

U.S. DISTRICT COURT, DISTRICT OF COLORADO
JUDGE WILEY Y. DANIEL
Courtroom A1002, Tenth Floor, Alfred A. Arraj U.S. Courthouse

PRACTICE STANDARDS
(Civil and Criminal Cases)

REVISED AS OF MAY 30, 2006

I. INTRODUCTION

A. Purpose and Authority

1. Consistent with FED. R. CIV. P. 1, these practice standards are adopted to secure the just, speedy, and inexpensive determination of every civil action. These practice standards shall apply to all motions, petitions, and orders filed on or after May 30, 2006, and to all hearings and trials conducted on or after May 30, 2006. They may be revised without notice and may be modified by orders entered in specific cases. These practice standards have the force and effect of the orders of this court.

2. Failure to follow the Local Rules or the procedures outlined herein will result in an order striking the noncompliant filing or otherwise addressing the noncompliant action. Repeated failure to follow these procedures may result in an order granting other proper relief, including sanctions.

B. Relation to Local Rules

1. The procedures outlined herein are in addition to the requirements set forth in the Local Rules of Practice for the United States District Court for the District of Colorado ("Local Rules").

C. Access to Local Rules & Practice Standards

1. Copies of the local rules are available at http://www.cod.uscourts.gov/rules_frame.htm, from the District Court's home page (<http://www.cod.uscourts.gov>) under "United States District Court" at "Local Rules," and from the clerk of the court in Room A105.

2. Copies of these practice standards are available at http://www.cod.uscourts.gov/judges_frame.htm, from the District Court's home page (<http://www.cod.uscourts.gov>) under "United States District Court" at "Judicial Officers' Procedures," and from the clerk of the court in Room A105.

II. GENERAL PROCEDURES

A. Applicable Rules

1. Those appearing in the District Court must know and follow:
 - a. The Federal Rules of Civil Procedure or the Federal Rules of Criminal 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 and Criminal)

B. Communications with Chambers

1. For information about the status of a motion or document, please (1) utilize the CM/ECF system available at <https://ecf.cod.uscourts.gov>, or at http://www.cod.uscourts.gov/pacer_frame.htm, or from the District Court's home page (<http://www.cod.uscourts.gov>) under "United States District Court" at "PACER," **OR** (2) contact the assigned civil docketing clerk, Eileen Van Alphen at (303) 335-2045, or the assigned criminal docketing clerk, Elaine Mares, at (303) 335-2073.

2. For information about courtroom technology, trial preparation, or submission of trial exhibits, please contact the courtroom deputy clerk, Robert R. Keech, at (303) 335-2103.

3. If you need to reach my court reporter or wish to order a transcript, please contact Kara Spitler, at (303) 335-2108.

4. For other information or assistance, you may contact my Chambers at (303) 335-2170 or (303) 844-2170. **Please do not contact my Chambers about procedural or scheduling matters. My staff is not authorized to interpret these procedures, give legal advice or grant oral requests over the telephone. If you want the Court to take action, you will need to file a motion.**

C. Page Limitations

ALL filings must comply with the following requirements:

1. The text of opening and responsive briefs shall not exceed fifteen

(15) pages in length. The text of any reply brief shall not exceed ten (10) pages in length. See D.C.COLO.LCivR 7.1 and D.C.COLO.LCivR 56.1 for applicable time limits for filing responsive and reply briefs.

2. Exceptions to the above page limitations will be made only in *extraordinary circumstances* where the Court decides that the complexity and numerosity of issues compel briefs of greater length. Permission to file briefs of greater length shall be sought by way of an appropriate motion filed well in advance of the deadline for filing such brief. A motion requesting such permission must include sufficient detail to allow the Court to discern the necessity of additional pages.

3. For the separate page limitations applicable to Summary Judgment Motions, see Section III.B.

D. Deadlines

1. Compliance with all deadlines imposed by the Court is mandatory. If relief from a deadline is needed (i.e. extension of time to file or continuance of hearing), such relief must be sought by way of appropriate motion filed as far in advance of the deadline as possible. **ORAL REQUESTS WILL NOT BE CONSIDERED.** If the requested relief is not granted by order prior to the deadline, the parties must comply with the pre-existing deadline.

