

CIVIL PRACTICE STANDARDS

**MAGISTRATE JUDGE CRAIG B. SHAFFER
UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

“The [Pirate] Code is more what
you’d call guidelines than actual
rules.”

Captain Barbosa

Effective: May 23, 2016

GENERAL INFORMATION

My staff and I look forward to working with you and contributing to the efficient disposition of your case. While the court cannot engage in *ex parte* communication with counsel or parties, my staff is available to answer questions of an administrative or logistical nature. Amanda Montoya is my Courtroom Deputy. She may be reached at 303-335-2096. Stephanie Gaddy and Sandy Potter are my Law Clerks. If you have questions, you may call my chambers at (303) 844-2117.

MENTORING AND TRAINING

The Preamble to the Colorado Rules of Professional Conduct acknowledges that members of the legal profession should “seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by” lawyers. Lawyers practicing in the courts of Colorado should reflect the communities we serve. The goals expressed in the Preamble are best achieved if young and diverse lawyers are given opportunities to play an active role in judicial proceedings. It has been this court’s experience that when women and diverse attorneys are given those opportunities, they do extraordinarily well. Those attorneys should know that this court welcomes their contribution to and active participation in the litigation process. I encourage experienced attorneys to facilitate the mentoring and training that will enrich the legal profession and the work of the United States District Court.

PRETRIAL PROCEDURES

I. CASE MANAGEMENT

It is my goal to encourage and facilitate pretrial proceedings that promote the just, speedy and inexpensive determination of every action. Consistent with the objectives underlying Fed. R. Civ. P. 1, this court does not believe that a “one size fits all” approach to case management is necessary or appropriate. To that end, I encourage counsel and *pro se* parties to take a proactive and creative approach to the pretrial process, and will work with the parties to facilitate that process. However, the court also expects the parties to propose scheduling deadlines that reasonably reflect their actual claims and defenses, as well as the particular needs and circumstances of the case at hand. When in doubt you should default to common sense.

II. COOPERATION

Parties and their counsel should be aware that this court has endorsed the [Sedona Conference® Cooperation Proclamation](#). I do not believe that a cooperative and collaborative approach to discovery is antithetical to the concept of zealous advocacy or the requirements of professional conduct rules. Cooperation does not require counsel to compromise a client’s interests, but does afford a means to avoid unnecessary disputes and thereby expedite litigation. Counsel and *pro se* parties should endeavor to conduct discovery in a diligent and candid manner, and direct their advocacy skills to the facts and legal issues that are central to the action.

III. DISCOVERY DISPUTES

Discovery disputes and the resulting motion practice inevitably increase the time and expense of litigation; often without any material effect on the ultimate disposition of the action. To avoid unnecessary and expensive motion practice, a party may not file an opposed discovery motion without first complying with the following procedures. Counsel and *pro se* parties must make a reasonable, good-faith effort to resolve the discovery dispute without the need for judicial intervention. See [D.C.COLO.CivR 7.1\(a\)](#); Fed. R. Civ. P. 26(c)(1); Fed. R. Civ. P. 37(a)(1). If those discussions are not fruitful, the parties next must arrange a telephone conference with the court. That telephone discovery conference will occur on the record. At the conclusion of the court-supervised conference, if the discovery dispute has not been resolved, the court will instruct a party to file a motion and set an expedited briefing schedule to ensure the motion is decided as promptly as possible.

IV. MOTION PRACTICE

This court does not have any prescribed page limits, but encourages brevity. Please be aware that repetitive arguments and string citations are not necessarily persuasive and may only serve to slow the ultimate disposition of the motion. Submissions that are verbose, redundant, ungrammatical, or unintelligible may be stricken or returned for revision, and may be grounds for sanctions. See [D.C.COLO.LCivR 7.1\(i\)](#).

V. FORMS

This court uses the [Standardized Order Forms](#) located on the court's website under "Forms." Consistent with this court's pretrial management philosophy, counsel and *pro se* parties may propose departures from the standard forms to meet the particular needs of their case.

