PRACTICE STANDARDS

(Civil Cases)

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

Courtroom 702
Alfred A. Arraj Courthouse

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Denver, CO 80294

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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); and

   e. These Practice Standards.

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

B. Communications with Chambers

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. Please do not call Chambers. Chambers staff cannot give legal advice or grant informal requests not made via motion, so please do not contact Chambers about substantive matters. For information about filing documents electronically please contact the **ECF Help Desk** at **(866) 365-6381** or **(303) 335-2050**.

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. Though it is not mandatory, counsel may wish to consult the short citation guide prepared by Judge Richard Posner of the Seventh Circuit Court of Appeals, a copy of which is available at https://www.law.gmu.edu/assets/files/faculty/Posner_citation_formatting_rules.pdf.

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

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 Whenever practicable, a citation to an unpublished opinion should include its Westlaw® citation. If an unpublished opinion is not readily available on Westlaw® or LexisNexis®, attach it as an exhibit to the brief.

D. Typeface

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

E. Proposed Orders

Proposed orders submitted pursuant to the Local Rules of Practice or at the direction of the Court shall be filed via CM/ECF and emailed to Domenico_Chambers@cod.uscourts.gov in editable Word format. The email message should identify the case name and number in the subject line and refer to the underlying motion by CM/ECF number.

F. Continuances of Hearings and Trials

Motions to continue (including motions to vacate or reset) hearings and trials shall be determined pursuant to *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. Stipulations for continuance shall not be effective unless and until approved by the Court.

G. Emergency Motions

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 at Domenico_Chambers@cod.uscourts.gov, with a subject line containing "Emergency Motion," and the case name and number.

H. Settlement

1. If a settlement is reached before a hearing or trial, please advise Chambers via email promptly, with a subject line containing "Settlement," and the case name and number. No deadline, hearing, or trial is vacated or continued unless and until the Court issues an order. If counsel are unable to file dismissal papers or other papers sufficient to resolve the matter before the hearing or trial, the Court may in its discretion require the parties to appear at the scheduled hearing or trial to place the settlement on the record. Regarding jury trials, jury costs may be assessed in accordance with Local Civil Rule 54.2 if a matter is resolved after noon on the last business day before trial. If a matter is resolved the weekend before trial, please file a notice via CM/ECF as soon as possible.

2. Settlement discussions are encouraged. However, hearings, trials, and pretrial deadlines will generally not be continued or vacated to facilitate settlement negotiations or alternative dispute resolution.

3. If a partial settlement is reached, the parties shall promptly notify the Court and request approval of the partial settlement or dismissal and shall specify the claims, counterclaims, cross-claims, defenses, or parties affected by the partial settlement.

4. 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 shall explain in detail the circumstances necessitating such an approach.

II. COURTROOM PROCEDURES

A. Courtroom Operations

For information regarding the courtroom, including telephonic connection, courtroom equipment and technology, courtroom protocol, trial preparation, use of deposition transcripts, the submission of trial exhibits and witness lists, and the use of exhibits at trial, please contact the Courtroom Deputy, **Patricia Glover**, at **(303) 335-2185**.

B. Recording of Proceedings

1. The realtime reporter assigned to the Court is **Tracy Weir** at **(303) 335-2358**. Transcripts of proceedings may be ordered from Ms. Weir. Requests for realtime, daily, or hourly copy must be made at least **30 days** before the trial or hearing. For further details, contact Ms. Weir.

2. Not later than **five business days** before any hearing, trial, or other proceeding, counsel and any pro se party shall file and provide the Court, the court reporter, courtroom deputy clerk, opposing counsel, and any pro se party with a glossary of any difficult, unusual, scientific, or technical words, names, terms, or phrases.

C. Exhibits

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

2. All exhibits should be identified by number only (*e.g.*, "Exhibit 1," not "Plaintiff's Exhibit 1"). Counsel shall 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). Numbers for trial exhibits need not be consecutive.

III. MOTIONS AND OBJECTIONS PRACTICE

A. Length Limitations

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

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

3. These type-volume limitations shall include footnotes, but shall exclude the caption, signature block, certificate of service, and certificate of compliance with the applicable type-volume limitations. Motions and opening briefs shall be combined and shall be considered one paper for purposes of type-volume limitations.

4. Each pleading must contain a separate statement, immediately after the signature block, certifying that the pleading complies with the applicable type-volume limitations set forth in these Practice Standards (*e.g.*, "I hereby certify that the foregoing pleading complies with the type-volume limitation set forth in Judge Domenico's Practice Standard III(A)(1).").

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

6. For any party who does not have access to a word-processing system with a word-count function, typewritten or legibly handwritten pleadings are subject to page limitations instead. 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. Untimely or Noncomplying Motions, Objections, Responses, or Replies

Pleadings 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*.

