

**UNITED STATES DISTRICT COURT  
DISTRICT OF COLORADO  
THE HONORABLE DAVID M. EBEL**  
Byron White United States Courthouse  
1823 Stout Street, Room 109L  
Denver, Colorado  
(303) 844-3800

District Court Courtroom:  
Byron Rogers Federal Building  
1929 Stout Street, Room C202

This is a summary of the procedures that I use in the trials of civil and criminal cases. Please familiarize yourself with these matters, and follow the attached check-list. These procedures supplement the Federal Rules of Criminal and Civil Procedures and Local Rules of the District.

When addressing the Court for any reason, parties should always stand at the lectern and speak into the microphone.

The Court is punctual. Counsel and parties should arrive 10-15 minutes before scheduled hearing times. Turn off all cell phones and pagers before entering the courtroom.

Pre-Trial and General Procedures

Generally, the magistrate judge assigned to the case will conduct the Rule 16 scheduling conference and set status, settlement and pre-trial conference dates. Upon completion of the final pre-trial conference, counsel should come to my Chambers to obtain final trial preparation conference and trial dates. Scheduling should be planned with the assumption that all cases will go to trial within one year of filing, absent extraordinary circumstances. Counsel should expect to be given a firm trial date within 60 to 120 days from the final pre-trial conference.

Briefs in support and in opposition to Motions to Dismiss and Motions for Summary Judgment may not exceed twenty pages in length unless the Court has granted a page extension prior to five days before the brief is due. Reply briefs shall not exceed five pages in length. Trial briefs may be filed with the Court's permission and shall not exceed ten pages unless the Court has granted a page extension.

When requesting a change in hearing dates, parties should endeavor to file unopposed, stipulated or joint motions. Please include **proposed** dates that have been cleared on all counsel's calendars for the Court to consider. There is

no guarantee that the Court will use these proposed dates. All motions should be accompanied by a proposed Order sent to my Chambers via e-mail ([Ebel\\_Chambers@ca10.uscourts.gov](mailto:Ebel_Chambers@ca10.uscourts.gov)) and filed in Microsoft Word or Word Perfect or in a format in accordance with the District of Colorado ECF Procedures V.L (instructions on submission of a proposed order). Do not hesitate to contact the ECF Help Desk at 303-335-2050 with any questions.

Any motion or brief which a party wishes the Court to consider is to be filed at least 72 hours in advance of a hearing.

### Trial / Hearing Procedures

There is one lectern in the courtroom from which attorneys will address the Court, witnesses and the jury. Counsel tables are arranged slightly perpendicular to the Bench.

- a) Plaintiffs are seated at the table closest to the jury box.
- b) Defendants are seated at the table farthest from the jury box.

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

The administration of an oath or affirmation is a solemn public ritual and an integral part of any judicial proceeding. The complete attention of all in the courtroom to such oath taking is mandatory.

The Courtroom Deputy will present exhibits and depositions to the witnesses. Thus, you may simply say, "Please look at Exhibit No. 1," or "Please refer to your deposition taken on . . . ." and the Courtroom Deputy will provide the exhibit or deposition to the witness.

In jury trials, bench conferences are strongly discouraged and will be minimized. Matters that may otherwise justify a bench conference should ordinarily be raised either before or after the trial day or during a break.

Jury trials normally begin on Mondays at 9:00 a.m. Counsel should be present **one hour before** the scheduled trial time, to go over the attached trial checklist with the Courtroom Deputy. Jury selection will begin as close to 9:00 a.m. as possible. Bench trials begin at 9:00 a.m. and counsel should be present to check in with the Courtroom Deputy at 8:30 a.m.

Subsequent trial days will normally begin at 9:00 a.m. and continue until 5:00 - 5:30 p.m. The lunch recess will usually begin between noon and 12:30 p.m. and will usually be of 75-minute duration. We will usually take a mid-morning and mid-afternoon break for approximately 15 minutes.

Please advise the Courtroom Deputy of any late or anticipated filings to ensure that all necessary documents are present during trial. I will be available for any preliminary matters.

### **Criminal Matters Only**

**NOTE: The Court disfavors plea agreements pursuant to F.R.Crim.P. 11(c)(1)(c) since the *Booker* and *FanFan* decisions, and they will only be accepted in certain circumstances.**

Changes of Plea are set approximately four (4) weeks from the date of the Notice of Disposition, unless specifically requested otherwise in the Notice.

