Standing Order Regarding Pretrial and Trial Procedures
(Civil Cases)

Magistrate Judge Cyrus Y. Chung
United States District Court
District of Colorado

Courtroom C201
Byron Rogers Courthouse

Chambers C250
1929 Stout St.
Denver, CO 80294

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I. GENERAL PROCEDURES

A. Communications with Chambers

Inquiries to Chambers (e.g., questions about procedures and standards) should be made via **email** to **Chung_Chambers@cod.uscourts.gov**. Please copy opposing counsel or opposing pro se parties on all emails. Please do not contact Chambers about substantive matters as Chambers staff cannot give legal advice or grant informal requests not made via motion. For information about filing documents electronically please contact the ECF Help Desk at cod_cmecf@cod.uscourts.gov or (303) 844-3433.

B. Citations

This Standing Order should be cited as CYC Civ. Standing Order Part(Section)(Subsection)(Paragraph) (e.g., CYC Civ. Standing Order III(E)(4)(a)).

II. COURTROOM PROCEDURES

A. Courtroom Operations

For information regarding the courtroom, including telephonic or video connection, courtroom equipment and technology, courtroom protocol, use of deposition transcripts, the submission of trial exhibits and witness lists, and the use of exhibits at trial, please contact the Courtroom Deputy. The courtroom is equipped with HDMI and VGA plug-ins for displaying exhibits. In addition, there are monitors at each table including the witness stand, large screens for the gallery, white pads, easels, and an ELMO.

For trial, please contact the Courtroom Deputy at least **14 days prior** with any questions regarding remote witnesses (if allowed by the Court), submission of trial exhibits and witness lists, use of exhibits at trial, general courtroom procedures, and to schedule a technical walk-through.

B. Recording of Proceedings

The realtime court reporter for the Court will be specifically assigned when a trial is scheduled**.** Transcripts of proceedings may be ordered from the assigned court reporter by email. Requests for realtime or daily rough draft transcripts must be made at least **30 days** before trial.

III. TRIALS

A. Final Pretrial Order and Conference

The Court will hold a Final Pretrial Conference as prescribed by Fed. R. Civ. P. 16(e) and D.C.COLO.LCivR 16.3. The Final Pretrial Order Form can be

found at http://www.cod.uscourts.gov/CourtOperations/RulesProcedures/Forms.aspx.

At least fourteen days before the scheduled date of the Final Pretrial Conference, counsel shall meet and confer to develop jointly the contents of the proposed Final Pretrial Order. It is the responsibility of Plaintiff's counsel (but if Plaintiff is pro se, it shall be Defendant's counsel's responsibility) to schedule meetings and then file and submit the proposed Final Pretrial Order. If the parties agree, Plaintiff may delegate responsibility for filing and submission to Defendant.

Unless otherwise ordered, the parties shall submit their proposed Final Pretrial Order **no later than seven days before the date of the Final Pretrial Conference**. The proposed Final Pretrial Order should be filed in CM/ECF and submitted electronically **in editable (Word) format** directly to Chambers at Chung_Chambers@cod.uscourts.gov.

B. Trial Settings

Whenever practicable, dates for the trial and the Trial Preparation Conference will be given to the parties during the Final Pretrial Conference.

C. Length of Trial

Should the parties request a trial lasting longer than five days, before a trial date can be set, counsel shall be prepared to present argument to the Court as to why a trial longer than five days is necessary.

D. Motions In Limine

Motions in limine are strongly discouraged when the motion cannot be resolved until evidence is presented at trial. Instead, such evidentiary issues can be flagged in a trial brief. If motions in limine are filed, they must be filed at least **twenty-one days** before the Trial Preparation Conference. Any responses to the motions in limine shall be filed **fourteen days** before the Trial Preparation Conference.

Conferral and One Motion Limit: Prior to filing a motion in limine, counsel shall confer with one another in an attempt to resolve the contested evidentiary issues. If they are unable to come to a mutual resolution, counsel shall then determine which party will file the motion on the particular evidentiary issue and which party will file the response.

