

The administration of justice is the firmest pillar of government.

– George Washington

**JUDGE CHRISTINE M. ARGUELLO
CIVIL PRACTICE STANDARDS
UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

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TABLE OF CONTENTS

I. SCOPE, PURPOSE, AND CONSTRUCTION

Civ. Practice Standard 1.1 PURPOSE, SCOPE AND CONSTRUCTION.....	1
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II. PLEADINGS, MOTIONS, AND OBJECTIONS

Civ. Practice Standard 6.1 CONTINUANCE OR EXTENSION OF TIME	2
Civ. Practice Standard 7.1A MOTIONS – GENERAL INFORMATION.....	3
Civ. Practice Standard 7.1B MOTIONS IN LIMINE	5
Civ. Practice Standard 7.1C MOTIONS PURSUANT TO FRE 702	5
Civ. Practice Standard 7.1D MOTIONS TO DISMISS - FED. R. CIV. P. 12(b)	6
Civ. Practice Standard 7.1E MOTIONS FOR SJ - FED. R. CIV. P. 56	7
Civ. Practice Standard 7.1F MOTION FOR DEFAULT JUDGMENT	8
Civ. Practice Standard 7.1G MOTION FOR TEMPORARY RESTRAINING ORDER ..	9
Civ. Practice Standard 10.1 FORMAT OF PLEADINGS AND DOCUMENTS	9
Civ. Practice Standard 16.6 ALTERNATIVE DISPUTE RESOLUTION	11

III. DEPOSITIONS

Civ. Practice Standard 30.1 USE OF DEPOSITIONS IN COURT PROCEEDINGS ...	12
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IV. HEARING AND TRIAL PROCEDURES

Civ. Practice Standard 43.1A GENERAL COURTROOM PROTOCOL	13
Civ. Practice Standard 43.1B EXHIBITS	15
Civ. Practice Standard 43.1C WITNESS LISTS	17
Civ. Practice Standard 43.1D TESTIMONY BY TELEPHONE OR VIDEO	17
Civ. Practice Standard 43.1E SETTING THE CASE FOR TRIAL	19
Civ. Practice Standard 43.1F BENCH TRIALS	20
Civ. Practice Standard 43.1G JURY TRIALS	21
Civ. Practice Standard 43.1H JURY INSTRUCTIONS AND VERDICT FORM	22

JUDGE ARGUELLO CIVIL PRACTICE STANDARDS

I. SCOPE, PURPOSE, AND CONSTRUCTION

Civ. Practice Standard 1.1 PURPOSE, SCOPE, AND CONSTRUCTION

(a) **Purpose.** Consistent with Fed. R. Civ. P. 1, these practice standards are intended to secure the just, speedy, and inexpensive determination of every civil action.

(b) **Scope, Title and Citation.** These rules are the Civil Practice Standards of Judge Christine M. Arguello and apply to all civil actions assigned to her. These rules should be cited as Civ. Practice Standard, Subdivision, Paragraph, Subparagraph, Item (e.g., Civ. Practice Standard 7.1E(b)(2)(A)).

(c) **Construction.** These practice standards supplement, but do not supersede, the Local Civil Rules or the Electronic Case Filing Procedures. If there is a direct conflict between these practice standards and the requirements of the Electronic Case Filing Procedures, the Electronic Case Filing Procedures control. If these practice standards and Electronic Case Filing Procedures contain different, but not directly inconsistent, requirements, parties should comply with both sets of procedures to the extent possible.

(d) **Access to Practice Standards.** Copies of these practice standards and forms referenced herein are available through the “Judicial Officers’ Procedures” link on the District of Colorado’s home page at <http://www.cod.uscourts.gov> and/or from the Clerk of Court in Room A105.

(e) **Applicable Rules.** Those appearing in the District Court must know and follow:

- (1) The Federal Rules of Civil Procedure;
- (2) The Federal Rules of Evidence;
- (3) The Local Rules of Practice of the United States District Court for the District of Colorado; and
- (4) The United States District Court for the District of Colorado Electronic Case Filing Procedures.

(f) **Communications with Chambers.**

(1) **No Legal Advice.** Chambers staff is not authorized to give legal advice or grant oral requests over the telephone, so please do not contact Chambers about substantive matters. For procedural information or assistance regarding a case, including scheduling of hearings or trials, please contact Judge Arguello’s Chambers.

(2) Ex Parte Communications. Unless specifically authorized, neither counsel nor *pro se* litigants may communicate about a case by letter to the Court. All communications must be made in the form of a motion, brief, notice, or status report, served on all opposing counsel and *pro se* parties, and filed as required by the Electronic Case Filing Procedures.

(3) Courtesy Copies. A courtesy copy for chambers is not required unless a paper is filed less than 48 hours before a hearing. When directed [by a Local Rule, these Practice Standards, or Judge Arguello] to submit a document directly to Chambers, *e.g.*, jury instructions, *voir dire* questions, etc., parties should submit documents as an e-mail attachment addressed to: Arguello_Chambers@cod.uscourts.gov. Documents submitted directly to Chambers in this manner (with the exception of proposed orders accompanying motions) should NOT be filed with the Clerk of Court using CM-ECF. The document should be submitted as an editable attachment, preferably in MS Word. PDF format is not acceptable. The subject line of the e-mail message should identify the case name, number, and the title of the document attached.

(4) CM-ECF Assistance. For information about filing documents electronically, please contact the ECF Help Desk at 1-866-365-6381 or 303-335-2050. If you have questions about the status of a motion or order, please utilize the PACER system at <http://www.co.uscourts.gov>.

(5) Courtroom Assistance. For information regarding the courtroom, including telephonic connection, courtroom equipment and technology, please contact Judge Arguello's Courtroom Deputy, Sandra Hartmann, at Sandra_Hartmann@cod.uscourts.gov.

(6) Court Transcription Assistance. If you need to order a transcript or reach a Court Reporter, please contact Judge Arguello's Court Reporter, Darlene Martinez, at Darlene_Martinez@cod.uscourts.gov.