Changes of Plea – ALWAYS bring the signed original and one copy of the “Statement by Defendant in Advance of Change of Plea” and the “Plea Agreement and Statement of Facts” to the courtroom at the time of the hearing. [This is in addition to the courtesy copy required to be delivered to chambers 48 hours before the Change of Plea hearing.] Please read my “Order Setting Change of Plea” carefully.

The AUSA assigned to a criminal matter must be present at a change of plea. If the AUSA cannot attend in person, he/she must be present by phone and a fully briefed substitute AUSA must be physically present.

\* \* \* \* \*

Please direct any questions concerning exhibits or courtroom equipment to Nicholas Richards at (303) 335-2180. Mr. Richards will put you in touch with a courtroom deputy, and counsel should schedule times before trial with the courtroom deputy to familiarize themselves with the Courtroom’s technology.

Please also contact Mr. Richards regarding transcripts. He can give you contact information for the court reporter. If counsel requires special services such as daily copy or real time, they should make such request **at least 30 days in advance of the trial date.**

We are sensitive to the anxieties of trial practice, and we hope to minimize apprehension about local practices. If you have any questions, call my Judicial Assistant at (303) 844-3800.

## CHECKLIST FOR FINAL TRIAL PREPARATION CONFERENCE

1. By 3:00 p.m. two days before the trial preparation conference, the parties shall submit, via email to [Ebel Chambers@ca10.uscourts.gov](mailto:Ebel_Chambers@ca10.uscourts.gov) the following:
  - a. A list containing the names and addresses of each witness to be called in your case in chief, using the form provided online. Set forth the best estimate of the time required for each witness for direct examination and a brief description of the nature of the testimony of the witness. This witness list is counsels' representation, upon which opposing counsel may rely, that the witnesses listed will be present and available for testimony at trial. Witnesses not listed in the pretrial order may not be listed at the final trial preparation conference absent stipulation or a showing of good cause.
  - b. A list of proposed exhibits, using the form provided online. Exhibits not listed in the pretrial order may not be included on the final exhibit lists except by stipulation or a showing of good cause. Only those exhibits listed on the final exhibit lists presented at the final trial preparation conference may be presented at trial. Counsel shall have stipulated to the authenticity and admissibility of exhibits to the extent possible in good faith.
  - c. A set of proposed jury instructions, submitted in accordance with this Court's memorandum that follows, addressing the instructions in greater detail.
  - d. Any proposed voir dire questions the parties would like the Court to ask.
2. At the Final Trial Preparation Conference, the parties shall submit the following:
  - a. A glossary of any unusual or technical terminology for the Court and the Court Reporter.
  - b. Provide citations to any case law that counsel believes the court should review before trial. Limit the citations to those which are believed to be controlling or most persuasive. String cites are not allowed.
  - c. Submit any stipulated amendments to the pretrial order.
3. Motions in limine are discouraged.

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CHECKLIST FOR TRIAL

1. Witness List: **Two days prior to the Final Trial Preparation Conference**, by 3:00 p.m., counsel shall submit via email to [Ebel\\_Chambers@ca10.uscourts.gov](mailto:Ebel_Chambers@ca10.uscourts.gov) their witness list. **At the Final Trial Preparation Conference**, each side must provide the Courtroom Deputy with three paper copies of a list of its witnesses (using the form included on-line), whether or not they have been listed in the pre-trial order. These are in addition to the copy emailed to Chambers prior to the Final Trial Preparation Conference. One copy will be made available to the Court Reporter, which will avoid the necessity of asking for the spelling of the witness' name. Please be sure that names are spelled correctly, and estimate the time of testimony for direct and cross-examination.
  
2. Exhibit List: The parties shall prepare a joint list of exhibits that they expect to offer (using the form included on-line). **Two days prior to the Final Trial Preparation Conference**, by 3:00 p.m., counsel shall submit via email to [Ebel\\_Chambers@ca10.uscourts.gov](mailto:Ebel_Chambers@ca10.uscourts.gov) the exhibit list. **At the Final Trial Preparation Conference**, three paper copies of the list must be provided to the Courtroom Deputy. These are in addition to the copy emailed to Chambers prior to the Final Trial Preparation Conference. I do not require that exhibits be offered in sequence. I DO require counsel to meet and confer before trial to stipulate to the authenticity and admissibility of exhibits prior to trial, marking the appropriate boxes on the attached form. NOTE: Although they are stipulated, it does not mean they are admitted automatically.
  
