PRACTICE STANDARDS FOR CIVIL CASES

Judge Daniel D. Domenico
United States District Court for the District of Colorado

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Chambers A1038
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I. GENERAL PROCEDURES

A. Applicable Rules

1. Those appearing in the District Court must know and follow:

a. The Federal Rules of Civil Procedure;

b. The Federal Rules of Evidence;

c. The Local Rules of Practice of the United States District Court for the District of Colorado;

d. The Electronic Case Filing Procedures (Civil Cases) of the United States District Court for the District of Colorado; and

e. These Practice Standards for Civil Cases.

2. Failure to comply with the foregoing rules or procedures or these Practice Standards may result in appropriate sanctions.

B. Communications with Chambers

1. **Please do not call Chambers.** Instead, inquiries to Chambers (*e.g.*, questions about procedure or clarifications to these Practice Standards) should be made via **email** to **Domenico_Chambers@cod.uscourts.gov**. Email messages to Chambers should identify the case number and name in the subject line and copy all counsel of record. Chambers staff cannot give legal advice or grant informal requests not made via motion, so please do not contact Chambers about substantive matters.

2. For questions about filing documents electronically, please contact the **ECF Help Desk** at **(303) 335-2050**, **(866) 365-6381**, or **cod_cmecf@cod.uscourts.gov**. For other case filing and docketing questions, please contact the Court's **Case Administration Specialist** at **(303) 335-2074**.

C. Citations

1. Citation and formatting may be in *Bluebook* form or in any form that consistently, accurately, and understandably conveys the authorities necessary to support a party's legal argument.

2. These Practice Standards may be cited as "DDD Civ. P.S. XX" (*e.g.*, "DDD Civ. P.S. III(A)(1)").

3. Whenever practicable, a citation to an unpublished opinion should include its Westlaw® citation. If an unpublished opinion is not readily available on Westlaw® or LexisNexis®, attach it as an exhibit to the brief or other paper.

D. Typeface

1. All papers filed with the Court must be in a proportionally spaced, serif font.

E. Settlement

1. If a settlement is reached, the parties must file a notice of settlement that includes the anticipated time required to file dismissal papers or other papers sufficient to resolve the matter. If a partial settlement is reached, the parties must file a notice of the partial settlement or a stipulation of dismissal specifying the claims, counterclaims, cross-claims, defenses, or parties affected by the partial settlement.

2. If a settlement is reached on the eve of a hearing or trial, please also promptly advise Chambers via email copying all counsel of record, with a subject line containing "Settlement" and the case number and name. No deadline, hearing, or trial is vacated or continued unless and until the Court issues an order. If a settlement is reached after noon on the last business day before a jury trial, jury costs may be assessed in accordance with Local Civil Rule 54.2.

3. The Court generally will not retain jurisdiction (including through open-ended administrative closure) over cases that have been settled. The proper mechanism for enforcing a settlement agreement is, in almost all cases, through a new action. Any motion or stipulation for dismissal requesting that the Court retain jurisdiction after dismissal must explain in detail the circumstances necessitating such an approach.

II. COURTROOM PROCEDURES

A. Courtroom Operations

1. For information regarding the courtroom, including instructions on how to proceed by telephone conference or video teleconference, courtroom equipment and technology, courtroom protocol, trial preparation and submission of trial exhibits, and the use of exhibits and deposition transcripts at hearings or trial, please contact the Courtroom Deputy, **Robb Keech**, at **Robb_Keech@cod.uscourts.gov**.

B. Recording of Proceedings

1. To order transcripts of proceedings, please contact the Court Reporter, **Tamara Hoffschildt**, at **tamarahoffschildt@gmail.com**. Requests for real-time, daily, or hourly copy must be made at least **thirty days** before the trial or hearing.

2. Not later than **five business days** before any hearing, trial, or other proceeding, counsel and any pro se party must file a glossary of any difficult, unusual, scientific, or technical words, names, places, terms, or phrases.

C. Exhibits

1. Counsel must confer and agree from the commencement of discovery on a numbering system that will avoid confusion and duplication, and that will allow the same exhibit number to be used for each exhibit for deposition and trial purposes (*e.g.*, the employment contract at issue would be the same exhibit with the same number for all depositions and at trial). All exhibits should be identified by number only (*e.g.*, "Exhibit 1," not "Plaintiff's Exhibit 1"). Numbers for trial exhibits need not be consecutive.

2. Each party must pre-mark all exhibits that will be used or identified for the record at a hearing or trial. The case number must appear on each exhibit sticker or label.

