

MEMORANDUM

TO: Counsel and Parties in Civil Cases
FROM: Judge John L. Kane
RE: Pretrial and Trial Procedures – CIVIL CASES

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I. PURPOSE

The purpose of these practice standards is to facilitate “the just, speedy, and inexpensive determination of every action and proceeding,” as mandated by Federal Rule of Civil Procedure 1.

II. GENERAL PROCEDURES

A. Applicable Rules

Those appearing in the District Court in civil cases 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;
- 4) The Electronic Case Filing Procedures (Civil Cases); and
- 5) These Practice Standards.

The Local Rules of Practice and Electronic Case Filing Procedures are available on the District of Colorado website at www.cod.uscourts.gov and from the Clerk’s Office. These practice standards and my specific forms are located under my tab on the District of Colorado website at www.cod.uscourts.gov/JudicialOfficers/SeniorArticleIIIJudges/HonJohnLKane [hereinafter “my website”].

B. Federal Rules of Civil Procedure

Please consider the Federal Rules of Civil Procedure as if they are sitting on a three-legged stool consisting of 1) Notice Pleadings; 2) Liberal Discovery, and 3) the Pretrial Order. Without all three, the system collapses.

C. Communications with Chambers

1. Chambers staff cannot give legal advice or grant oral requests over the telephone. Please do not ask to speak directly with law clerks about pending matters unless previously authorized or invited to do so. If after fully and carefully reading these Practice Standards and the Local Rules of Practice, you still have a question about procedure, you may contact my chambers at 303-844-6118 or Kane_Chambers@cod.uscourts.gov.
2. *Ex parte* communications: Unless specifically authorized for scheduling or other purposes, neither counsel nor pro se litigants may communicate about a case by letter, email, or telephone to the court. All communications must be made in the form of a motion, brief, notice, or status report, and must be served on all opposing counsel and any pro se parties.

3. For information about courtroom technology, trial preparation, submission of trial exhibits, and courtroom protocol, please contact my courtroom deputy clerk, Bernique Abiakam, at Bernique_Abiakam@cod.uscourts.gov.

D. Magistrate Judges

If at any point during the pendency of a case the parties would like referral to a magistrate judge for mediation or settlement purposes, they need only notify my chambers, and the case will be referred for that purpose.

E. Settlements

The parties should provide prompt notice (the same or next business day) of any settlement or partial settlement specifying the claim or defense settled, the parties affected, and the claims defenses, and parties which remain in controversy, as well as the time and date previously set for hearing or trial. Previously set conferences or deadlines (including trial) will not be vacated without the filing of dismissal papers, unless otherwise ordered.

III. SCHEDULING AND DISCOVERY CONFERENCE

1. Once responsive pleadings have been filed and any initial motions to dismiss have been ruled on, the court will set a scheduling conference pursuant to Federal Rule of Civil Procedure 16 and D.C.COLO.LCivR 16.1 and 16.2.
2. Unless otherwise ordered, no formal discovery shall be undertaken by the parties until they meet and attempt to agree on the stipulated Scheduling and Discovery Order. *See* Fed. R. Civ. P. 26(f). This Rule 26(f) meeting shall be held at least **21 days** before the proposed Scheduling and Discovery Order is due to be submitted. The parties shall exchange the disclosures required by Federal Rule of Civil Procedure 26(a)(1) at or within **14 days** of their Rule 26(f) meeting. The parties are not to file any disclosure statements with the court.
3. The stipulated Scheduling and Discovery Order shall be submitted for my approval no later than **five days before the Scheduling Conference** or as otherwise ordered. It is the responsibility of the plaintiff's counsel to schedule meetings and then file and submit the proposed Order. If the parties agree, the plaintiff may delegate the filing responsibility to the defendant. The Scheduling and Discovery Order shall be in the form specified on my website and shall include the signatures of counsel and pro se litigants. Please note that the stipulated Scheduling and Discovery Order template on my website in some instances requires more or different information than that required by D.C.COLO.LCivR 16.2. The proposed Scheduling and Discovery Order should be filed in CM/ECF and submitted electronically in editable Word format to my chambers at Kane_Chambers@cod.uscourts.gov.
4. As provided in the Local Rules, counsel and pro se parties should try in good faith to agree upon the matters addressed in their proposed Scheduling and Discovery Order. If there are

any areas of disagreement, the parties should make a brief statement in the proposed Order concerning the basis for disagreement. In suggesting deadlines for discovery, counsel must be prepared to justify each request at the Scheduling Conference, being mindful of their obligations under Federal Rule of Civil Procedure 1. The parties should expect that I will discuss these and any other issues affecting the management of the case at the Scheduling Conference and that I may modify their proposed Order.