II. PLEADINGS, MOTIONS, AND OBJECTIONS

Civ. Practice Standard 6.1

CONTINUANCE OR EXTENSION OF TIME

(a) Continuances of Hearings and Trials. Motions to continue hearings and trials (including motions to vacate or reset) are governed by D.C.COLO.LCivR 6.1 and 7.1; these Practice Standards; *Rogers v. Andrus Transp. Serv.*, 502 F.3d 1147, 1151 (10th Cir. 2007); and *United States v. West*, 828 F.2d 1468, 1469-70 (10th Cir. 1987). Motions to continue must be supported by good cause and shall be submitted in writing to the Court as early as practicable based on the circumstances pertaining to the

underlying reason for the request for a continuance. Stipulations for continuance are not effective unless and until approved by the court.

(b) Motions for Extension of Time.

(1) Motions for extensions of time are governed by Fed. R. Civ. P. 6; D.C.COLO.LCivR 6.1 and 7.1A; these Practice Standards; and D.C.Colo.ECF Proc. V.L.2. Motions will be denied if they do not comply with these rules or if they fail to demonstrate good cause.

(2) Requested extensions of time, even if stipulated, may be denied if the extension adversely affects the scheduling of the case or other cases.

(3) Any motion for extension of time shall be filed as early as practicable based on the circumstances pertaining to the underlying reason for the request for additional time.

Civ. Practice Standard 7.1A

MOTIONS - GENERAL INFORMATION

(a) Procedure. All requests for the Court to take any action, make any type of ruling, or provide any type of relief must be contained in a separate, written motion. All motions not covered by or addressed in D.C.COLO.LCivR 7.1C. [with the exception of motions filed under Fed. R. Civ. P. 56 or 65 or Fed. R. Evid. 702] shall be determined in the time and manner prescribed by D.C.COLO.LCivR 7.1C., and subject to the page limitations imposed in Civ. Practice Standard 10.1.

(b) Unopposed Motions. An unopposed motion shall be designated as required by D.C.COLO.LCivR 7.1B.

(c) Submission of Orders. Proposed orders should be submitted via CM-ECF along with all motions. Proposed orders should not be sent via email to Chambers unless requested by Judge Arguello.

(d) Responses, Replies, and Objections.

(1) **Deadlines.** See D.C.COLO.LCivR 7.1 and D.C.COLO.LCivR 56.1 for applicable time limits for filing responsive and reply briefs. Fed. R. Civ. P. 6 controls the computation of time. For extensions of time for filing such briefs, see Civ. Practice Standard 6.1.

(2) A response, reply, or objection shall identify, by title and CM-ECF docket number, the pleading to which it responds.

(3) A motion for leave to cite new relevant authority may be filed if the supplemental authority was issued after briefing on a motion closed. The motion shall be limited to the case title, citation, date of decision, and a single-sentence reference to the issue to which the movant believes the new decision pertains. No comment on the significance of the decision, or its interpretation, may be made, and no responsive comment will be permitted.

(4) No surreply or supplemental briefs shall be filed without permission of the Court.

(e) Untimely or Noncomplying Motions, Objections, Responses, or Replies.

(1) A “non-complying” motion, response, reply, or objection is a filing that does not conform in form and substance to the procedural, formatting, or technical requirements of applicable statutes, regulations, rules of civil procedure, local rules, or these practice standards.

(2) Untimely or noncomplying motions, responses, replies, or objections may be denied in whole or part without prejudice, or their determination may be delayed relative to compliant motions.

(3) Motions without a certification required by D.C.COLO.LCivR 6.1E or 7.1A will be denied without prejudice *sua sponte*.

(f) Motions Hearings. Motions may be determined without a hearing or may be set for an evidentiary hearing or oral argument. At least **one business day prior** to such hearing, counsel shall advise the Court regarding which issues are still in dispute and which issues have been resolved.

(g) Forthwith Hearings on Motions. A “forthwith hearing” is a hearing that cannot be handled in the normal course of notice and setting due to the need for immediate judicial intervention. A request for forthwith hearing must be made by a separate motion stating the reason(s) warranting immediate action and whether notice was given to all parties or why such notice could not be given. A courtesy call to Judge Arguello’s Chambers advising that such a motion is being filed is appreciated and will help facilitate prompt consideration.

Unless required by statute or rule of procedure, after reviewing the request for forthwith hearing, the Court may order that the matter be heard as soon as possible on a forthwith basis, require that notice and opportunity to respond be given to any opposing party, or deny the request for forthwith hearing and require that the matter be set using normal setting procedures. If the Court determines that a forthwith hearing is

necessary, it shall not occur without notice to all parties of record in the manner and form directed by the Court.

Civ. Practice Standard 7.1B
MOTIONS *IN LIMINE*

(a) Not Discouraged. Judge Arguello does NOT discourage Motions *in Limine*. Parties should keep in mind that the admissibility of evidence often depends upon the context in which the evidence is offered, so the Court may be unable to rule on the Motion prior to trial. However, if the Court is forewarned about particular evidentiary disputes that are anticipated to arise during trial, the Court is much more likely to be able to make a more informed ruling on the evidentiary issue.

(b) Filing Deadline. Motions *in Limine* must be filed **not later than 21 days prior** to the Final Trial Preparation Conference. A Response to a Motion *in Limine* must be filed **no later than 14 days after** the filing of the motion.

(c) One Motion Limit. Each party shall be limited to one Motion *in Limine*. The Motion shall address all difficult or unusual evidentiary issues the party anticipates will arise at trial. Each Motion and Response shall be limited to eight pages. No reply brief in support of a Motion *in Limine* will be permitted. All text in these filings will count against the page limits, except for the attorney or party signature blocks and the certificate of service. Motions or responses in excess of the page limits will be permitted only upon a showing of **substantial** good cause.

Civ. Practice Standard 7.1C
MOTIONS PURSUANT TO Fed. R. Evid. 702

(a) Filing Deadline. Motions under Fed. R. Evid. 702 often require additional time for the Court to fully analyze. Thus, parties should file such motions as early as is practicable and, in all civil cases, **not later than 70 days (ten weeks) prior** to the Final Trial Preparation Conference. All Rule 702 motions shall identify with specificity each opinion the moving party seeks to exclude. The motion shall also identify the specific ground(s) for challenging each opinion, *e.g.*, relevance, sufficiency of facts and data, or methodology. A Response to a Motion must be filed **no later than 14 days after** the filing of the motion. The movant and respondent shall state whether an evidentiary hearing is requested and explain why such a hearing is necessary. Rule 702 motions requiring an evidentiary hearing may be referred to the assigned Magistrate Judge for hearing and decision.