3. Exhibits: All exhibit are to be listed numerically without repetition. Plaintiff's exhibits should be marked P-1, P-2, P-3 . . . . Defendant's exhibits should be designated D-1, D-2, D-3 . . . . Please also affix labels to your exhibits before trial. The civil action number shall also be placed on each of the exhibit stickers. Blank exhibit stickers are available at the front counter of the Clerk's Office. Multi-page exhibits must be permanently fastened and each page numbered consecutively to prevent any pages from becoming separated or omitted. All exhibits in proper sequence shall be delivered to the Courtroom Deputy on the morning of trial. We encourage the use of 3-ring binders to hold

exhibits. The notebooks should properly function and contain a small enough number of exhibits so that witnesses can turn the pages in the notebook with ease. In no event should the notebook be bigger than a 3-inch notebook. Counsel must provide copies of all exhibits to opposing counsel and have copies for their own reference. An original exhibit notebook and two copies for the Court are required. There will be no juror notebooks of exhibits. (Jurors will be given blank workbooks in which they can record brief notes during trial.) Jurors will deliberate with the admitted exhibits in the original exhibit notebook(s). NOTE: Demonstrative exhibits and documents used to refresh memory must also be marked. All exhibits are to be displayed on the Elmo and must fit on the Elmo. No over-sized exhibits are to be used unless requested by motion.

4. Written Curricula Vitae: In trial to the Court, a *vita*, marked as an exhibit, will usually suffice for the qualifications of an expert witness.
5. Depositions: At the beginning of trial, you should deliver to the Courtroom Deputy the originals of all depositions you intend to use. In a trial to the Court, you should deliver such depositions to chambers one week prior to trial. If you are going to offer deposition testimony in lieu of a live witness, prepare your page and line designations and cross-designations ahead of time and submit these to the Courtroom Deputy in writing, in duplicate. You are also requested to provide a person to read answers if there is a jury trial. DO NOT mark depositions as exhibits.
6. Trial Briefs: Please advise the Court if you wish to file trial briefs, which may not be filed unless requested by the Court. Briefs requested shall be filed on a date to be set by the Court. Unless otherwise specified, trial briefs shall be limited to ten (10) pages.
7. Jury Costs: In order to avoid assessment of jury costs, you must notify the Court of a settlement before 12:00 noon on the last business day before the scheduled trial date. See D.C.COLO.LCivR 54.2.
8. Standing for Jurors: As a matter of courtesy, it is the Court's policy that everyone stand when the jury enters or leaves. (EXCEPTION: Do not stand for the jury panel members as they come into the courtroom initially for jury selection.)
9. Oath-Taking: Any public oath-taking administered to witnesses, interpreters and Court Security Officers require the undivided attention of counsel as well as all others in the courtroom.
10. Forms of Address: As a sign of respect for the institution, you will refer to the judge as "Your Honor" or "the Court." Please refer to all other persons by their surnames, prefaced by Mr. or Ms. (Miss or Mrs. only when appropriate) unless referencing a quote in which only a first name was used or where a

surname cannot be recalled. You may refer to both physicians and Ph.D.'s as "Doctor," and the law enforcement officials as "Agent" or "Officers," as appropriate.

11. Sequestration Orders: Sequestration orders are to be strictly observed. Expert witnesses may not sit in on trials in which sequestration orders have been entered except with express prior authorization. Witnesses who have not yet testified at trial should not be provided transcripts of trial proceedings. Once excused, witnesses may sit in the courtroom, unless a party has a good faith belief that the witness will be called again for rebuttal purposes and makes an ongoing exclusion request with the Court.

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**MEMORANDUM**

TO: Trial Counsel

FROM: Judge David M. Ebel

RE: Proposed Jury Instructions

First, and most importantly, counsel for both sides should meet together well in advance of trial and **stipulate to as many proposed jury instructions as possible**. It is often possible for trial counsel to stipulate to all stock instructions, and frequently counsel are able to agree on most substantive instructions as well.

**By 3:00 p.m. two days prior to the Final Trial Preparation Conference**, the parties should submit, via email to [Ebel\\_Chambers@ca10.uscourts.gov](mailto:Ebel_Chambers@ca10.uscourts.gov), three separate sets of instructions:

- 1) Stipulated – This first set should contain instructions to which both plaintiff and defendant have agreed;
- 2) Competing – This second set should contain instructions on issues where the parties agree an instruction is needed, but disagree on the wording of the instruction; and
- 3) Additional/Non-Stipulated – This third set should contain any additional instruction which a party requests, but to which the other party objects.

The instructions should **NOT** be numbered and there should be no repetition. However, the pages should be numbered. That is, if the parties stipulate to a particular instruction, then that instruction should be submitted as a stipulated instruction only, and no similar instruction should appear in either plaintiff's or defendant's set of instructions.