Each party shall be limited to **one** motion in limine unless the Court grants leave for a supplemental filing. The motion shall address all difficult or unusual evidentiary issues the party anticipates will arise at trial, with **each discrete evidentiary dispute separately numbered within the motion**. Each motion and response shall be **limited to eight pages** unless there is a showing of good cause and the Court grants leave to extend the page limits. All text in these filings will

count against the page limits, except for the attorney or party signature blocks and the certificate of service. No reply brief in support of a motion in limine will be permitted.

E. Trial Preparation Conference

The Trial Preparation Conference will typically be held approximately **fourteen days** before trial. Counsel who will try the case must attend. **Seven days** before the Trial Preparation Conference, the parties shall file in CM/ECF their proposed voir dire questions. 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 standard *voir dire*.

If parties want to use a jury questionnaire, they must raise the issue at the Trial Preparation Conference.

If counsel needs additional time for voir dire, opening statements, and closing arguments than what is designated in Sections III(K)(3)(a), (N), and (O), counsel must address the issue with the Court during the Trial Preparation Conference.

F. Jury Instructions and Verdict Form

Clear and concise jury instructions are imperative. While the Court encourages the use of stock and model instructions, counsel should review those instructions with the average layperson in mind and modify language that is overly complicated so that the jury instructions and verdict form are understandable to laypersons.

Where possible, jury instructions and verdict forms will be finalized *before* the trial begins. This will allow counsel to refer to the instructions in opening statements and throughout the presentation of evidence. In addition, the Court may utilize the jury instructions in advising the jury before the trial begins. Of course, the jury instructions will be revisited at the close of evidence and the Court will hold a charging conference to ensure that counsel has the opportunity to offer additional or alternative instructions based on the evidence.

1. The Court requires preparation and submission of instructions **twenty-one days** before the Trial Preparation Conference, so counsel and the Court can devote the time necessary for this crucial task before other trial preparation demands become overwhelming.

2. The parties shall meet and confer to stipulate to the verdict form, as many proposed jury instructions as possible, and a joint statement of the case. Only true conflict or uncertainty in binding substantive law should prevent agreement. It is Plaintiff's counsel's responsibility (but if Plaintiff is pro se, it shall be Defendant's counsel's responsibility) to submit stipulated jury instructions (and, if applicable, a stipulated verdict form) directly to

Chambers in editable (Word) format via email (Chung_Chambers@cod.uscourts.gov) with a copy to opposing counsel/party, at least **21 days** before the Trial Preparation Conference. Similarly, competing and non-stipulated instructions should also be submitted to Chambers via email by the party proffering such instructions at least **twenty-one days** before the Trial Preparation Conference. **Instructions shall NOT be filed via CM/ECF**. The Court will consider only those jury instructions and verdict forms tendered using the procedures described below.

3. 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). However, the Court encourages counsel to carefully read and tailor any form instruction to the facts and circumstances of the particular case as well as to edit such instructions to use plain language.

4. The Court has template jury instructions for instructions commonly given at every trial available at http://www.cod.uscourts.gov/Portals/0/Documents/Judges/CYC/CYC_Closing_Jury_Instructions.pdf. Unless the parties are proposing different instructions to replace these, there is no need to include analogous instructions in their submissions.

5. Categories of Jury Instructions: The Court contemplates three categories of jury instructions, as described below. In order to assist the Court in distinguishing among the different instructions, at the bottom of each instruction (immediately preceding the legal authority), the instruction should be identified as "Stipulated," "Competing," or "Non-Stipulated," and, in the case of competing or non-stipulated instructions, should also identify the party tendering the instruction (e.g., "Plaintiff's Competing Instruction," "Defendant's Non-Stipulated Instruction.")

    a. Stipulated Instructions: Stipulated instructions are those instructions about which the parties agree after conferral. There should be no duplication of stipulated instructions (or verdict forms); i.e., if the parties stipulate to a particular instruction or a verdict form, then that instruction or form should be submitted as stipulated only, and no similar instruction or 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 is necessary but disagree about the content of that instruction.

c. Non-Stipulated Instructions: Non-stipulated instructions are those instructions requested by a party (or parties) to which any other party objects, but does not request/tender a competing instruction.

d. Each proposed competing or non-stipulated instruction should contain, at the bottom of the instruction, one paragraph of argument from each side, including citations to legal authority, explaining why the instruction is tendered or opposed. No separate objection should be filed.