Civ. Practice Standard 7.1D

MOTIONS TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)

(a) Procedure. Motions brought pursuant to Fed. R. Civ. P. 12(b) are discouraged if the defect is correctable by the filing of an amended pleading. Counsel should confer **prior** to the filing of the motion to determine whether the deficiency can be corrected by amendment (e.g., failure to plead fraud with specificity) and should exercise their best efforts to stipulate to appropriate amendments. If such a motion is nonetheless filed, the movant shall include a conspicuous statement describing the specific efforts undertaken to comply with this practice standard. Counsel are on notice that failure to comply with this practice standard may subject them to an award of attorney fees and costs assessed personally against them. This practice standard shall not apply in cases where the non-movant is proceeding *pro se*.

(b) Single Motion. All requests for relief under any part of Fed. R. Civ. P. 12 must be brought in a single motion. All motions to dismiss shall state in the caption or in the opening paragraph under which rule or subsection thereof such motion is filed.

(c) 12(b)(1)-(5) Motions. Motions brought pursuant to Fed. R. Civ. P. 12(b)(1)-(5) shall identify the grounds for dismissal, which party has the burden of proof, the material facts, and whether materials outside the pleadings should be considered. If matters outside the pleadings are pertinent, the motion may be set for evidentiary hearing or treated as one brought pursuant to Rule 56.

(d) 12(b)(6) Motions. With respect to motions brought pursuant to Fed. R. Civ. P. 12(b)(6):

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

(2) The respondent should utilize the same format for each challenged claim. If the respondent disputes that a particular element must be alleged, the element should be identified as “disputed” and substantiated with accompanying legal argument. If the respondent contends that a proper and sufficient factual allegation has been made in the complaint, the respondent should specifically identify the page and paragraph containing the required factual allegation.

(e) Matters outside the pleadings. Rule 12(b) motions should not be stated in the alternative as a Rule 56 motion for summary judgment. If matters outside the pleadings are submitted in support of or opposition to a Rule 12(b) motion, both parties should discuss whether the 12(b) motion should be converted to a summary judgment motion.

In such a case, the Court may issue an order to show cause why the motion should not be treated as a Rule 56 motion, or the parol submissions may be disregarded.

Civ. Practice Standard 7.1E

MOTIONS FOR SUMMARY JUDGMENT PURSUANT TO FED. R. CIV. P. 56

(a) Procedure. These procedures contemplate the filing of a single motion for summary judgment by a party. A party may NOT file multiple motions for summary judgment without obtaining the Court's permission, which will be given only in exceptional circumstances.

(b) Format. For Rule 56 motions, the following format should be used:

(1) For each claim for relief or defense (as to which judgment is requested) the motion shall:

(A) identify which party has the burden of proof;

(B) identify each element that must be proved;

(C) for each identified element, identify the material, undisputed, or admitted facts that prove that element and the pinpoint location in the filed record; or

(D) if the respondent has the burden of proof, identify the elements which the movant contends the respondent cannot prove (with reference to the record where appropriate).

(2) The response should utilize the same format for each claim/defense:

(A) if the respondent disputes the movant's statement of the burden of proof on necessary elements, it shall identify the element as disputed.

(B) if the movant has the burden of proof, the respondent shall identify all elements for which there are disputed material facts, as well as provide a brief explanation of the reason(s) for the dispute and specific references to supportive evidence in the record. Stipulation to facts not reasonably in dispute is encouraged.

(C) if the respondent has the burden of proof, for each element identified by the movant as lacking proof, the respondent should identify the facts and their location in the record that establish that element.

(3) Motions for partial summary judgment on some, but not all, legal theories arising from a single factual scenario are not favored unless:

(A) if granted, the resulting judgment can be certified in accordance with Rule 54(b); or

(B) if granted, the scope of evidence to be presented at trial will be significantly reduced.

(c) Exhibits. All exhibits in support of a summary judgment motion shall be submitted in one appendix with the pages numbered consecutively and shall be referenced in the motion, response, and reply by page number and name, *e.g.*, (Movant's Appx., p. 30 - Smith Affidavit). If the respondent needs to include exhibits not contained in movant's appendix, the respondent shall submit a respondent's appendix, with the pages numbered consecutively. Respondent's appendix shall be referenced by page number and name, *e.g.*, (Respondent's Appx., p. 10 - Jones Affidavit).

Civ. Practice Standard 7.1F MOTIONS FOR DEFAULT JUDGMENT

(a) Requirements. In addition to the requirements in D.C.COLO.LCivR 55.1A, a motion for default judgment under Fed. R. Civ. P. 55(b) shall include copies of the following documents:

(1) the summons and return of service or a waiver of service, showing valid service on the particular defendant in accordance with Fed. R. Civ. P. 4;

(2) if attorney fees will be requested, a separate motion requesting such fees with an affidavit indicating that the defendant agreed to pay attorney fees or citation to statutory authority establishing that such fees are recoverable; an assertion that such fees have been actually incurred in the prosecution of the action; and sufficient evidence that the fees sought are reasonable under the circumstances and applicable law;

(3) if the action is on a promissory note, the original note shall be presented to the Court so that it may make a notation of the judgment on the face of the note; if the note is to be withdrawn, a photocopy shall be substituted;

(4) a proposed form of judgment (do not include "proposed" in the title of the order) that recites the language requested to be included in the body of the judgment. See D.C.COLO.LCivR 55.1.

(b) Other. If further documentation, proof, or hearing is required, the Court shall notify the moving party. If the party against whom default judgment is sought is in the

military service or his status cannot be shown, the Court shall require such additional evidence or proceedings to protect the interests of such party in accordance with 50 U.S.C. § 520, including the appointment of an attorney when necessary. The appointment of an attorney shall be made upon application of the moving party, and expense of such appointment shall be borne by the moving party but taxable as a cost awarded to the moving party as part of the judgment.