III. MOTIONS AND OBJECTIONS PRACTICE

A. Length Limitations

1. Excluding motions filed under Federal Rule of Civil Procedure 56 or 65(a) or (b) and papers filed in AP Cases (*see* Local AP R. 1.1(c)), all motions, objections (including objections to the recommendations or orders of United States Magistrate Judges), responses, and briefs must not exceed **4,000 words**. Reply briefs must not exceed **2,700 words**. If a party elects to file more than one preliminary motion under Rule 12, the motions and response briefs must not exceed **4,000 words total** for all such motions/briefs (not each such motion/brief) filed by each party; reply briefs must not exceed **2,700 words total**.

2. Motions for summary judgment or partial summary judgment, motions for preliminary injunction or temporary restraining order, and related response briefs must not exceed **5,500 words**. Reply briefs must not exceed **2,700 words**. If a party elects to file more than one Rule 56 motion, the motions and response briefs must not exceed **5,500 words total** for all such motions/briefs (not each such motion/brief) filed by each party; reply briefs must not exceed **2,700 words total**.

3. In social-security appeals, the length limitations of paragraph (1) above apply to motions, and the length limitations of Local AP Rule 16.1(c)(2) apply to appellate briefs. In bankruptcy appeals, the length limitations of Federal Rule of Bankruptcy Procedure 8013(f) apply to motions, and the length limitations of Rule 8015(a)(7) apply to appellate briefs. In appeals of agency action under 5 U.S.C. §§ 701-706, the length limitations of paragraph (1) above apply to motions, and the length limitations of paragraph (2) above apply to appellate briefs.

4. These length limitations include footnotes, but exclude the case caption, any table of contents or table of authorities, signature block, certificate of service, and certificate of compliance with the applicable length limitation. Motions and opening briefs must be combined in a single document and will be considered one paper for purposes of the applicable length limitation.

5. All motions, objections, responses, and briefs must contain a separate statement, immediately after the signature block, certifying that the paper complies with the applicable length limitation set forth in these Practice Standards (*e.g.*, "I hereby certify that the foregoing paper complies with the length limitation set forth in DDD Civ. P.S. III(A)(1).").

6. A party may file a motion to exceed the applicable length limitation explaining the reasons why additional length is necessary. Any such motion must be filed no later than **three business days** before the date the motion, response, reply, or other paper is due.

7. For any party who does not have access to a word-processing system with a word-count function, typewritten or legibly handwritten papers are subject to page limits instead of the word limits of paragraphs (1) and (2) above. The following equivalents should be used:

a. 2,700 words = 10 pages;

b. 4,000 words = 15 pages; and

c. 5,500 words = 20 pages.

B. Responses and Replies

1. A response must clearly and completely identify by title and CM/ECF docket number the antecedent motion, objection, or other paper to which the response is made. Similarly, a reply must clearly and completely identify by title and CM/ECF docket number the antecedent paper the reply supports and the antecedent response to which the reply is made. No sur-reply or supplemental brief is permitted without leave of Court.

2. A party may respond to another party's objections to a magistrate judge's recommended disposition of a dispositive pretrial matter as provided by Federal Rule of Civil Procedure 72(b)(2). A party may respond to another party's objections to a magistrate judge's order on a nondispositive pretrial matter within fourteen days after being served with a copy of the objections. No reply is permitted without leave of Court.

3. A notice of supplemental authority may be filed if new relevant authority is issued *after* briefing closed on a motion, objection, or other pending issue. Such a notice must be limited to (a) a citation to the new authority including the date of issuance, and (b) a single-sentence reference to the issue to which the filing party believes the new authority pertains (including a citation to the location(s) in previously filed briefing where the issue was raised). If the new authority is not readily available on Westlaw® or LexisNexis®, attach it as an exhibit to the notice. No comment, briefing, or response as to the significance or interpretation of the new authority is permitted without leave of Court. No notice of supplemental authority regarding any authority that issued before the close of briefing may be filed without leave of Court.

C. Proposed Orders

1. Proposed orders submitted pursuant to the Local Rules of Practice or at the direction of the Court must be filed via CM/ECF and emailed to Domenico_Chambers@cod.uscourts.gov in editable Word format, copying all counsel of record. The subject line of the email should identify the case number and name and the CM/ECF docket number of the underlying motion.

D. Exhibits

1. Exhibits to motions, objections, responses, and briefs must be labeled in the CM/ECF system both by exhibit number and by name (*e.g.*, "Exhibit 1 - Smith Affidavit").

2. Copies of documents attached as exhibits to a motion, objection, or other opening brief should not be attached as exhibits to the response, and copies of documents attached as exhibits to a response should not be attached as exhibits to a reply. Any additional exhibit should be attached to the corresponding response or reply and consecutively numbered.