TRIAL PROCEDURES FOR CONSENT CASES

I. TRIAL PREPARATION

At the final pretrial conference, counsel and *pro se* parties should be prepared to discuss any and all trial matters. I will establish deadlines for filing, as appropriate, proposed voir dire and jury instructions, trial briefs, motions in limine, Proposed Findings of Fact and Conclusions of Law, exhibit lists, and witness lists. All trial materials shall be filed with the Clerk of the Court in conformance with the [District of Colorado Electronic Case Filing \("ECF"\) Procedures 4.9](#). At the conclusion of the final pretrial conference, my Courtroom Deputy will be available to answer your questions regarding administrative procedures.

1. Trial Preparation Conference

My practice will be to consolidate the final pretrial and trial preparation conferences. To the extent I feel a separate trial preparation conference is necessary, I will hold that conference approximately two weeks prior to trial.

2. Witness Lists

Each party shall provide a final witness list containing the name of each witness to be called and the proposed date(s) and anticipated length of each witness' testimony. See [Witness List](#) located on the court's website under "Judicial Officers." While counsel and *pro se* parties will not be held strictly to this schedule, it must reflect counsel's and the *pro se* party's good faith estimates. During trial, the parties should use their best efforts to have witnesses standing by to avoid interruptions in the presentation of evidence.

3. Exhibit Lists

Trial exhibits need not be brought to the final pretrial conference. The parties' exhibits shall be listed using a joint exhibit list. See [Exhibit List](#) located on the court's website under "Judicial Officers." Exhibits to which the parties have stipulated shall be listed first with the "stipulated" box checked. The remaining exhibits shall be listed numerically and consecutively; do not mark an exhibit making reference to the party offering it, (i.e., do not mark an exhibit as "Plaintiff's Exhibit ____" or "Defendant's Exhibit ____").

4. Proposed Voir Dire

I will permit counsel and *pro se* parties to conduct limited voir dire and submit additional questions for the court-conducted voir dire. Please remember, however, that the purpose of voir dire is to assist the parties in utilizing challenges for cause and peremptory challenges; questioning by counsel and *pro se* parties should not attempt, directly or indirectly, to instruct the prospective jurors on the law that will govern their deliberations.

5. Proposed Jury Instructions and Verdict Forms

- a. Stipulating to Jury Instructions. Counsel and *pro se* parties shall make a good faith effort to stipulate to as many proposed jury instructions as possible. The court will hear argument only on the instructions for which there is legitimate disagreement.
- b. Numbering and Form of Instructions. The stipulated proposed jury instructions should be numbered. Any instructions which cannot be stipulated must be numbered separately and indicate at the top Plaintiff's or Defendant's Proposed Instruction No. _____. Proposed jury

instructions must be submitted in Word format.

- c. Copies. Submit two copies of your proposed jury instructions – one copy with sources and supporting authority and one copy without sources and authority – via e-mail to Shaffer_Chambers@cod.uscourts.gov.
- d. Stock Instructions. I have prepared [stock introductory and closing instructions](#) for use in every civil case. They include general cautionary instructions regarding the jury's duties, the burden of proof, types of evidence, impeachment, etc. These instructions are available on the court's website, under "Judicial Officers." I will customize these instructions for the particular trial. Counsel and *pro se* parties shall not edit these instructions.
- e. The proposed jury instructions shall include the following:
 - (1) A theory-of-the-case instruction which sets forth the party's claims or defenses. This instruction may be used by the court during voir dire.
 - (2) Other non-stock instructions related to each party's claims or defenses, including definitional and elements instructions.
- g. At the conclusion of evidence presentation, I will entertain arguments on instructions and will inform counsel and *pro se* parties which instructions will be used. With assistance of counsel and *pro se* parties, I will prepare the final set of instructions for submission to the jury. Counsel and *pro se* parties will make their closing arguments after the jury instruction conference. After closing arguments, I will charge the jury and provide the jury with a copy of the written instructions.

6. Trial To The Court

I will establish a deadline for submitting Stipulated Findings of Fact and Proposed Findings of Fact and Conclusions of Law based upon the evidence that will be presented at a trial to the court. Stipulated Findings of Fact and Proposed Findings of Fact and Conclusions of Law must be in Word format and submitted via e-mail to Shaffer_Chambers@cod.uscourts.gov.

II. CHECKLIST FOR TRIAL

1. Any questions regarding transcripts should be directed to my Courtroom Deputy. Any request for Daily Copy should also be made to my Courtroom Deputy, 30 days in advance of trial.