Civ. Practice Standard 7.1G

MOTIONS FOR TEMPORARY RESTRAINING ORDERS

(a) Conferral. To minimize delays, the Court strongly encourages counsel to confer, in advance, with the opposing party's counsel (or, if not yet represented, with the party itself). Counsel need not wait at the Courthouse after filing the motion; the Court will contact counsel if a hearing is required.

(b) Ex Parte Motions. As a general rule, *ex parte* motions for issuance of temporary restraining orders will be granted only upon strict compliance with Fed. R. Civ. P. 65(b) and (c). In appropriate circumstances, the Court may issue an order to show cause, directing the person to be enjoined to appear at a hearing to show cause why the temporary restraining order should not be issued; deny the motion; or set a hearing, requiring the movant to serve the order and all underlying papers on the respondent in accordance with Fed. R. Civ. P. 4 within the time specified in the order. A continuance of the scheduled return date on the order to show cause ordinarily will not be granted absent stipulation by the parties.

(c) Initial Hearing. At the initial hearing, counsel for both sides should be prepared to proffer the evidence they would present at an evidentiary hearing on the request for a preliminary injunction, as well as any legal argument that is appropriate. At the conclusion of this hearing, the Court will, if appropriate, set a preliminary injunction hearing. If an evidentiary hearing is scheduled on a motion for temporary restraining order, Civ. Practice Standard 18.1, involving the use of exhibits, shall apply. At all such hearings, counsel must be prepared to present appropriate legal argument.

(d) Preliminary Injunction Hearing. A preliminary injunction hearing will be an evidentiary hearing. Both parties must be prepared to present evidence in accordance with the Federal Rules of Evidence. See Civ. Practice Standards 43.1A - 43.1D

Civ. Practice Standard 10.1

FORMAT OF PLEADINGS AND DOCUMENTS

(a) Font. All papers filed with the Court shall be in Arial 12 point font (including footnotes and endnotes).

(b) Citations.

(1) Generally: Citations shall be made pursuant to the most current edition of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION. Whenever practicable, a citation to an unpublished opinion should include its Westlaw® citation. If such a Westlaw citation is not available, the parties should submit a copy of the unpublished opinion.

(2) Colorado Cases: When citing to post-2011 decisions from the Colorado Court of Appeals or the Colorado Supreme Court, the Court encourages parties to use the public domain citation format instead of citing to the Pacific Reporter. For citation examples and further explanation from the Colorado Supreme Court regarding this citation format, see Chief Justice Directive 12-01, available at http://www.courts.state.co.us/Courts/Supreme_Court/Directives/CJD%2012-01.pdf.

(c) Page Limitations.

(1) Except motions for summary judgment, all motions, objections (including objections to the recommendations or orders of United States Magistrate Judges), responses, and briefs shall not exceed 15 pages. The moving party shall not file a separate motion and brief. Any reply brief shall not exceed ten pages. These page limitations shall include the cover page, jurisdictional statement, statement of facts, procedural history, argument, authority, closing, and all other matters, except the signature block and certificate of service.

(2) Motions for summary judgment or partial summary judgment and response briefs shall not exceed 20 pages. Reply briefs shall not exceed ten10 pages. These page limitations shall include the motion, cover page, jurisdictional statement, statement of facts, procedural history, argument, closing, and all other matters, except the signature block and certificate of service.

(3) Exceptions to the above page limitations will be granted only upon a showing of good cause. Permission to exceed the page limitation shall be sought by way of an appropriate motion filed well in advance of the deadline for filing the pleading and shall indicate the number of pages of the proposed document and the reason why the additional pages are necessary.

Civ. Practice Standard 16.6
ALTERNATIVE DISPUTE RESOLUTION

(a) **Settlement.** In addition to D.C.COLO.LCivR 16.6, the following applies:

(1) **No Continuances.** Settlement discussions are encouraged at all phases of the litigation process. However, absent good cause, hearings, trials and pretrial deadlines will not be continued or vacated to facilitate settlement negotiations or alternative dispute resolution, or in anticipation of the filing of settlement documents.

(2) **Notice of Settlement.** If a settlement is reached before a hearing or trial, please file a notice via CM-ECF, which includes a time estimate for filing dismissal papers. However, no deadline, hearing or trial will be vacated, except upon the filing of papers sufficient to resolve the matter. If counsel and/or any *pro se* party are unable to file the appropriate documents before the hearing or trial, counsel and/or any *pro se* party shall appear at the scheduled hearing or trial to memorialize the settlement on the record. Pursuant to D.C.COLO.LCivR 54.2, 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.

(3) **Partial Case Settlement/Dismissal.** If fewer than all claims or defenses are resolved by a settlement, a motion requesting approval of same shall specify which claims, defenses, and parties will be resolved by the settlement/dismissal and which will remain. The parties shall also advise the Court if a settlement renders moot any pending motion, or portion thereof. The proposed order shall set out a proposed revised caption, deleting parties whose claims have been resolved, to be used on all subsequent pleadings. The proposed order shall be in editable format and submitted as set forth in Civ. Practice Standard 1.1(f)(3). If the parties request a written order of dismissal per Fed. R. Civ. P.41(a)(1), a proposed order shall also be submitted to Chamber's e-mail as set forth in Civ. Practice Standard 1.1(f)(3).

(4) **No Retention of Jurisdiction.** Absent extraordinary circumstances, the Court will not retain jurisdiction (including through open-ended administrative closure) over cases that have been settled. The proper mechanism for enforcing a settlement is, in almost all cases, a new action. Any motion or stipulation for dismissal requesting that the Court retain jurisdiction after dismissal shall explain in detail the extraordinary circumstances necessitating such an approach.