I require two sets of these three groups of instructions. One set should have citations listed at the bottom of each instruction and the other should be clean, meaning no citations or titles. My staff will prepare a final clean set to give to the jury following closing arguments. The set emailed to the Court should be submitted in **Microsoft Word**, if possible, and should not contain citations.

In addition, the instructions must conform to the following requirements:

- (1) **Instruction titles:** Each instruction should include only the title "INSTRUCTION NO. \_\_\_\_" at the top – centered, in all CAPS and not bolded or underlined. DO NOT fill in the numbers, as my law clerk will number the instructions after I have determined the entire set of instructions to be submitted to the jury. Thus, DO NOT entitle an instruction "PLAINTIFF'S INSTRUCTION NO. 4," for example. There should be a two-line break between the title and the text of the instruction.
- (2) **Font:** Instructions should be submitted in **Arial 12 point font**.
- (3) **Line spacing:** Text of the instructions should be **1.5**.
- (4) **Justification:** Except for the centered title explained above, please use a **left margin** justification, not full justification.
- (5) **Emailed set:** The parties should submit their sets of instructions as one continuous document **with hard page breaks between each separate instruction**.
- (6) **CJI:** In a diversity case in which Colorado law applies, I prefer that you submit instructions that conform to the Colorado Jury Instructions (CJI). CJI may also be used for stock instructions in a federal question case.
- (7) **Tenth Circuit Model Jury Instructions:** In criminal matters, where applicable, I prefer that you submit instructions that conform to the Tenth Circuit Model Jury Instructions.
- (7) **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" or "Plaintiff Smith" rather than "the Plaintiff" or "plaintiff Smith."
- (8) **Please Proofread** your submissions carefully.

FOR YOUR REFERENCE, EXAMPLES OF PROPOSED INSTRUCTIONS WITH AND WITHOUT CITATIONS ARE ATTACHED. If the instructions submitted do not conform to these guidelines, they may be returned to you for reformatting.

**Additional Instructions:** If, during the course of trial, you determine that additional instructions are necessary, please submit, via email to [Ebel Chambers@ca10.uscourts.gov](mailto:Ebel_Chambers@ca10.uscourts.gov), and give a paper copy, one with authority and one without, to my law clerk as soon as possible. Of course, you must also give a copy to opposing counsel. Please note that my law clerks will be your primary contact for all matters relating to jury instructions.

**Jury Instruction Conference:** We will have an instruction conference shortly before the case goes to the jury, usually during a lunch break or after the jury is excused for the day. If possible, we will provide you with a draft set of instructions ahead of time. At the instruction conference, I will go through the draft set with you and you will have an opportunity to request changes to the proposed instructions. You also will have an opportunity to state objections on the record at the conclusion of the conference.

Please read the above instructions carefully. If you have any questions, you may call my law clerk.

Thank you for your cooperation in ensuring a smooth trial.

INSTRUCTION NO. \_\_\_\_\_

You are the sole judges of the credibility of the witnesses and the weight to be given their testimony. You should take into consideration their means of knowledge, strength of memory and opportunities for observation; the reasonableness or unreasonableness of their testimony; the consistency or lack of consistency in their testimony; their motives; whether their testimony has been contradicted or supported by other evidence; their bias, prejudice or interest, if any; their manner or demeanor upon the witness stand; and all other facts and circumstances shown by the evidence which affect the credibility of the witnesses.

Based on these considerations, you may believe all, part or none of the testimony of a witness.



**WITNESS LIST FORM**

**Judge David M. Ebel**

Date: \_\_\_\_\_

Case No. \_\_\_\_\_

Case  
Caption: \_\_\_\_\_ v. \_\_\_\_\_

**Plaintiff/Defendant Witness List**

<u>Will Call Witnesses</u> <u>(name &amp; summary of testimony)</u>	<u>Estimated Time for Examination</u>	
	<u>Direct</u>	<u>Cross</u>
1. _____ _____ _____	_____ _____ _____	_____ _____ _____
2. _____ _____ _____	_____ _____ _____	_____ _____ _____
etc.		

<u>May Call Witnesses</u> <u>(name &amp; summary of testimony)</u>	<u>Estimated Time for Examination</u>	
	<u>Direct</u>	<u>Cross</u>
1. _____ _____ _____	_____ _____ _____	_____ _____ _____
2. _____ _____ _____	_____ _____ _____	_____ _____ _____
etc.		