2. Permission to file motions, briefs, or other documents after the expiration of an applicable deadline shall be sought by way of appropriate motion. A motion requesting such permission must include sufficient detail to allow the Court to determine whether the relief requested is appropriate.

E. Citations

1. Citations shall be made pursuant to the most current edition of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 18th ed. 2005).

2. General references to cases, pleadings, depositions, or documents are insufficient if the document is over one page in length. **The parties shall provide specific references in the form of pinpoint citations, page number or paragraph number to identify those portions of the cases, pleadings, depositions, or documents relevant to the argument presented.** Only if the nature of the material does not permit a specific reference (e.g., "The contract contains no provision for termination") is a general reference sufficient.

F. Testimony by Telephone or Video Conference

1. Together with FED. R. CIV. P. 43(a) for trials and 43(e) for motions, this practice standard governs requesting and taking testimony by telephone or video conference. A party may request that testimony be presented by telephone or video conference at a trial or hearing. A request for presentation of testimony by telephone or video conference shall be made by written motion or stipulation filed at least twenty-one (21) days before the trial or hearing at which testimony is proposed to be taken by telephone or video conference.

2. The court shall determine whether in the interest of justice the testimony may be taken by telephone or video conference. The granting of such motion is also subject to the availability of necessary equipment. If the court orders testimony to be taken by telephone or video conference, the court may issue such orders as are appropriate to protect the integrity of the proceedings.

III. MOTIONS PRACTICE

A. Special Instructions Concerning Motions to Dismiss

1. All motions to dismiss shall state in the caption or in the opening paragraph under which rule or subsection thereof such motion is filed.

2. If a motion to dismiss is filed pursuant to FED. R. CIV. P. 12(b)(6) or 12(b)(1) and matters outside the pleadings are presented with the motion, the motion shall include a brief statement addressing whether the motion should be converted to a Motion for Summary Judgment.

B. Special Instructions Concerning Motions for Summary Judgment

1. These procedures contemplate the filing of a single motion for summary judgment by a party. A party may **NOT** file multiple motions for summary without obtaining permission from the Court. Such permission will only be given in exceptional circumstances.

2. The statements of fact sections described below are **NOT** included within the page limitations imposed above in Section II. **However, the statement of facts sections are intended to set forth only MATERIAL facts which are not in dispute. Excessive or prolix statement of facts sections will be STRICKEN.**

3. All motions for summary judgment must contain a "Statement of Undisputed Material Facts." This Statement shall set forth in simple, declarative sentences, which are 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. Each separately numbered and paragraphed fact must be accompanied by a specific reference to material in the record which establishes that fact.

4. Any party opposing the motion for summary judgment shall provide a "Response to Undisputed Material Facts" in its brief, admitting or denying the asserted material facts set forth by the movant. The admission or denial shall be made in 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.

5. If the party opposing the motion believes that there are additional disputed questions which have not been adequately addressed in the submissions made pursuant to this Section (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 movant is entitled to judgment as a matter of law. Each separately numbered and paragraphed fact shall be accompanied by specific reference to material in the record which establishes the fact or at least demonstrates that it is disputed.

6. If a reply brief is filed pursuant to D.C.COLO.LCivR 56.1, it shall contain:

- a. A separate section titled "Reply Concerning Undisputed Facts," containing any factual reply which movant cares to make regarding the facts asserted in movant's motion to be undisputed. Any such factual reply shall be made in separate paragraphs numbered according to movant's motion and the opposing party's response and shall be supported by specific references to material in the record.
- b. A separate section styled "Response Concerning Disputed Facts" admitting or denying the disputed material facts set forth by the opposing party pursuant to Section VI.3. above. The admission or denial shall be made in paragraphs numbered to correspond to opposing party'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.

7. The sole purpose of these procedures is to establish facts and to determine what facts are in dispute. Legal argument is not permitted here and should be reserved for separate portions of the briefs. For example, if it is believed that an established fact is immaterial, that belief should be expressed in the part of the brief that is devoted to legal argument, and the fact should be admitted. If, conversely, it is believed that the reference to material in the record does not support the claimed fact, that factual argument may appropriately be made.