III. DEPOSITIONS

Civ. Practice Standard 30.1

USE OF DEPOSITIONS IN COURT PROCEEDINGS

- (a) **Procedure.** Together with Fed. R. Civ. P.32, this practice standard governs the use of both regular and videotape depositions in court proceedings.
- (b) **Sealed Original.** At the beginning of a hearing or trial, a party shall deliver to the Courtroom Deputy the sealed, original transcripts of all depositions the party intends to use, whether for impeachment or otherwise. The offering party shall also provide the Court with a notebook containing copies of any deposition transcripts the party plans to use with tabs that identify the relevant depositions.
- (c) **No Substantive Use.** Unless otherwise permitted for good cause shown, if any party will be calling a witness to testify in person at trial, testimony by that witness via deposition on behalf of any party for substantive (as opposed to impeachment) purposes will not be allowed.
- (d) **Designations.** Any party intending to offer deposition testimony in lieu of a live witness at trial shall provide opposing counsel with his/her designations of deposition testimony at least 21 days before the Final Trial Preparation Conference. Within seven days of receipt of these designations, opposing counsel shall provide counter-designated deposition testimony. Plaintiff's designations shall be highlighted in yellow, Defendant's in blue, and any other party's in green. Within seven days of the Final Trial Preparation Conference, the parties shall exchange objections to all designated testimony, and make a good-faith attempt to resolve such objections. Two copies of the highlighted deposition transcript(s) shall be provided to Judge Arguello at the beginning of trial. Deposition testimony will be presented in the same manner as live testimony, *i.e.*, objections to properly designated deposition testimony will be made during trial in the same way objections to live testimony are made.
- (e) **Technical Requirements.** To accommodate evidentiary objections to deposition testimony presented by video, the proponent must have the technical ability to "mute" excluded responses and efficiently "fast forward" to the next segment of testimony.
- (f) **Special Equipment (Audio/Video).** If you require special audio/video equipment [other than the ELMO], you must notify Judge Arguello's Courtroom Deputy no later than the Final Trial Preparation Conference.
- (g) **Reader.** If evidence is to be presented through a written deposition transcript in a jury trial, the proponent shall supply a person to read from a written deposition transcript.

(h) Bench Trials. For bench trials, depositions will not be read in open court. 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 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.

IV. HEARING AND TRIAL PROCEDURES

Civ. Practice Standard 43.1A GENERAL INFORMATION

(a) Court Appearances.

(1) Unless otherwise directed, all matters to be heard by Judge Arguello will be heard in her Courtroom. Matters to be heard by the Magistrate Judge will be in the courtroom assigned to that Magistrate Judge.

(2) Court time is valuable to litigants, counsel, and court staff. Counsel shall arrive 15 minutes before any scheduled hearing or trial and confer to confirm what issues are in dispute and what stipulations can be made.

(3) If a scheduled matter is called for hearing and a party or a party's counsel is not present, the Court may reset the matter for hearing, enter default, impose sanctions, or enter any other order.

(4) Counsel – and, where specifically directed, the parties – shall appear personally at all hearings, unless leave to appear by telephone has been timely sought and expressly granted. Motions seeking leave to appear by telephone should be made at least three days before the scheduled hearing date. For non-evidentiary hearings, leave to appear by telephone will be liberally granted, providing that both sides are in full compliance with all prior orders and the case is making satisfactory progress. Leave to appear by telephone for evidentiary hearings will be granted only in exceptional circumstances.

(b) Courtroom Organization and Protocol.

(1) Plaintiff's table is closest to the jury box. There is one lectern in the courtroom at which all counsel and parties shall stand to make any statement or argument.

(2) All cell phones are to be turned off before entering the courtroom. If an attorney's tardiness delays the scheduled time of a proceeding or if an attorney's cell phone or pager goes off during proceedings, the Court is likely to give

counsel the opportunity to perform needed public service through a *pro bono* assignment.

(3) No soda, coffee, or food is allowed in the courtroom. Water bottles are permitted, and water and cups are provided.

(4) Please advise the Courtroom Deputy of any recent or anticipated filings to ensure that the Court is aware of all relevant filings during a hearing or trial.

(5) Please observe the following courtroom decorum:

(A) stand when addressing the Court or when the jury enters or leaves the courtroom;

(B) request permission to approach the bench;

(C) address the Court as “Your Honor”;

(D) refer to all other persons by their surnames, prefaced by the appropriate title, *e.g.*, Mr., Ms., Dr., Agent, Officer, *etc.*, as appropriate.

(6) The administration of an oath or affirmation is a solemn public ritual and an integral part of any judicial proceeding. Any public oath-taking administered to witnesses, interpreters, and Court Security Officers requires the undivided attention of counsel as well as all others in the courtroom.

(c) Record of Proceedings. The official record of all trials and proceedings will be taken either by a real-time reporter or by electronic sound recording (audiotape). Prior to the beginning of any proceeding, please provide the Court Reporter with your business card. Transcripts of proceedings may be ordered from Judge Arguello’s Court Reporter, Darlene Martinez, at Darlene_Martinez@cod.uscourts.gov.

(d) Real-time, Daily, or Hourly Copy. Requests for real-time, daily, or hourly copy must be made no later than the Final Trial Preparation Conference or three business days before the hearing.

(d) Audio Visual Aids. If you have the need for electronic equipment other than the ELMO to display your exhibits, please consult with the Courtroom Deputy regarding what technology is available in the courtroom. Any equipment set-up shall be done outside the presence of the jury and shall not cause delay for the jury.

(e) Glossary. Not later than three days before commencement of a hearing, a bench trial, a jury trial, or any other proceeding, counsel and any *pro se* party shall provide the Court Reporter with a glossary of any difficult, unusual, scientific, technical, and/or medical jargon, words, names, terms and/or phrases.

Civ. Practice Standard 43.1B
EXHIBITS

(a) Format. The Exhibit List submitted by the parties must include all the information identified in the Civil Case Exhibit List found with Judge Arguello's practice standards on the District Court website:

<http://www.cod.uscourts.gov/JudicialOfficers.aspx>. Parties must pre-mark all exhibits that will be used or identified for the record in a hearing or trial. Exhibit labels can be obtained from the Clerk's Office before trial. With the exception of composite exhibits, each exhibit shall consist of one document and not a group of documents.

(b) When to File. For motions hearings, exhibit lists shall be filed via CM-ECF two business days before the hearing. For trials, exhibit lists shall be filed via CM-ECF seven days before the Final Trial Preparation Conference.

(c) Joint Exhibit List Required. Counsel are required to meet and confer before an evidentiary hearing or the Final Trial Preparation Conference to exchange exhibits and to prepare a single, joint list of exhibits that they expect to offer. The parties should pre-mark all exhibits numerically with the exhibit label (and also include the applicable case number). No exhibit is to be designated as "Plaintiff's Exhibit" or "Defendant's Exhibit." The parties must stipulate to the authenticity and admissibility of as many exhibits as possible, marking the appropriate boxes on the Exhibit List form. The notation on an exhibit list that an exhibit's admission is stipulated does not automatically result in the admission of that exhibit. Each exhibits must be offered orally on the record. If parties have stipulated to the authenticity and admissibility of an exhibit, counsel merely needs to so inform the Court upon offering the exhibit by number.