2. The Trial Record

- a. If you anticipate your witnesses will utilize unusual or technical vocabulary, prepare a list of such correctly spelled terms for the Courtroom Deputy.
- b. Make certain that audible responses are elicited from all witnesses.

3. Exhibits

- a. Exhibit Labels. Exhibit labels may be obtained from the Clerk's Office in Room A105. Please affix exhibit labels before trial. The civil action number also must be placed on each exhibit sticker.
- b. Exhibit Notebooks. Exhibits should be bound in tabbed, looseleaf notebooks. Any multi-page exhibit should have all pages numbered for specific page reference.
- c. Copies of Exhibits for the Court and Opposing Counsel and/or Pro Se Parties. There should be one notebook of original exhibits for the witness, one notebook of copies for the judge, and one notebook of copies for each opposing counsel and/or *pro se* party. For a trial to the court, please provide one additional notebook for the law clerk. At the conclusion of the trial, all original exhibits will be returned to the parties for preservation.
- d. Copies of Exhibits for Jurors. Exhibit notebooks for jurors may be used at the discretion of counsel and *pro se* parties, and with the consent of the court. This will be addressed at the final pretrial conference. If juror notebooks are permitted, counsel and *pro se* parties shall provide them for each juror. The juror notebooks shall be submitted to the Courtroom Deputy at the start of the trial. These notebooks should contain only stipulated exhibits that are certain to be admitted. As additional exhibits are admitted over the course of the trial, the Courtroom Deputy will either hand the exhibits to the jurors or place the exhibits in the juror notebooks during recesses. Counsel and *pro se* parties shall arrange for copies of the exhibits to be provided to Courtroom Deputy for distribution. Do not include a copy of the Exhibit List in the juror notebooks.

4. Depositions

- a. The use of depositions is governed by Fed. R. Civ. P. 32 and the following procedures. All original deposition transcripts must be delivered to the Courtroom Deputy before the start of trial. *See also* [D.C. COLO LCivR 5.3](#).
- b. Not later than 21 days before trial, counsel and *pro se* parties shall exchange their designations of anticipated deposition and videotape deposition testimony. Plaintiff's designations shall be highlighted in yellow and Defendant's designations highlighted in blue. Parties shall exchange any counter-designated deposition testimony within 7 days of initial designations, and file any objections to designated deposition and videotaped deposition testimony no later than 7 days before trial. Objections should be separately identified by page and line number, and accompanied by an explanation for each objection. Counsel and *pro se* parties are expected to make a good faith attempt to resolve objections to deposition and videotaped deposition testimony.
- c. In jury trials, you must provide a person (who may be co-counsel) to read deposition answers. In bench trials, the preferred practice is to provide two copies of the deposition transcript with the Plaintiff's designations highlighted in yellow and the Defendant's designations highlighted in blue. Unless expressly authorized, depositions will not be read in open court in bench trials. Depositions will remain in the possession of the Courtroom Deputy until the end of the trial, when they are returned to the parties with the other exhibits.
- d. If videotaped deposition testimony is to be used at a jury trial, the court and the parties must be given notice in the final pretrial order. The party offering the videotaped deposition testimony must arrange for any necessary equipment. To accommodate evidentiary objections to videotaped deposition testimony, the proponent must have the technical ability to edit out or "mute" excluded responses and efficiently "fast forward" to the next segment of testimony.

5. Special Equipment

If you intend to use any special equipment, please make arrangements with the Courtroom Deputy no later than seven days prior to the first day of trial.

6. Anticipated Trial Schedule

On the first day of trial, counsel and *pro se* parties shall be present at 8:30 a.m. I will begin the first day of trial with jury selection commencing at 9:00 am. On all subsequent days, trial will begin at 8:30 am and conclude at 3:45 pm. I will take a 15 minute mid-morning recess (usually at 10:30 am) and a 60 minute lunch recess (usually at 12:30 pm.). This daily schedule may be subject to change based upon unanticipated developments. If schedule changes become necessary, I will make every effort to give the parties and the jury as much advance notice as possible.

7. No Alternate Jurors

Pursuant to Fed. R. Civ. P. 48, the jury will consist of eight jurors, with no alternates.

8. Modifications to Trial Procedures

These procedures serve as a framework for the effective administration of litigation in this court. I will consider modification of these procedures on a case-by-case basis in the interests of justice to meet specific circumstances and needs of the parties.