C. Motions in Limine & Trial Briefs

1. Motions in limine are discouraged. This is particularly true when such motions are evidence driven and cannot be resolved until evidence is presented at trial. In the event that the parties believe a motion(s) in limine is appropriate and are unable to resolve the matters raised therein without Court involvement, such motion(s) may be filed not later than forty-five (45) days prior to the Trial Preparation Conference.

2. No trial briefs will be allowed unless specifically ordered or authorized by the Court.

D. Hearings

1. Motions may be determined without a hearing or may be set for an evidentiary hearing or oral argument.

IV. JURY INSTRUCTIONS

A. The parties shall submit jury instructions (trial to jury) as set forth below no later than twenty (20) days before the Trial Preparation Conference.

1. **Stipulated Instructions: To the maximum extent possible, the parties shall agree on one stipulated set of proposed jury instructions; only true conflict or uncertainty in binding substantive law (i.e., 10th Circuit, etc.) should prevent such agreement.** The Court generally follows the form of preliminary instructions and instructions on substantive legal claims contained in the most current editions of the FEDERAL JURY PRACTICE AND INSTRUCTIONS (federal claims and introductory instructions) and the COLORADO JURY INSTRUCTIONS (state claims).

2. **Disputed Instructions:** To the extent that counsel are unable to agree on instructions, each side may tender a set of disputed instructions. Plaintiff's disputed instructions should be clearly labeled as "Plaintiff's" (numbered 1, 2, 3, etc.) and Defendant's disputed instructions should be clearly labeled as "Defendant's" (lettered A, B, C. etc.).

3. Authority for Stipulated and Disputed Instructions: For each stipulated and disputed instruction, the party submitting the disputed instruction shall indicate the source and authority for the instruction. If the source is a pattern instruction from a source not listed in Section IV.A.1., the party submitting the disputed instruction shall submit a copy of the pattern instruction and identify the authority underlying the pattern instruction.

4. Special Procedure for the Party Opposing a Disputed Instruction: The party opposing a disputed instruction shall file an Objection that contains: (1) an explanation for their objection to the disputed instruction; (2) the authority relied on in support of their objection; (3) whether they have submitted an alternate instruction to the disputed instruction; (4) an explanation for why the alternate instruction should be given; and (5) the number or letter of the alternate instruction and the authority relied on in support thereof.

5. Form of Submission: Parties shall file and submit via electronic mail to daniel_chambers@cod.uscourts.gov (preferably in WordPerfect 12.0 format) the following sets of jury instructions and proposed verdict form: (1) Stipulated Set with Authority; (2) Plaintiff's Disputed Set with Authority; (3) Defendant's Disputed Set with Authority; (4) Plaintiff's Proposed Verdict Form; and (5) Defendant's Proposed Verdict Form (OR a Stipulated Proposed Verdict Form).

6. Final Jury Instructions and Verdict Form: Before or during trial, the Court will provide a set of proposed jury instructions and verdict form to the parties. Sometime near the close of evidence, a charge conference will be held during which the parties may object to instructions included in the Court's proposed set. Also at the charge conference, the parties may tender additional instructions from their previously submitted sets that were not included in the Court's proposed set. Counsel must have copies of these instructions and pertinent legal authority to submit at the charge conference. A final set of instructions will be distributed following the charge conference. Jury instructions are generally read to the jury before closing arguments. When deliberations commence, each juror receives a written copy of the jury instructions and verdict form.

V. INSTRUCTIONS FOR TRIAL PREPARATION CONFERENCES

A. A Trial Preparation Conference will occur prior to trial. Counsel who will try the case must attend. Failure of chief trial counsel to attend the conference may result in sanctions, including vacating the trial date, striking claims or defenses, and imposition of attorneys' fees, among other things. This is counsel's opportunity to invite the Court's attention to any problems which need to be resolved before trial commences or which may arise during the course of the trial.