(d) Exhibit Notebooks.

(1) Exhibits must be bound in three-ring notebooks or contained within numbered folders. The exhibit notebook(s) or folder(s) should include all exhibits that the parties plan to use or introduce, including those that are stipulated, contested, and demonstrative. Multi-page exhibits must be numbered to avoid having any pages separated or omitted. The notebook or folder should be labeled with the following information:

- (i) caption;
- (ii) nature of proceeding;
- (iii) scheduled date and time; and
- (iv) "original" or "copy."

The hearing or trial may be delayed or continued until exhibits are properly bound and labeled.

(2) The parties shall provide the Court with one exhibit notebook containing the original exhibits (for the Witness) and one exhibit notebook containing copies of the exhibits (for the Judge). These copies shall be delivered to the Courtroom Deputy before commencement of the hearing or trial.

(e) Voluminous Evidence. In preparation for trial, parties shall either:

(1) redact voluminous evidence to reflect only the relevant portions and portions necessary for context; or

(2) consistent with the requirements of Fed. R. Evid. 1006, prepare and offer charts, summaries, or calculations to communicate the contents of voluminous evidence to the Court and jury.

(3) The parties shall include any redacted evidence or Rule 1006 chart, summary, or calculation they intend to use at trial in the list of exhibits set forth in the Final Pretrial Order and in the exhibit copies exchanged following the Final Pretrial Conference. The voluminous evidence on which such redacted, summary, chart, or calculation exhibit is based shall be identified in an appendix to the exhibit list and such underlying evidence shall be made available to the other parties at the time the parties exchange exhibits.

(f) Elmo. All exhibits are to be displayed on the Elmo. No over-sized exhibits are to be used unless requested and approved by the Court.

(g) Jury Evidence Recording System (JERS).

(1) If Judge Arguello informs you that she will be using JERS for electronic exhibits, exhibits shall be downloaded to a CD-ROM, DVD, flash drive, or USB drive. Each exhibit shall be saved as a separate file and not page-by-page. Exhibits should be in one of the following formats depending upon whether it is a document and photograph or audio or video recordings.

(A) Documents and Photographs: .pdf, .jpg, .bmp, .tif, .gif

(B) Video and Audio Recordings: .avi, .wmv, .mpg, .mp3, .wma, .wav

(2) Electronic Exhibits shall be submitted to the Courtroom Deputy not later than the Friday prior to the start of trial so they can be downloaded into JERS prior to the start of trial.

Civ. Practice Standard 43.1C
WITNESS LISTS

(a) Format. The Witness List submitted by the parties must include all the information identified in the Civil Case Witness List found with Judge Arguello's practice standards on the District Court website:

<http://www.cod.uscourts.gov/JudicialOfficers.aspx>.

(b) When to File. Each party shall submit a list of its proposed witnesses at the time and in the manner set forth in the Court's orders or, if no time or manner has been specified, as set forth below:

(1) Motion hearings, including Rule 702 hearings: filed via CM-ECF three days before the hearing.

(2) Final Trial Preparation Conference: e-mailed directly to chambers [NOT filed via CM-ECF] seven days before the Conference. Witnesses not listed in the Final Pretrial Order may not be included in the Final Witness List without prior leave of Court for substantial good cause shown.

(4) Trials: filed via CM-ECF seven days before the Trial.

(c) Before Trial. Prior to commencement of trial, each party shall provide the Courtroom Deputy with three paper copies of a final list of its witnesses and include an estimate of the time anticipated for the witnesses' testimony. One copy will be made available to the Court Reporter to assist her in the transcription of Court proceedings, so please ensure that names are spelled correctly.

(d) Witness Presence. Counsel desiring a witness' physical presence at a trial or hearing shall ensure the presence of that witness either by written stipulation with the opposing party (if the witness is in the control of that party) or by subpoena (in all other circumstances).

Civ. Practice Standard 43.1D
TESTIMONY BY TELEPHONE OR VIDEO

(a) General Information. Together with Fed. R. Civ. P. 43(a) for trials and 43(c) for motions, this practice standard governs requesting and taking testimony by telephone or video. For purposes of this practice standard, the phrase "remote testimony" includes live, one-way or two-way testimony by telephone or video. It does not apply to deposition testimony preserved on video.

(1) A party may request that remote testimony be presented at any trial or hearing. Except in extraordinary circumstances, such request should be made by written motion or stipulation filed at least 21 days before the trial or hearing. The motion should include:

- (A) the reason(s) such testimony should be taken remotely and what means will be used;
- (B) a detailed description of all testimony which is proposed to be presented remotely; and
- (C) copies of all documents or reports which will be used or referred to in such testimony.

(2) If any party objects to the presentation of remote testimony, the party shall file, within seven days following service of the motion, a written objection stating the basis of the objection. If no objection is filed, the motion will be deemed unopposed.

(3) The Court shall determine whether, in the interest of justice, the testimony may be presented from a remote location. The factors to be considered include, but are not limited to, the following:

- (i) whether there is a statutory right to live or remote testimony,
- (ii) the cost savings to the parties,
- (iii) the availability of appropriate equipment to permit the presentation of remote testimony,
- (iv) the availability of the witness to physically appear in Court,
- (v) the relative importance of the issue or issues for which the testimony is offered,
- (vi) whether credibility of the witness is a material issue,
- (vii) whether the case is to be tried to the Court or to a jury, and
- (viii) whether the presentation of remote testimony would unreasonably inhibit the ability to cross examine the witness.

(4) If remote testimony is approved, the proponent of the testimony shall ensure that an officer authorized to administer oaths by the law of the jurisdiction in which the witness is located be physically present with the witness to certify the witness' identity and to administer the oath.