5. At the Scheduling Conference, I want to learn what the case is about in counsel's own words, I want to learn what the costs of litigation will be and what steps the parties are taking to reduce costs. I want the parties' best estimate of when in the course of pretrial it makes sense to discuss settlement and whether a magistrate judge can assist in that endeavor or whether a private mediator will be selected. I want to learn if experts will be retained, the subject area of expertise and the proposed methodology to be used by each such expert.

IV. MOTIONS

A. Duty to Confer in Advance of Motion

I require complete compliance with D.C.COLO.LCivR 7.1(a), which imposes a duty to confer in advance of filing a motion. Before filing any motion, status report, statement, or other paper that includes a request for relief, the filing party shall have conferred or made a reasonable, good-faith effort to confer with opposing counsel to resolve the issue in full or in part. Parties are encouraged to discuss and agree upon collateral matters such as proposed briefing schedules, requests for hearing, sub-issues to which they may be able to stipulate, and other matters that can be resolved through the extension of mutual courtesies or other demonstration of civility.

Filings shall include a statement describing counsel's efforts in this regard and the matters on which agreement was reached. Certification that a telephone call or email was directed to opposing counsel fewer than 24 hours before the paper was intended to be filed and "no response" was received is per se NOT a good-faith effort.

Unopposed motions shall be designated as required by D.C.COLO.LCivR 7.1(c).

B. Format for Motions

1. Motions and all supporting arguments should be contained in a single document. Motions with separately filed briefs or memoranda are strongly discouraged.
2. It is not possible to predetermine the length of a good brief. Accordingly, I do not adhere to any prescribed page limits for briefs. Counsel are expected to exercise good judgment. Consider, however, that the longer it takes to make a point, the less likely it is to be understood, and I will disregard string citations and repetitive arguments. Any case, statute, or article cited in a brief as authority is accepted as certified by counsel's signature that such has been read and known not to have been overruled, modified, or amended. Furthermore,

counsel should bear in mind that sarcastic, rude, or ungrammatical briefs are not persuasive and often counterproductive.

3. I prefer the body of the text and the footnotes to be in Times New Roman 12-point font. The page numbers of motions and briefs should correspond with those given by CM/ECF, i.e., the numbering should start with “1” and continue uninterrupted throughout the document.
4. Responses and replies shall identify by title and CM/ECF docket number the pleading or motion to which they relate.

C. Index of Attached Exhibits

1. Each filing with an exhibit should contain an index of the exhibit(s) that accompany it as the final page of the filing (i.e., after the Certificate of Service). Then, each exhibit should be attached to the actual filing in CM/ECF. This includes any declaration in support of the filing, even if the declaration has its own attachments. In the case of such declarations, the declaration should be a single exhibit to the filing in CM/ECF and each of the attachments to the declaration should be their own exhibits to the filing. For example, the Exhibit List on the last page of the filing would state:
 - Ex. 1: Decl. of _____, dated _____
 - Ex. 2: Att. 1 to Decl. of _____, Email from ___ to ___, dated _____
 - Ex. 3: Att. 2 to Decl. of _____,
2. Restricted exhibits may necessarily be filed as separate entries in CM/ECF.
3. **If a document has already been filed in the docket, the previous entry should be cited and the document should not be re-filed** unless there is a compelling reason for doing so.

D. Deadlines

See D.C.COLO.LCivR 7.1 and D.C.COLO.LCivR 56.1 for applicable time limits for filing response and reply briefs. The computation of time is controlled by Federal Rule of Civil Procedure 6.

E. Motions for Extensions of Time

Motions for extension of time require a showing of good cause, which must be established with particularity. Any motion for extension of time shall be filed as far in advance of the deadline as possible, and no later than one business day before the date the filing would otherwise be due.

F. Motions to Continue

Motions to continue (including motions to vacate or reset) hearings and trials will be determined pursuant to D.C.COLO.LCivR 6.1 and 7.1; these Practice Standards; and *Rogers v. Andrus Transportation Services*, 502 F.3d 1147, 1151 (10th Cir. 2007). Motions to continue should be made without delay at the earliest possible opportunity. Stipulations for continuance

are not effective unless and until approved by the court.