6. Format of Proposed Jury Instructions

a. Proposed instructions should NOT be numbered. Each proposed instruction should contain a title, which shall be centered in bold.

b. If the parties edit a form, model, or pattern instruction, the parties shall either redline/track such changes or specifically describe them at the bottom of the instruction.

c. Proposed instructions should be submitted with "hard page breaks" (not the use of "hard returns") between each instruction.

d. Stylistic conventions. When referring to this Court in the body of the instructions, always capitalize the word "Court." Additionally, do not use articles when referring to the parties, but do capitalize the parties' names or designation. Thus, the preferred format is: "Plaintiff Smith" or "Mr./Ms./Mx. Doe" or "XYZ Corp." rather than "the Plaintiff/Defendant." Please be mindful of a party's preferred pronouns. Please proofread submissions carefully.

7. Verdict Form: As with jury instructions, the Court urges counsel to confer and to craft a stipulated verdict form that is understandable to lay persons. The verdict form should provide a roadmap for the jury as to each claim and affirmative defense, as well as specific instructions about where to proceed in the verdict form, if, for example, a Plaintiff fails to prove an element of a claim. *See* Fed. R. Civ. P. 49(a). The verdict form shall not be filed via CM/ECF; it should be submitted pursuant to the same deadlines and method provided in subsection F.2.

8. Charging Conference: The Court will examine the jury instructions and verdict form again when it holds the charging conference before the case goes to the jury. The parties will have another opportunity to request changes or additions to the proposed instructions and verdict forms and to state their objections on the record.

9. Final Instructions and Verdict Form: Court staff will prepare a final, clean set of instructions and the verdict form for the jury.

G. Exhibits

1. Format: Parties must use the exhibit list available on the District Court website at http://www.cod.uscourts.gov/JudicialOfficers/ArticleIMagistrateJudges/HonCyrusYChung.aspx. Parties must pre-mark all exhibits that will be used or identified for the record in trial.

2. The parties shall each submit a list of exhibits listed sequentially and consecutively using the exhibit list form (by numbers for the Plaintiff(s) and using alphabetical letters for the Defendant(s)). Parties shall file their final exhibit lists via CM/ECF **no later than seven days** before the Trial Preparation Conference. Final trial exhibit lists shall be filed via CM/ECF by noon the Friday before trial.

3. **One USB flash drive** and **three exhibit notebooks** for each side, one containing the original exhibits and one containing copies of the exhibits for the Court, shall be provided to the Courtroom Deputy by **9:00 a.m.** at least **two business days** before commencement of trial. The following information should appear on the cover of each notebook: (i) caption, (ii) nature of the proceeding, (iii) scheduled date and time, and (iv) "original" or "copy."

    a. Parties shall contact Chambers via email prior to delivery of exhibits and shall deliver the exhibits as directed by Chambers per the designated deadline.

    b. The Courtroom Deputy will place the original exhibit notebook(s) in the witness box. Thus, when asking a witness to look at an exhibit, the party may simply say, "Please look at Exhibit No. __ in the notebook in front of you," and the witness will be able to refer to the exhibit in the original exhibit notebook. Please note that electronic copies may be used in place of referring the witness to the notebook.