Civ. Practice Standard 43.1E
SETTING THE CASE FOR TRIAL

(a) Final Pretrial Conference. A final pretrial conference will be held in all civil cases and will be used to set the trial date. Unless otherwise ordered by the Court, the assigned Magistrate Judge shall preside over the Final Pretrial Conference as prescribed by Fed. R. Civ. P. 16(d) and D.C.COLO.LCivR 16.3. The primary purpose of the Final Pretrial Conference is to complete and finalize the parties' proposed Final Pretrial Order.

(b) Final Pretrial Order. The Proposed Final Pretrial Order shall be prepared in accordance with the Instructions for Preparation of Final Pretrial Order as set forth in D.C.COLO.LCivR Appendix G. Parties may be issued a Trial Preparation Order with specific tasks to be completed before the Pretrial Conference.

(c) Trial Settings.

(1) Unless otherwise instructed by the Magistrate Judge, immediately following the Final Pretrial Conference, counsel and *pro se* parties shall report to Judge Arguello's Chambers to set the case for a Final Trial Preparation Conference and Trial.

(2) Length of Trial: Trials of five days or less can usually be set for firm trial dates within three or four months of the Final Pretrial Conference. If the parties seek to schedule more than five days for trial, a status conference date will be set, at which time the parties may present argument to the Court as to why a longer trial is necessary.

(d) Final Trial Preparation Conference.

(1) The Final Trial Preparation Conference will be scheduled approximately two to four weeks before trial. Counsel who will try the case must attend the Final Trial Preparation Conference. Failure of chief trial counsel or *pro se* parties to attend the conference may result in sanctions, including, without limitation, vacating the trial date, striking claims or defenses, and/or awarding attorney's fees. At the Final Trial Preparation Conference, counsel and/or any *pro se* party should bring to the Court's attention to any problems which need to be resolved or addressed before trial commences or which may arise during the course of the trial. The parties should anticipate discussing witnesses, exhibits, *voir dire*, jury instructions, verdict forms, allotted time for openings and closings, trial testimony via deposition, settlement, evidentiary issues, and/or outstanding motions or issues.

(2) No later than one week before the Final Trial Preparation Conference, the parties shall submit their case-specific proposed *voir dire* questions to Chambers and provide a copy to opposing counsel. Parties should NOT file their proposed *voir dire* questions on the CM-ECF system. Routine questions, e.g., whether the jurors know any of the parties, whether they have served on a jury, whether they have any legal training or experience, need not be submitted as these will be included as part of the Court's general *voir dire*. All proposed *voir dire* questions must be written in a format that can be asked of the jury panel as a whole, i.e., the question must be able to be answered either "yes" or "no."

Civ. Practice Standard 43.1F
BENCH TRIALS

(a) **Time.** Trials to the Court will begin at 8:30 a.m.

(b) **Findings of Fact.** Seven days prior to the Final Trial Preparation Conference the parties shall submit Preliminary Proposed Findings of Fact and Conclusions of Law, along with a Proposed Order for Judgment or other remedy or relief. The parties shall follow the formatting requirements for their proposed findings of fact as specified in Civ. Practice Standard 7.6.2(b).

(1) **Findings of Fact:** To the maximum extent possible, the parties shall stipulate to the material 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.

(2) **Conclusions of Law:** Conclusions of law need not be underlined even if disputed. Counsel shall key their closing arguments to their preliminary proposed findings and conclusions so as to point out the evidence upon which they rely to support their proposed findings and conclusions.

(3) The parties must order a transcript within 10 days after the conclusion of the trial. No later than 21 days after a bench trial has concluded, each party shall file Final Proposed Findings of Fact, Conclusions of Law, and Proposed Orders and/or Judgment, with citations to the relevant portion of the transcript and/or admitted exhibit(s) relevant to the corresponding proposed finding of fact. If a party contracted for Realtime reporting during the trial, then said party shall cite to the date and time of that portion of the Realtime report relevant to the respective proposed finding of fact.

(c) Expert Witness Qualification. For a trial to the Court, a proper résumé or curriculum vitae, marked and introduced as an exhibit, generally will suffice for the determination of an expert witness' qualification.

Civ. Practice Standard 43.1G

JURY TRIALS

(a) Trial Times. If the jury has been selected a week in advance of the trial, as set forth below, each trial day begins at 8:00 a.m. A fifteen minute recess is provided at approximately 10:00 a.m. and a half-hour lunch recess is provided at approximately 12:15 p.m. Jurors will be excused for the day between 2:30 and 2:45 p.m.

(b) Counsel to arrive early. Counsel should be present in court 30 minutes before the scheduled trial time to address any issues that may arise before the start of the trial day. It is the Court's expectation that the Jury will be seated and trial will begin promptly at 8:00 a.m. each day.

(c) Trial Briefs. Trial briefs are not required, absent specific court order. If filed, trial briefs shall not exceed ten pages and shall be filed not later than seven days before trial.

(d) Jury Selection Process.

(1) The jury in civil cases will normally consist of seven jurors with no designated alternates.

(2) Unless otherwise specified by Judge Arguello, jury selection will be conducted at 1:30 p.m. on the Monday before the scheduled trial, *i.e.*, a week in advance.

(3) Prior to the jurors being brought up to the Courtroom, the Clerk's office will provide the Court with a list of juror names in an order that was randomly selected by a computer program used by the Clerk's office. The prospective jurors on the list will be seated in the jury box in the order in which they were drawn. The total number seated in the box will be the number of jurors Judge Arguello intends to seat plus six additional jurors.

(4) *Voir dire* will be directed to the prospective jurors seated in the jury box. The Court will conduct the initial *voir dire* examination of the prospective jurors. Unless ordered otherwise, thereafter, each side shall be permitted *voir dire* examination not to exceed 15 minutes.

(5) Any juror excused by the Court for hardship will be replaced by the next numerically identified prospective juror in the jury pool who has not already been seated in the jury box.

(6) After *voir dire* is completed, the Court will entertain challenges for cause. Any juror excused for cause will be replaced by the next numerically identified prospective juror in the jury pool who has not already been seated in the jury box. *Voir dire* of any replacement jurors shall be conducted by the Court.

(7) Pursuant to Fed. R. Civ. P. 47(b) and 28 U.S.C. § 1870, each side shall have three peremptory challenges, which shall be exercised simultaneously using a strike sheet and. See *Pointer v. United States*, 151 U.S. 396 (1894); *United States v. Martinez-Salazar*, 528 U.S. 304 (2000).