G. Untimely or Noncomplying Motions, Objections, Responses, or Replies

1. Pursuant to D.C.COLO.LCivR 7.1(d), a motion shall not be included in a response or reply to the original motion. 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. This paragraph applies as well to requests for attorney fees or other sanctions.
2. No surreply or supplemental briefs shall be filed without leave of the court.
3. Motions that are untimely, noncomplying, or filed without a certification pursuant to D.C.COLO.LCivR 7.1(a) may be denied without prejudice or stricken *sua sponte*. Untimely or noncomplying objections, responses, or replies may be stricken or ignored.

H. Motions for Default Judgment

1. For default judgment to enter, the Clerk of the Court must first enter default against the defaulting party. If the Clerk has not entered the party's default, the party seeking default judgment must move for the entry of default under Federal Rule of Civil Procedure 55(a). The motion for default must establish valid service on the particular party in accordance with Federal Rule of Civil Procedure 4.
2. Once default has entered, a motion for default judgment may be filed under Federal Rule of Civil Procedure 55(b). The motion shall indicate whether a hearing is required, and a proposed form of judgment should be attached, reciting the language requested to be included in the body of the judgment.

I. Motions for Temporary Restraining Orders

1. Conferral. To minimize delays, I strongly encourages counsel to confer, in advance, with the opposing party's counsel (or, if not yet represented, with the party itself).
2. Ex Parte Motions. As a general rule, *ex parte* motions for issuance of temporary restraining orders will be granted only upon strict compliance with Federal Rule of Civil Procedure 65(b) and (c). In appropriate circumstances, I may deny the motion, set a hearing, or issue an order to show cause to the party to be enjoined.

J. Motions for Protective Orders and Motions to Restrict

Absent good cause, the parties shall use my form Stipulated Protective Order regarding the treatment of confidential information exchanged in discovery. Note that this form Order requires the parties and their counsel to obtain affidavits from recipients before disclosing confidential information to others and imposes additional requirements before confidential information may be filed as restricted. These provisions or their equivalent must be included in any proposed protective order submitted for my approval. Any motion to restrict or otherwise

seal the contents of a filing must comply with the requirements set forth in my form Protective Order. The form Order is available on my website. Please be aware that restricted filings are disfavored except in the limited circumstances authorized by law.

K. Motions to Dismiss

1. Motions filed pursuant to Federal Rule of Civil Procedure 12(b) are discouraged if the defect is correctable by an amended pleading. Counsel should confer before the filing of the motion if the deficiency is correctable by amendment and should exercise their best efforts to stipulate to appropriate amendments. For Rule 12(b) motions, the following format should be used:
2. For each claim for relief that the movant seeks to have dismissed, clearly enumerate each element the movant contends must be alleged but was not.
3. If the respondent contends that a sufficient factual allegation has been made in the complaint for a particular element, the respondent should identify the page and paragraph containing the required factual allegation.
4. If matters outside the pleadings are submitted in support of or in opposition to a Rule 12(b) motion, the party should discuss whether the 12(b) motion should be converted to a summary judgment motion.

L. Motions for Summary Judgment or Partial Summary Judgment

Motions seeking relief pursuant to Federal Rule of Civil Procedure 56 are governed by D.C.COLO.LCivR 56.1. Deadlines will be strictly applied. Upon receipt of a Motion for Summary Judgment filed in accordance with these instructions, I generally adhere to the briefing schedule set forth in D.C.COLO.LCiv.R 56.1 (i.e., 21 days for a response, 14 days for a reply) but may order a shorter or longer briefing schedule as I deem appropriate. In every case, unless otherwise ordered, the movant need not seek permission to file a reply brief.

Any party submitting a motion for summary judgment should be familiar with Professor Arthur R. Miller's article *The Pretrial Rush to Judgment: Are the "Litigation Explosion," "Liability Crisis," and Efficiency Clichés Eroding our Day in Court and Jury Trial Commitments?*, 78 N.Y.U. L. Rev. 982, 1132 (June 2003).