4. Exhibits Preparation:

    a. The parties must pre-mark all exhibits that will be used or identified for the record.

    b. The case number shall appear on each exhibit sticker or label. If exhibits are not bound and labeled properly, the trial may be delayed or continued until they are.

    c. There is no need for duplicate exhibits or for a party to seek to admit exhibits offered by another party and admitted by the court or by stipulation.

d. The parties shall confer and attempt to stipulate to the admissibility of any exhibits.

e. No oversized exhibits are to be used unless requested by prior motion and approved by the Court.

f. If a particular exhibit has more than two pages and is not otherwise paginated internally, pages within the exhibit shall be numbered sequentially.

H. Witness Lists

1. Format: Parties must use the form of witness list available through the District Court website at http://www.cod.uscourts.gov/JudicialOfficers/ArticleIMagistrateJudges/HonCyrusYChung.aspx.

2. When to File: Each party shall submit a list of its proposed witnesses as set forth below:

   a. Parties shall file their witness lists via CM/ECF no later than **seven days** before the Trial Preparation Conference. Final trial witness lists shall be filed via CM/ECF by noon the Friday before trial.

   b. **Two days** after witness lists are filed, the parties shall file estimates of the time required for their cross-examination of the opposing party's witnesses.

3. Final witness lists shall include an estimate of the time anticipated for each witness's direct and cross-examination. One copy will be made available to the Court Reporter to assist in the transcription of Court proceedings, so please be sure that names are spelled correctly.

I. Depositions

1. Together with Fed. R. Civ. P. 32, this Standing Order governs the use of both regular and videotape depositions in Court proceedings.

2. When needed during witness testimony, a party shall deliver to the Courtroom Deputy the sealed, original transcript of the deposition.

3. If the parties intend to offer deposition testimony in lieu of a live witness at trial:

   a. Not later than **thirty days** prior to trial, counsel shall exchange with each other their designation of anticipated deposition and videotaped deposition testimony. Plaintiff's designations shall be highlighted in yellow; Defendant's designations highlighted in blue; and any other party's in green. Subsequent to the original

exchange, and not later than **twenty-one days** prior to trial, counsel shall notify opposing counsel of any counter-designated deposition testimony, exchange objections to all designated testimony, and make a good-faith attempt to resolve such objections.

b. Not later than **fourteen days** prior to trial, the parties shall submit directly to Chambers the transcript of the designated deposition testimony, highlighted as set forth above, along with the objections thereto highlighted in red, with a notation as to the basis for the objection and a response to such objection.

c. The Court will attempt to resolve disputes regarding the admissibility of properly designated deposition testimony prior to trial. However, if the Court does not rule on the admissibility of deposition testimony before trial, as with all other live testimony, objections shall be raised at the time the deposition testimony is presented.

d. 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.

4. For jury trials, if evidence will be presented through a written deposition transcript, the proponent shall supply a person to read from a written deposition transcript.

5. For bench trials, depositions will usually not be read in open Court. Instead, the Court will read them in Chambers in any sequence requested. 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, Defendant's in blue, and any other party's in green. If there is any dispute or objection concerning such testimony, see subsection 3 above.

J. Glossary

1. Not later than **five business days** before trial, the parties shall **email to Chambers** a Glossary of any difficult, unusual, scientific, or technical words, names, terms, or phrases, along with the spellings of witnesses' names, names of persons or entities that will be frequently referenced, and acronyms or abbreviations that may be used in testimony or argument.

2. The parties shall submit to the Courtroom Deputy **three paper copies** of the Glossary and provide a copy of the Glossary to opposing counsel and any pro se party **on the day of trial.**

K. Jury Trials

1. The parties shall be present on the first day of trial **at 8:00 a.m.** Jury selection will begin **at 8:30 a.m.** The second day of trial will begin **at 8:30 a.m.** and continue **until 5:00 p.m.** The trial day will have morning and afternoon recesses of approximately fifteen minutes in duration. A lunch break of approximately one hour will be taken at approximately 12:00 p.m.

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

3. **Voir Dire**: After potential jurors are seated in the courtroom, the Court will give a brief statement of the case and conduct initial voir dire.

    a. The parties will conduct the remainder of the voir dire examination. Counsel will have **thirty minutes** per party/party group to conduct voir dire.