(8) Challenges pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), are to be made after peremptory challenges are concluded and immediately prior to the jury being seated and sworn.

(e) Note Taking by Jurors. Jurors will be permitted to take notes during the trial. The jurors' notes will be destroyed after the jury is discharged.

(f) Questions by Jurors. At this time, the Court does not allow jurors to submit written questions for witnesses while the witness is on the stand. However, in specific cases, the Court reserves the right to do so, and counsel will be asked to approach the bench in order to read the proposed questions and raise any objections. If the Court sustains the objection, the question either will be modified to address the objection or not asked. If the Court overrules the objection, the question will be read to the witness. Counsel will then be given the opportunity to ask follow-up questions.

(g) Bench Conferences. Bench conferences are strongly discouraged and will be minimized. Matters should be raised either before or after the trial day.

Civ. Practice Standard 43.1H

JURY INSTRUCTIONS AND VERDICT FORM

(a) Jury Instruction. The jury will be instructed before closing arguments and each juror will be given a copy of the written jury instructions for their use and consideration during deliberations.

(b) Standard Instructions. The Court has developed standard, generic preliminary and final jury instructions that are pertinent to all cases and will be used at trial so the parties need not submit instructions covering these issues. (See Judge Arguello's sample instructions available at <http://www.cod.uscourts.gov/JudicialOfficers.aspx>.)

If the parties wish to modify the Court's Standard Instructions, the parties should follow the instructions set forth in paragraphs (1)-(4) below. With respect to nonstandard instructions that the parties wish to have submitted to the jury, 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 should prevent such agreement. The Court generally follows the most current editions of the form instructions provided in FEDERAL JURY PRACTICE AND INSTRUCTIONS (for federal claims and introductory instructions) and the COLORADO JURY INSTRUCTIONS – CIVIL (for state claims).

(1) Categories of Instructions: The Court contemplates three categories of jury instructions and/or verdict forms, as described below. Each category of instruction and/or verdict form must be emailed directly to Chambers, with a copy to opposing counsel, via e-mail attachment in MS Word format no later than two weeks before the Final Trial Preparation Conference. Parties should NOT file their proposed instructions and/or verdict forms on the CM-ECF system.

(A) Stipulated Instructions: The parties shall meet and confer well in advance of the Final Trial Preparation Conference and stipulate to the form of verdict and as many proposed jury instructions as possible. The parties shall exchange their proposed jury instructions and verdict forms at least one week before this meeting. It is Plaintiff's counsel's responsibility (if Plaintiff is *pro se*, it shall be Defendant's counsel's responsibility) to schedule the meeting(s) and to submit the stipulated jury instructions and verdict form directly to Chambers' e-mail address, with a copy to opposing counsel/party. In order to assist the Court in distinguishing between the various instructions, stipulated instructions should contain the word "STIPULATED" at the bottom of each stipulated instruction immediately preceding the legal authority for the instruction. There should be no duplication of stipulated instructions or verdict forms, *i.e.*, if the parties stipulate to a particular instruction or verdict form, then that instruction should be submitted as stipulated only, and no similar instruction or verdict form should appear in any party's competing or non-stipulated instructions.

(B) Competing Instructions: Competing Instructions are those instructions about which all parties agree that an instruction or form is necessary, but disagree about the wording of the instruction or form. In order to assist the Court in distinguishing between the various instructions submitted, at the bottom of each competing instruction immediately preceding the legal authority for the instruction, competing instructions should identify the party tendering the competing instruction and the fact that it is

a competing instruction, e.g., “Plaintiff’s Competing Instruction” or “Defendant’s Competing Verdict Form.”

(C) Non-Stipulated Instructions: Non-stipulated Instructions are those instructions and verdict forms requested by a party (or parties) to which any other party objects, but does not request/tender a competing instruction or verdict form. In order to assist the Court in distinguishing between the various instructions, at the bottom of each non-stipulated instruction immediately preceding the legal authority for the instruction, non-stipulated instructions should identify the party tendering the instruction and the fact that it is a non-stipulated instruction, e.g., “Plaintiff’s Non-Stipulated Instruction” or “Defendant’s Non-Stipulated Instruction.”

(2) Procedure Relating to Competing or Non-Stipulated Instructions: With respect to competing or non-stipulated instructions, each party shall provide the Court with brief legal argument and citation to the legal authority upon which that party relies for the instruction tendered. Each party may file a brief or memorandum with objections to another party’s competing and/or non-stipulated instructions and verdict forms no later than one week before the Final Trial Preparation Conference.

(3) Format of proposed jury instructions and verdict forms:

(A) Each proposed instruction and verdict form should contain a title, which shall be centered in bold, all caps typeface on the top of the page corresponding to the instruction, e.g.,

INSTRUCTION NO. __
ELEMENTS OF OFFENSE

Proposed instructions should NOT be numbered.

(B) Each proposed instruction and verdict form should contain citations to authority supporting its use.

(C) Proposed instructions and verdict forms should be submitted with hard page breaks (not the use of “hard returns”) between each separate instruction and verdict form.

(D) Stylistic conventions – When referring to this Court in the body of the instructions, always capitalize the word “Court.” In addition, do not use articles when referring to the parties. Do capitalize the parties. The

preferred format is: "Plaintiff Jones" or "Defendant Smith," rather than "the Defendant" or "plaintiff Jones." Please proofread submissions carefully.

(3) Charging Conference: Assuming the parties are cooperating in good faith and have stipulated to many of the instructions, the Court will attempt to finalize the proposed instructions and provide them to the parties prior to the start of trial. The Court will hold a charging conference before the case goes to the jury. At the charging conference, the Court will review the proposed final instructions and verdict forms with the parties and they will have an opportunity to request changes to the proposed instructions and to state their objections to the final instructions on the record. The Court will address unanticipated matters that arise during trial and that require changes to the jury instructions at the charging conference or after the close of evidence.

(4) Final Instructions and Verdict Form: The Court will consider only those jury instructions and verdict forms tendered using the procedures described above. Court staff will prepare a final, clean set of instructions and verdict form for the jury. See sample instructions, available under "Hon. Christine M. Arguello," at <http://www.cod.uscourts.gov/JudicialOfficers.aspx>.