C. Responses and Replies

A response shall clearly and completely identify by title, court CM/ECF docket number, and date filed, the antecedent motion or petition to which response is made. Similarly, a reply shall clearly and completely identify by title, court CM/ECF docket number, and date filed, the antecedent response to which reply is made.

D. Motions to Dismiss – Fed. R. Civ. P. 12(b)

1. Rule 12(b) 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 the motion 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. Rule 12(b) motions should not be stated in the alternative as a Rule 56 motion for summary judgment. For Rule 12(b) motions, the following format should be used:

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

b. The respondent should utilize the same format for each challenged claim. If the respondent disputes a particular element, it should be identified as **"**DISPUTED**"** and briefed. If the respondent contends that a sufficient factual allegation has been made in the complaint, the respondent should identify the page and paragraph containing the required factual allegation.

c. If matters outside the pleadings are submitted in support of or opposition to a Rule 12(b) motion, the party should discuss whether the 12(b) motion should be converted to a summary judgment motion.

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

1. Due the voluminous factual materials often submitted with Rule 56 motions, all such 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 Material Facts," the movant shall 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 movant is entitled to judgment as a matter of law.

b. 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 insufficient if the document is more than one page in length.

c. 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.").

d. Any party opposing the motion for summary judgment shall, in a section of the brief styled "Response to Statement of Undisputed Material Facts," admit or deny the movant's asserted material facts. The admission or denial shall be made in separate correspondingly numbered paragraphs. Any denial shall be accompanied by a brief factual explanation of the reason(s) for the denial and a specific reference to material in the record supporting the denial.

e. If the party opposing the motion believes that there are additional disputed questions of fact that have not been adequately addressed in the submissions made pursuant to subparagraph (d) above (*e.g.*, disputed facts concerning an affirmative defense), the party shall, in a separate section of the brief styled "Statement of Additional Disputed Facts," set forth in simple, declarative sentences, separately numbered and paragraphed, each additional, material disputed fact that undercuts the movant's claim that it is entitled to judgment as a matter of law. Each such fact shall be accompanied by a specific reference to material in the record establishing the fact or demonstrating that it is disputed.

f. Any reply brief must comply with the following:

i. In a separate section styled "Reply Concerning Undisputed Facts," the movant shall 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. The reply will be made in separate paragraphs numbered according to the motion and the opposing party's response.

ii. In a separate section styled "Response Concerning Disputed Facts" (with respect to each fact that the opposing party, pursuant to subparagraph (e) above, claims to be in dispute), the movant shall either admit that the fact is disputed or supply a brief factual explanation for its position that the fact is undisputed, accompanied by a specific reference to material in the record establishing the fact is undisputed. This will be done in paragraphs numbered to correspond with the opposing party's paragraph numbering.

g. 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:

i. The opposing party may not deny an assertion on grounds of evidentiary admissibility or other reasons for inadmissibility (including, irrelevance, immateriality, lack of authenticity, lack of foundation, incompleteness, waiver, or estoppel). The opposing party "may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible at trial," 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.

ii. 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 the affidavit or declaration required by that Rule.

iii. The opposing 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."

iv. The opposing 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 document has been quoted or summarized accurately.

h. The sole purpose of these procedures is to establish facts and determine which of them are in dispute. Legal argument is not permitted here and 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.

i. See Local Civil Rule 56.1(c) regarding submission and marking of summary judgment exhibits. All summary judgment exhibits shall be labeled in the CM/ECF system both by exhibit number or letter and by name (*e.g.*, "Exhibit 1 - Smith Affidavit").

j. 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.

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

1. A party objecting to the admissibility of opinion testimony by an expert witness shall file a written motion seeking its exclusion. (The failure of an opponent to file such a motion, however, does not relieve the proponent of its burden to show that the proffered testimony is admissible at trial.)

2. The motion shall identify with specificity each opinion the moving party seeks to exclude. The motion shall also identify the specific ground(s) on which each opinion is challenged, *e.g.*, relevancy, sufficiency of facts and data, methodology. *See* Fed. R. Evid. 702.

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

4. If a deadline for filing such motions is not set at the scheduling conference, such motions shall be filed **30 days** after the deadline for disclosure of rebuttal expert witnesses. The time for filing responses and replies shall be governed by Local Civil Rule 7.1(d).

IV. TRIALS

A. Final Pretrial Conference/Trial Preparation Conference

1. The Court will generally 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 such motions.

2. In most cases, the Court will combine the Federal Rule of Civil Procedure 16(e) Final Pretrial Conference with a Trial Preparation Conference, held approximately three to four weeks before trial. Counsel who will try the case must attend. Once a trial date and Final Pretrial Conference/Trial Preparation Conference date(s) have been set, the Court will issue an 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. The jury in civil cases will normally consist of nine jurors. Pursuant to Federal Rule of Civil Procedure 47(b) and 28 U.S.C. § 1870, each side shall have three peremptory challenges.

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

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

4. The jury will be instructed before closing argument, and each juror will be given a copy of the written jury instructions for use during deliberations.