B. No later than two business days prior to the Trial Preparation Conference, counsel for the parties shall file the following:

1. A final witness list (using the form below) containing the name of each witness to be called, the proposed date(s) of the witnesses' testimony, and the anticipated length of the witnesses' testimony. Witnesses not listed in the Final Pretrial Order may not be listed absent approval of the Court.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO	
Judge Wiley Y. Daniel	
Case No. _____	Date: _____
Case Title: _____	
_____ (Plaintiff/Defendant) WITNESS LIST	
<u>WITNESS</u>	<u>PROPOSED DATE(S) AND LENGTH OF TESTIMONY</u>
_____	_____
_____	_____
_____	_____
_____	_____

Copies of this form are available at (<http://www.cod.uscourts.gov>) under the link "Judicial Officers' Procedures" or from my Courtroom Deputy, Robert R. Keech, at (303) 335-2103.

2. A final list of proposed exhibits (using the form below). Plaintiff's Exhibits shall be numbered (1, 2, 3, etc.) and Defendant's Exhibits shall be lettered (A, B, C, etc.). If there are more than 26 exhibits for the Defendant, mark them as A1 through A99, B1 through B99, etc., or group the exhibits together using A1 through A4, B1 through B14, etc., as the evidence warrants. Do not use double or triple letters under any circumstances. There shall be no duplicate exhibits (i.e. exhibits listed on both Plaintiff's and Defendant's exhibit lists). Counsel shall stipulate to the admissibility of exhibits to the maximum extent possible and indicate all stipulated exhibits on the list submitted at the Trial Preparation Conference.

EXHIBIT LIST									
CASE NO. _____ PLAINTIFF'S LIST _____ DEFENDANT'S LIST _____ THIRD PTY DEFTS. LIST _____									
CASE CAPTION _____ vs. _____ PAGE NO. _____ DATE _____									
LIST PLAINTIFF'S EXHIBITS BY NUMBERS (1, 2, 3, etc.) and DEFENDANT'S BY LETTER (A, B, C, etc.)									
EXHIBIT NO/LTR	WITNESS	DESCRIPTION	ADM/AUTH	STIP	OFFER	RECD	REF.	RUL. RSVD.	COMMENTS/ INFO.

Copies of this form are available at (<http://www.cod.uscourts.gov>) under the link "Judicial Officers' Procedures" or from my Courtroom Deputy, Robert R. Keech, at (303) 335-2103.

3. Proposed *voir dire* questions.
4. Proposed Findings of Fact and Conclusions of Law along with a proposed order for judgment or other remedy (trial to Court).
 - a. Findings of Fact: To the maximum extent possible, the parties shall agree on the facts. Proposed findings of fact should be stated as nearly as possible in the same order as their anticipated order of proof at trial. To the extent that the parties cannot agree on one version of facts, each party shall submit their own proposals and underline all disputed facts.
 - b. Conclusions of Law: Conclusions of law need not be underlined even where disputed. Counsel shall key their closing arguments to their proposed findings and conclusions so as to point out the evidence they rely on to support their proposals.
5. Any stipulated or proposed amendments to the Pretrial Order for consideration by the Court.
6. A list of issues and/or motions that require resolution prior to, or at, trial.

VI. TRIAL INFORMATION

Unless instructed otherwise, trials are normally set to begin at 9:00 a.m. On the first day of trial, counsel are normally expected to be present at 8:30 a.m. to go over any final matters before the commencement of trial. The normal trial day begins at 9:00 a.m. and continues until 5:00 p.m. The Court will recess for a lunch break as well as short mid-morning and mid-afternoon breaks.

VII. TRIAL INSTRUCTIONS

A. Technology. Counsel shall familiarize themselves with the technology in the courtroom prior to trial. Please make arrangements to test the equipment with my courtroom deputy clerk, Robert P. Keech, (303) 335-2103, at least ten (10) days before the start of trial.

B. Transcripts. If you desire Real Time or daily copy transcripts, you must make arrangements with my court reporter, Kara Spittler, (303) 335-2108, at least thirty (30) days before the start of trial.