All summary judgment briefing submitted by the parties must comply with the following requirements:

1. In a section of the motion 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 the movant is entitled to judgment as a matter of law.
2. Each separately numbered and paragraphed fact must be accompanied by a specific reference

to evidence in the record that establishes that fact. General references to pleadings, depositions, or documents are insufficient if the document is over one page in length. A “specific reference” means:

- a. In the case of papers filed with the court, the title of the paper, the date on which it was filed or served, and a specific paragraph or page and line number; or, if the paper is attached to the motion, the paragraph or page and line number;
 - b. In the case of interrogatories or requests for admission (the pertinent parts of which must be filed with the motion), the number of the interrogatory or request;
 - c. In the case of depositions or other documents bearing line numbers (pertinent parts of which must be filed with the motion), the specific page and line(s) establishing the fact;
 - d. In the case of affidavits submitted in support of the motion, the specific paragraph number establishing the fact; and
 - e. In the case of other evidence not numbered by paragraph, line, or page, a reference that points to the fact without requiring review of the entire document. The effort at specificity may be made by highlighting, manual underscoring, or pagination supplied by the movant.
3. Only if the nature of the material fact does not permit a specific reference (e.g., “The contract contains no provision for termination.”) is a general reference sufficient.
 4. Any party opposing the motion for summary judgment shall in a section of the response styled “Response to Statement of Undisputed Material Facts,” admit or deny the asserted material facts set forth by the movant. The admissions or denials shall be made in paragraphs numbered to correspond to the movant’s paragraph numbering. Any denial shall be accompanied by a brief factual explanation of the reason(s) for the denial and a specific reference to evidence in the record supporting the denial. Formulaic explanations repeatedly incanted are distracting and unpersuasive and are therefore discouraged. Stipulating to facts not reasonably in dispute strengthens credibility and is encouraged.
 5. If the nonmovant believes there are additional disputed material questions of fact not adequately addressed in its “Response to Statement of Undisputed Material Facts” (e.g., disputed facts concerning an affirmative defense), the nonmoving party shall, in a separate section of its brief styled “Statement of Additional Facts,” set forth in simple, declarative sentences, separately numbered and paragraphed, each additional material disputed fact that it believes undercuts the movant’s claim of entitlement to judgment as a matter of law. Each separately numbered and paragraphed fact shall be accompanied by a specific reference to evidence in the record that establishes the fact or demonstrates it is disputed.

6. In its reply brief (if any) the movant shall:
 - a. In a separate section styled “Reply Concerning Undisputed Material Facts,” set forth any factual reply it cares to make to the nonmovant’s “Response to Statement of Undisputed Facts.” This reply shall be made in separate paragraphs numbered according to the original motion and the opposing party’s response and shall be supported by specific references to evidence of record.
 - b. In a separate section styled “Response Concerning Additional Facts,” admit or deny any of the asserted material facts set forth by the nonmovant in its “Statement of Additional Material Facts.” The admissions or denials shall be made in paragraphs numbered to correspond to the nonmovant’s paragraph numbering. Any denial shall be accompanied by a brief factual explanation of the reason(s) for the denial and a specific reference to evidence in the record supporting the denial.
7. The sole purpose of these procedures is to establish facts and determine whether any of them are in dispute. Legal argument is not permitted here and should be reserved for separate portions of the briefs. If a party believes an undisputed fact is immaterial, for example, the fact should be admitted and the party’s belief regarding its lack of materiality should be expressed in the portion of its brief devoted to legal argument. If, on the other hand, a party believes the asserted fact is simply not supported by the referenced evidence, this factual argument should be included in the party’s response to the allegedly undisputed fact.
8. Absent leave of the court, which will only be granted in exceptional circumstances, a party may only file one motion for summary judgment.
9. Failure to follow these procedures may result in an order striking the motion or brief.

M. Motions to Exclude Expert Testimony

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. The deadline for filing motions objecting to any testimony of an expert witness based on the requirements of *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), and their progeny will be after the Pretrial Conference. However, in many cases, it may be prudent to file such motions before or at the time motions for summary judgment are filed. Any expert motion not specifically identified in the Pretrial Order and filed by the deadline will be deemed waived, unless otherwise ordered.

All motions filed under Federal Rule of Evidence 702 shall include the expert witness’s report as an exhibit, and 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, or methodology.

Upon the filing of a motion, I may, in my discretion, set a hearing to determine whether the challenged opinions are admissible. The setting of such hearing does not obviate the need for opposing counsel to respond to such motion. If such a hearing is ordered, the expert witness whose testimony or opinion is proffered shall be present at the hearing.