4. Jurors will be permitted to take notes during the trial. Jurors will be permitted to submit written questions for witnesses to the Courtroom Deputy while the witness is on the stand. The parties will approach the bench to read the proposed question(s) and raise any objections. Based on the objections, the Court may read, modify, or reject the question(s).

5. The jury will be instructed before closing argument.

6. Each juror will be given a copy of the written jury instructions for use during deliberations.

7. The parties are not required to remain behind the lectern during voir dire. It is useful, however, for the reporter if parties use the microphone at the lectern. Please speak slowly for the reporter. The parties should also remind their witnesses to speak slowly and clearly.

L. Trials To Court

1. Trials to court will begin at 8:30 a.m. on the first day of trial.

2. Not less than **two business days** before the Trial Preparation Conference, counsel and any pro se party shall file proposed findings of fact, conclusions of law, and orders. A copy shall also **be emailed to Chambers in Word format.** Counsel and any pro se party are requested to state their proposed findings of fact in the same order as their anticipated order of proof at trial. Counsel and any pro se party are requested to key their closing arguments to their proposed findings of fact and conclusions of law and to emphasize the evidence on which they rely

to support their positions.

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

M. Trial Briefs

Trial briefs are encouraged but not required absent a specific Court order. If filed, trial briefs shall not exceed ten pages and shall be filed no later than **five days** before the Trial Preparation Conference. A trial brief may not be used as a substitute for a motion.

N. Opening Statements

Counsel will have **thirty minutes** per party/party group for opening statements. Parties may use charts, graphs, and other demonstrative aids in opening statements. Such aids must be exchanged no later than **three business days** before trial so that objections can be resolved before trial.

O. Closing Arguments

Counsel will have **sixty minutes** per party/party group for closing arguments. The parties are required to adhere to the evidence admitted during the trial but may argue inferences from the evidence, use analogies, or employ other tactics that would be useful for the jury.

P. Order and Mode of Presentation by Counsel in Trial

Where a party is represented by more than one attorney, only one attorney for that party will be permitted, per witness, to examine and/or cross-examine said witness. Only one attorney for such party may conduct voir dire (unless given leave of the Court to do otherwise) or give an opening statement. If a party is entitled to two closing arguments, two attorneys may split closing arguments between counsel.

Table of Pretrial/Trial Deadlines

Note: This table is provided for the convenience of parties. It does not include all the dates and deadlines listed within the Judge's Civil Standing Order.

DEADLINE	DAYS PRIOR	CYC CIV. STANDING ORDER REF.
Prior to Final Pretrial Conference		
Meet and confer regarding Final Pretrial Order	14 days	III(A)
Final Pretrial Order	7 days	III(A)
Prior to Trial Preparation Conference		
Proposed jury instructions and verdict form	21 days	III(F)
Motions in limine	21 days	III(D)
Responses to motions in limine	14 days	III(D)
Proposed voir dire questions	7 days	III(E)
Joint list of exhibits	7 days	III(G)(2)
Witness lists	7 days	III(H)(2)(a)
Estimates for cross-examinations of opposing party's witnesses	5 days (or 2 days after witness lists are filed)	III(H)(2)(b)
Proposed findings of fact, conclusions of law, and orders (*bench trials only*)	2 business days	III(L)(2)
Trial briefs	5 days	III(M)
Prior to Trial		
Realtime or daily rough draft request	30 days	II(B)
Exchange deposition designations	30 days	III(I)(3)(a)
Counter-designations and objections regarding deposition designations	21 days	III(I)(3)(a)
Transcript of designated deposition testimony and objections	14 days	III(I)(3)(b)
Questions to Courtroom Deputy regarding courtroom technology	14 days	II(A)
Glossary due (3 total)	5 business days via email and 3 copies on the first day of trial	III(J)
Exhibit notebooks (3) and USB flash drive (1)	2 business days	III(G)(3)
Final witness and exhibit lists	Friday before trial by noon	III(H)(2) and III(G)(2)