during the final pretrial conference; otherwise, immediately after the final pretrial conference counsel and pro se parties shall report to chambers (**Room A641, located on the sixth floor**) to set the case for trial and for Trial Preparation Conference. (See D.C.COLO.LCivR 16.1).

2. Trials will normally begin on Mondays and will continue through Thursday. Fridays are generally reserved for hearings on other matters. Trials will resume the following Monday.

C. Trial Preparation Conference

The Trial Preparation Conference will usually be held **approximately two weeks** before trial. Counsel who will try the case must attend. Once trial has been set, the court will issue a Trial Preparation Conference Order that will confirm the trial date, confirm the Trial Preparation Conference date, and specify the tasks to be completed before the Trial Preparation Conference.

D. Trials To Court

1. For a trial to the court, not less than **five business days** before trial, counsel and any pro se party shall file proposed findings of fact, conclusions of law, and orders. Counsel and any pro se party are requested to state their proposed findings of fact as nearly as possible in the same order as their anticipated order of proof at trial. Counsel and any pro se party are requested to key their closing arguments to their proposed findings of fact and conclusions of law and to emphasize the evidence on which they rely to support their positions.

2. For a trial to the court, a proper resumé or *curriculum vitae*, marked as an exhibit, generally will suffice for the qualification of an expert witness.

E. Jury Trials

1. Jury trials will begin with jury selection on Monday morning at 8:30 a.m., with the trial commencing after jury selection. Counsel and pro se parties shall be present on the first day of trial at 8:00 a.m. Commencing the second day of trial, the normal trial day will begin at 8:30 a.m. and continue until 5:00 p.m. The trial day will have morning and afternoon recesses of approximately fifteen minutes duration. A lunch break will be scheduled for approximately one hour and thirty minutes beginning between 11:30 a.m. and 12:30 p.m., depending on the exigencies of trial.

2. The jury in civil cases will normally consist of **nine** jurors. Pursuant to Fed.R.Civ.P. 47(b) and 28 U.S.C. §1870, each side shall have **three** peremptory challenges.

3. Voir Dire:

a. **Two business days** before the trial preparation conference, the parties shall file their proposed *voir dire* questions.

b. Unless ordered otherwise, each side shall be permitted *voir dire* examination of **fifteen minutes** after *voir dire* examination by the court.

4. Jury Instructions and Verdict Forms:

a. **Two business days** before the trial preparation conference, counsel and any pro se party shall submit proposed jury instructions and verdict forms, one copy identifying the source of the instruction and supporting authority and one copy without sources and authority. Parties shall submit their instructions and verdict forms both via CM/ECF and by electronic mail to brimmer_chambers@cod.uscourts.gov. Proposed instructions must be tendered in Word Perfect format (Word Perfect 12 or a later version) or Word, and be double-spaced. **Each instruction and verdict form tendered must be in a separate document or file.**

b. Each instruction should be numbered (e.g., “Plaintiff’s Instruction No. 1”) for purposes of making a record at the jury instruction conference. The parties shall attempt to stipulate to the jury instructions, particularly “stock” instructions and verdict forms.

c. In diversity cases where Colorado law applies, please submit instructions and verdict forms that conform to CJI-Civ 4th.

5. Jurors will be permitted to take notes during the trial.

6. The jury will be instructed before closing argument.

7. Each juror will be given copies of the written jury instructions and verdict forms for their use and consideration during deliberations.

F. Trial Briefs

Trial briefs are encouraged, but not required absent specific court order. If filed, trial briefs shall not exceed **ten pages** and shall be filed not later than **five business days** before trial. Please flag evidentiary issues in a trial brief rather than by motion in limine. A trial brief may not be used as a substitute for a motion.