N. Proposed Orders

All proposed orders should be emailed to Kane_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 document number.

O. Oral Argument on Motions

While oral argument and/or evidentiary hearings on motions may be requested by a party, they will be scheduled at my sole discretion. Pro forma or generic requests failing to describe reasons for oral argument or an evidentiary hearing will not be considered.

V. IN-COURT PROCEEDINGS

A. Courtroom Protocol

1. Courtroom Decorum. Creating a courtroom where all litigants, witnesses, and counsel feel welcome and respected is of utmost importance to this Court. Courtesy and civility to and from one and all is expected. All parties should observe the following courtroom decorum:
 - a. Stand when the Judge enters or leaves the courtroom, when addressing the Court, and when the jury enters or leaves the courtroom;
 - b. Stand at the lectern when speaking, and communicate clearly and distinctly;
 - c. Request permission to approach the bench; and
 - d. Refer to all other persons by their surnames, prefaced by the individual's title (e.g., Dr., Agent, Officer, Mr. or Ms., etc.).

It will not normally be necessary for counsel to approach a witness on the stand. The courtroom deputy, upon request of counsel, will hand a witness an exhibit.

2. Oaths. Please note and advise all persons appearing with you in court, including co-counsel, paralegals, clients, witnesses, and spectators that oath taking is treated formally in my courtroom. The courtroom deputy is directed to administer an oath to a jury or witness **ONLY** when all other activity in the courtroom has ceased. Attorneys are directed to observe the administration of the oath and to stop all other activity.
3. Cell phones. Cellphones must be placed in "silent mode" or "off" in the courtroom.

B. Record of Proceedings

1. The official record of all trials and proceedings will be taken by a court reporter. Before any courtroom proceeding, please provide the court reporter with your business card or other means of contacting you, as well as a glossary of unusual or technical terminology, difficult-to-spell names, and/or acronyms. Requests for realtime or daily or hourly copy should be communicated to the reporter as soon as practicable, no later than two weeks before the proceeding.
2. Transcripts of any court proceeding can be ordered directly from the court reporter sitting at the particular hearing. If you do not remember the reporter's name, consult the Minute Entry for that proceeding. Court reporters' contact information can be found at www.cod.uscourts.gov/AbouttheDistrict/ContactUs.aspx#report.

C. Exhibits

1. **When to File Exhibit List.** For motions hearings, exhibit lists shall be filed via CM/ECF **two business days before the hearing**. For trials, parties shall file their final unified exhibit list via CM/ECF and email an editable Word version to Kane_Chambers@cod.uscourts.gov **no later than seven days before the Final Trial Preparation Conference**.
2. **Format of Exhibit List.** Parties must use the form Exhibit List available on my website, indicating which exhibits are stipulated and which are not and the basis for any objections. Counsel shall stipulate to the admissibility of exhibits to the maximum extent possible. A failure to stipulate to authenticity of any particular exhibit must set forth specific reasons for the objection.
3. **Marking Exhibits.** Each party must pre-mark all exhibits that will be used or identified in a hearing or trial. Each exhibit shall be marked with its number under the unified system. Exhibits not pre-marked or exchanged before a hearing or trial may not be admitted. The plaintiff's exhibits should be marked with numbers starting at 1. The defendant's exhibits should be marked with numbers starting with where the plaintiff's proposed exhibits leave off. It matters not whether the exhibit is offered by the plaintiff or defendant; the point is to avoid duplication and confusion. There is no need for a party to seek to admit exhibits offered by another party and admitted by the court. Once an exhibit is marked, that number will be permanent and no new additional number(s) should be used to mark it. Each document exhibit shall be paginated, including any attachments thereto.
4. **Paper Exhibits.** Paper copies of exhibits shall be submitted in 3-ring binders, which shall be labeled with the following information: (i) caption, (ii) nature of proceeding, (iii) scheduled date and time, and (iv) "original" or "copy." Paper exhibits, including the set of original exhibits, shall bear extended tabs showing the number of the exhibit. If exhibits are not bound and labeled properly, the hearing or trial may be delayed or continued until they are.