3. Voluminous exhibits are discouraged. Parties should limit exhibits to essential portions of documents.

E. Emergency Motions

1. Emergency motions are only those necessary to avoid imminent, irreparable harm. Counsel filing an emergency motion should ensure that: (1) the caption of the motion begins with the word "Emergency"; (2) the motion is electronically filed using the CM/ECF drop-down menu option entitled "Emergency" on the docket-text modification screen; and (3) Chambers is notified of the motion by email to Domenico_Chambers@cod.uscourts.gov and copying all counsel of record, with a subject line containing "Emergency Motion," the case number and name, and the CM/ECF docket number of the motion.

F. Motions to Continue Hearings and Trials

1. Motions to continue (including motions to vacate or reset) hearings and trials will be determined pursuant to *Rogers v. Andrus Transportation Services*, 502 F.3d 1147 (10th Cir. 2007) and *United States v. West*, 828 F.2d 1468, 1469-70 (10th Cir. 1987). Oral or written motions to continue made at the time of a hearing or trial may not be entertained by the Court. Stipulated motions for continuance are not effective unless and until approved by the Court.

G. Preliminary Motions – Fed. R. Civ. P. 12

1. Rule 12 motions are discouraged if the defect is correctable by the filing of an amended pleading. Except in cases where a party is proceeding pro se, counsel must confer prior to the filing of a motion under Rule 12(b), (c), (e), or (f) to discuss whether an asserted deficiency is correctable by amendment (*e.g.*, failure to plead fraud with specificity) and should exercise their best efforts to stipulate to appropriate amendments. If the parties are unable to resolve the dispute(s), the moving party must describe in the motion, or in a certificate attached to the motion, the specific efforts taken to comply with this duty to confer and the position of each party at the time the conferral process broke down.

2. If matters outside the pleadings are submitted in support of or opposition to a Rule 12 motion, the filing party must address the basis for the Court to consider such matters. Rule 12(b)(6) or 12(c) motions should not be stated in the alternative as a Rule 56 motion for summary judgment.

H. Motions to Amend Pleadings – Fed. R. Civ. P. 15

1. When a party seeks leave to amend a pleading on or before the applicable scheduling-order deadline, the Court will freely grant leave to amend. *See* Fed. R. Civ. P. 15(a)(2). Parties are discouraged from opposing a timely request to amend a pleading on the basis of futility of the proposed amendment; futility arguments are better addressed through an appropriate Rule 12 motion filed after the amended pleading is in place.

I. Motions for Summary Judgment – Fed. R. Civ. P. 56

1. Rule 56 motions must comply with the following:

a. In a section of the brief required by Local Civil Rule 56.1(a) styled "Statement of Undisputed Facts," the movant must set forth in simple, declarative sentences, separately numbered and paragraphed, each material fact that the movant believes is not in dispute and that supports the movant's claim that the movant is entitled to judgment as a matter of law. Each material fact must be accompanied by a specific reference to material in the record that establishes that fact. General references to pleadings, depositions, or documents are usually insufficient if the document is more than one page in length. A general reference is sufficient only if the nature of the material fact does not permit a specific reference (*e.g.*, "The contract contains no provision for termination.").

2. Responses to Rule 56 motions must comply with the following:

a. In a section of the response brief styled "Response to Statement of Undisputed Facts," the opposing party must admit or deny each of the movant's asserted material facts. Each admission or denial must be made in a separate paragraph numbered according to the corresponding paragraph in the movant's "Statement of Undisputed Facts." Any denial must be accompanied by a brief factual explanation of the reason(s) for the denial and a specific reference to material in the record supporting the denial.

b. If the party opposing the motion believes that there are additional material facts that have not been adequately addressed in its "Response to Statement of Undisputed Facts" (*e.g.*, facts concerning an affirmative defense), the party must, in a separate section of the brief styled "Statement of Additional Facts," set forth in simple, declarative sentences, separately paragraphed and numbered continuing from the previous list, each additional material fact that undercuts the movant's claim that it is entitled to judgment as a matter of law. Each such fact must be accompanied by a specific reference to material in the record establishing the fact or demonstrating that it is in genuine dispute.