C. Glossary. Where necessary, the Court may direct the parties to provide the Court, the court reporter, the courtroom deputy clerk, and opposing counsel with a glossary of any unusual or technical terminology.

D. Depositions. All original deposition transcripts should be delivered to the courtroom deputy clerk before the start of trial.

1. Videotaped Depositions. If videotaped deposition testimony is to be used, the Court and all parties must be given at least ten (10) days advance notice. The party offering the testimony must arrange for any necessary technology.

2. Deposition Testimony. Counsel are reminded that, pursuant to FED. R. CIV. P. 5(d), depositions, interrogatories and requests for admissions are not filed with the Clerk unless on special order of the Court. The original deposition transcripts should be in possession of the party to whom they are delivered. They must be brought to trial. The following guidelines should be used for preparing depositions for use as testimony at trial:

- a. Jury Trials. Advise opposing counsel of your proposed offer by page and line reference within twenty (20) days prior to trial to enable the preparation of objections and the offer of additional portions of the transcript. The party offering the deposition testimony is required to provide a person to read the answers.

- b. Court Trials. The Court will determine how depositions will be used at the time of the Trial Preparation Conference. The offering party shall provide the Court with two copies of the transcript prior to trial, each with the plaintiff's designations highlighted in yellow and the defendant's designations highlighted in blue. (The highlighting should be accomplished in advance of trial, so that the highlighted deposition transcripts can be marked as an exhibit and tendered to the courtroom deputy at the beginning of the trial.)

3. Objections to Use of a Deposition. Objections to use of a designated deposition or videotape deposition shall be filed no later than ten (10) days prior to trial. The parties shall attempt to resolve these objections prior to trial. Objections that are not resolved by the parties prior to trial must be marked on a copy of the written transcript and provided to the Court. These objections will be resolved at trial (not prior to trial).

E. Exhibits. Provide three copies of your updated exhibit list to my courtroom deputy clerk on the morning of trial. All exhibits must be marked with exhibit labels which identify the case number and exhibit number or letter. These labels can be obtained from the clerk's office.

1. Original Exhibits (to be used by the witnesses). All original exhibits shall be submitted to my courtroom deputy clerk in three-ring binders at the start of the trial. Include all exhibits in these notebooks. (Even those to which there is no stipulation from opposing counsel.)

- a. A label shall be placed on the spine of each binder that shows the volume number and which exhibits are contained within each binder.
- b. Each original exhibit shall bear an extended tab showing the number or letter of the exhibit.
- c. Each document shall be paginated including any attachments thereto.

2. Copies of Exhibits. In addition to the original exhibit, one copy of all exhibits shall be provided to the Court. The copies shall be submitted in the same format as the original exhibits.

3. Exhibits for Jurors. Due to the technology in the courtroom, exhibit notebooks for jurors are no longer permitted.

4. Use of Exhibits During Trial. The courtroom deputy clerk will present the exhibits to the witnesses. Instead of the traditional "I hand you what has been marked for identification as plaintiffs exhibit number __," counsel may simply say, "Please look at exhibit number one..." and the exhibit will be placed before the witness. Counsel need not approach the witness as part of this process.

5. Submission of Electronic Copies of Trial Exhibits. The Court shall advise the parties at the Trial Preparation Conference whether they will be required to submit electronic exhibits to the Court pursuant to the Technical Specifications of Judge's Electronic Copies of Trial Exhibits. Copies of this document are available at (<http://www.cod.uscourts.gov>) under the link "Judicial Officers' Procedures" or from my Courtroom Deputy, Robert R. Keech, at (303) 335-2103.

F. Witnesses. Provide three copies of your updated witness list to my courtroom deputy clerk on the morning of trial.

1. All witnesses are required to remain in the witness room until called to testify unless otherwise ordered by the Court.

2. Questioning of Witnesses During Trial. Counsel shall make certain that verbal responses are elicited from all witnesses during questioning.

G. Settlement. The Local Rules require that in order to avoid assessment of jury costs, the parties must notify the Court of a settlement before noon on the last business day before the scheduled trial date. See D.C.COLO.LCivR 54.2.