5. Number of Sets of Exhibits.

- a. Original Exhibits: At the start of every trial or evidentiary hearing, the parties shall submit a set of original exhibits (labeled as “original”) to my courtroom deputy. The “original” set will be for the witness stand and will be the only set that goes to the jury room during deliberations in a jury trial.
- b. Copies of Exhibits: In addition to the original exhibit binder(s), the parties shall provide copies of exhibits to the court as follows:
 - i. In addition to the original set of exhibits, each party should provide three separate sets of the exhibits. These copies shall be submitted in the same format as the original exhibits. One set is for opposing counsel, the others are for the court.¹
 - ii. The parties shall also submit their exhibits on a flash drive for the court reporter. If an exhibit cannot be presented in digital form on a flash drive, the party shall contact the court reporter to discuss an alternate format.

D. Timelines and Other Demonstrative Aids

1. In cases in which a sequence of events is relevant or helpful to deciding any issue presented, the parties shall prepare a stipulated demonstrative that sets out the timeline of these events. If any element of this timeline is disputed, the demonstrative should so indicate.
2. The parties are also encouraged to submit similar demonstrative aids for reference during the course of their presentations if such would assist the court or the jury.
3. The parties should provide three total copies of any demonstrative aid, unless it is prohibitively expensive or difficult to make copies of a particular demonstrative aid. Demonstrative aids will not be provided to the jury during its deliberations, unless otherwise ordered.

E. Witnesses

1. When to File Witness List. For motions hearings, witness lists should be filed via CM/ECF **two business days before the hearing**. For trials, the parties shall file their final witness lists via CM/ECF **no later than seven days before the Final Trial Preparation Conference**.
2. Format of Witness List. The parties should use the form Witness List available on my website. It should list the witnesses to be called by each party in its case in chief and set forth the best estimate of the time required for that witness for direct examination. It should also

¹ For trials, one court copy of the parties’ proposed exhibits shall be delivered to my chambers, and a copy to opposing counsel, no later than **seven days before the Final Trial Preparation Conference**. The original set and additional copy of the final exhibits may be brought to the courtroom the first morning of the trial, along with exhibits needing to be replaced in the copies already provided based on rulings from the Final Trial Preparation Conference.

include potential rebuttal witnesses. This witness list is counsel's representation, upon which opposing counsel may rely, that the witnesses listed will be present and available for testimony. The witness list should note any testimony that is expected to occur via video teleconferencing, but such testimony will not be permitted, unless a related motion is made and granted. The witness list must include witnesses whose testimony is to be presented by way of deposition.

3. Witness Sequestration. Upon motion, witnesses will be sequestered until a particular witness's testimony is complete. Each party may retain one advisory witness throughout the trial. If an expert witness's testimony is based in part on observations at trial, the need for the witness's presence must be disclosed not later than the Final Trial Preparation Conference.

F. Use of Deposition Testimony

1. The use of depositions in court proceedings is governed by Federal Rule of Civil Procedure 32, together with this practice standard.
2. At the beginning of a hearing or trial, a party shall deliver to the courtroom deputy the original transcripts of all depositions the party intends to or may use, whether for impeachment or otherwise.
3. For depositions to be used at a hearing, counsel shall exchange with each other their designations of anticipated deposition and videotape deposition testimony **at least seven days before the hearing**. Objections shall be filed **at least two business days before the hearing**. If objections are made, the offering party should provide the court with a notebook containing the deposition transcripts with tabs that identify the relevant testimony **at least two business days before the hearing**.
4. If the parties intend to offer deposition testimony in lieu of a live witness at trial, counsel shall exchange with each other their designations of anticipated deposition and video deposition testimony. Pursuant to Federal Rule of Civil Procedure 26(a)(3)(B), **these disclosures must be made at least 30 days before trial**. After the original exchange, 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. Objections to any portion of a proposed deposition, including a videotaped deposition, shall be filed before the Final Trial Preparation Conference. Any objectionable portion of the deposition shall be identified with specificity, e.g., by page and line. The parties shall also submit the transcript(s) of the designated deposition testimony to my chambers at Kane_Chambers@cod.uscourts.gov before the Final Trial Preparation Conference. In the transcript(s), plaintiff's designations should be highlighted in yellow, defendant's designations should be highlighted in blue, and testimony that is the subject of an objection should be highlighted in red. I will make every effort to resolve objections at the Final Trial Preparation Conference to speed things along and to facilitate any necessary redaction.
5. For jury trials, parties shall provide a person to read the deposition answers.