3. Any reply brief in support of a Rule 56 motion must comply with the following:

a. In a section of the brief styled "Reply Concerning Undisputed Facts," the movant must include any factual reply it cares to make regarding the facts asserted in its motion to be undisputed, supported by specific references to material in the record. Each reply must be made in a separate paragraph numbered according to the corresponding paragraph in its motion and the opposing party's response.

b. If the response brief contains a "Statement of Additional Facts" pursuant to subparagraph (2)(b) above, the movant must, in a separate section of the reply brief styled "Response to Statement of Additional Facts," with respect to each additional fact the opposing party asserts or claims to be in dispute, either admit the fact or that it is in genuine dispute or supply a brief factual explanation for its position that the fact is undisputed, supported by a specific reference to material in the record establishing the fact is undisputed. This must be done in separate paragraphs numbered according to the corresponding paragraphs in the opposing party's response.

4. In any admission or denial, the party must admit or deny the factual substance of the other party's assertion, unless doing so would violate a recognized privilege. To this end, the following restrictions apply:

a. A party may not deny an assertion on grounds of inadmissibility. A party "may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence," Fed. R. Civ. P. 56(c)(2), and any party so objecting must include a concise explanation of its objection, but the party must still admit or deny the factual substance of the assertion.

b. The opposing party may not deny an assertion for lack of knowledge, unless the party states within the body of its response a well-grounded request for additional discovery under Federal Rule of Civil Procedure 56(d) and attaches to the response the affidavit or declaration required by that Rule.

c. A party may not admit an assertion in terms such as "admitted that John Doe *claims* such-and-such," unless the assertion itself is framed in terms of what John Doe "claims."

d. A party may not respond that a quoted or summarized document "speaks for itself," or similar phrases. When faced with such assertions, the opposing party must address their substance, including, for example, an admission or denial that the relevant portion of the document has been quoted or summarized accurately or completely.

5. The sole purpose of these procedures is to establish facts and determine which of them are in genuine dispute. Legal argument is not permitted in the sections of the briefs submitted pursuant to subparagraphs (1)-(3) above, and instead should be reserved for separate portions of the briefs. If, for example, a party believes that an established fact is immaterial, that belief should be expressed in the part of the brief devoted to legal argument, and the fact should be admitted. If, on the other hand, a party believes that the reference to material in the record does not support the claimed fact, that fact may be denied, and *factual* argument may appropriately be made pursuant to these procedures.

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

J. Motions to Exclude Expert Testimony – Fed. R. Evid. 702

1. A party objecting to the admissibility of opinion testimony by an expert witness must file a written motion seeking its exclusion. If a deadline for filing such motions is not set in the scheduling order, such motions must be filed **thirty days** after the deadline for disclosure of rebuttal expert witnesses. The time for filing responses and replies is governed by Local Civil Rule 7.1(d). Failure to raise an issue concerning a putative expert witness (whether under Federal Rule of Evidence 401, 403, 702, and/or 704) in the time and manner set forth herein will constitute a waiver or forfeiture of the issue.

2. The motion must identify with specificity each opinion the moving party seeks to exclude. The motion must also identify the specific ground(s) on which each opinion is challenged, *e.g.*, qualifications, helpfulness, sufficiency of facts or data, reliability of methodology or its application. *See* Fed. R. Evid. 702.

3. If the opinion was disclosed in a written expert report pursuant to Federal Rule of Civil Procedure 26(a)(2)(B), a complete copy of the report must be attached as an exhibit to the motion.

K. Untimely or Noncomplying Papers

1. Motions, objections, responses, replies, briefs, or other papers that are untimely, noncomplying, or filed without a certification when required under Local Civil Rule 7.1(a) or these Practice Standards may be denied without prejudice or stricken *sua sponte*.

IV. TRIALS

A. Trial Scheduling and Preparation

1. The Court generally will contact the parties to set a trial date and Final Pretrial Conference/Trial Preparation Conference date(s) after the dispositive-motions deadline has passed and the Court has issued rulings on all pending motions. If there are no pending motions and the Court has not contacted the parties or issued an order regarding trial scheduling within one month after the dispositive-motions deadline has passed, counsel and pro se parties may email Chambers at Domenico_Chambers@cod.uscourts.gov and politely inquire regarding trial scheduling. Such email messages should identify the case number and name in the subject line and copy all counsel of record.

2. In most cases, the Court will set the Federal Rule of Civil Procedure 16(e) Final Pretrial Conference approximately three to four weeks before trial and a separate Trial Preparation Conference the week before trial. Counsel who will try the case must attend both conferences.

3. The Court will issue a trial preparation order specifying the pretrial tasks to be completed (*e.g.*, proposed Final Pretrial Order, motions *in limine*, proposed jury instructions, etc.) and the deadlines for those tasks.

B. Jury Trials

1. Challenges pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), must be made after peremptory challenges have concluded and before the jury is sworn. A party that wants to preserve a *Batson* challenge should request that the Court not release any jurors subject to the challenge.

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

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