6. For bench trials, depositions will not usually be read in open court. Instead, I will read them before trial in chambers in any requested sequence. The offering party shall provide the relevant deposition transcript as an exhibit with its designated portions highlighted. If both parties seek to use portions of the same deposition transcript, they shall confer beforehand and the exhibit provided shall contain the plaintiff's portions highlighted in yellow and the defendant's in blue.

G. Special Equipment (Audio/Video)

The court has audio-visual and other special equipment that may be used by the parties. Notify my courtroom deputy, Bernique Abiakam at Bernique_Abiakam@cod.uscourts.gov, no later than **14 days before a hearing or trial** regarding use of such equipment or any request to bring your own equipment through security for use in the courtroom. You may schedule a time with Ms. Abiakam to visit the courtroom and run through your technology needs.

H. Time Limits

Unless specified in an order setting a matter for hearing, there are no time limits imposed. Brevity is encouraged.

VI. PRETRIAL PROCEEDINGS

A. Pretrial Order and Conference

1. Preparation for Pretrial Conference.
 - a. When the case is at issue, meaning discovery is completed and all motions that might dispose of the case have been decided, counsel will be directed to call in to set a date for the Pretrial Conference.
 - b. **At least 14 days before the scheduled date of the Pretrial Conference**, counsel shall meet and confer to jointly develop the contents of the proposed Pretrial Order. It is the responsibility of plaintiff's counsel to schedule meetings and then file and submit the jointly proposed Pretrial Order. If the parties agree, plaintiff may delegate responsibility for filing and submission to defendant.
 - c. Unless otherwise ordered, the parties shall submit their proposed Pretrial Order for the court's approval **no later than seven days before the date of the Pretrial Conference**. The proposed Pretrial Order should be filed in CM/ECF and submitted electronically in editable Word format to my chambers at Kane_Chambers@cod.uscourts.gov.
2. Form of Proposed Pretrial Order. The parties should use the form for Pretrial Orders

available on my website. The Pretrial Order will include, among other information:

- a. a list of witnesses to be called;
 - b. a list of the exhibits to be offered;
 - c. important deadlines for filings; and
 - d. a list of as many stipulations as the parties can achieve.
3. Attendance at Pretrial Conference. As required by Federal Rule of Civil Procedure 16, at least one of the attorneys **who will conduct the trial for each of the parties**, as well as any unrepresented parties, must attend the Pretrial Conference.
4. Enforceability of Pretrial Orders. I consider Pretrial Orders of utmost importance. The Pretrial Order will supersede the pleadings and control the subsequent course of the case and the trial.

B. Motions *in Limine*

Motions *in limine* are discouraged when the motion is evidence driven and cannot be resolved until evidence is presented at trial.

C. Jury Instructions and Verdict Forms

1. I place great emphasis on the preparation of narrative instructions that clearly and accurately inform the jurors of the law that applies in a given case. Jury instructions and verdict forms will be submitted to the court, argued, revised, and approved **before** trial begins. This practice allows counsel to refer to the instructions in their opening statements, presentation of testimony and exhibits, and closing arguments. In my experience, the repeated use of the instructions results in more efficient trials and informed decision-making by the jury. Please refer to the published articles I have written that are available on my website: *Riding Jury Instructions to Victory* and *Judging Credibility*.
2. The parties will jointly submit proposed jury instructions and verdict forms. The parties shall consult and base their instructions on the “Sample Jury Instructions-Civil” on my website. The jury instructions shall identify the source of the instruction and supporting authority, e.g., “Judge Kane’s Sample Instruction 2” or “§ 103, Fed. Jury Practice, O’Malley, Grenig, and Lee (5th ed.)” While the instructions should be tailored to the facts and circumstances of the particular case, parties should, where appropriate, consult the most current editions of the Federal Jury Practice and Instructions and the Colorado Jury Instructions for guidance on instructions relating to substantive legal claims. Please refrain from using legalese where commonly used words are available (e.g., not “prior” or “subsequent” but “before” and “after”). And please use the names of the parties rather than “plaintiff” and “defendant.”
3. To the maximum extent possible, the parties shall agree on one stipulated set of proposed jury instructions. The filed Jury Instructions shall include all of the parties’ stipulated, proposed, and counter-proposed instructions in a single, page-numbered document. **Do not submit jury instructions individually or as separate Word files.** Each instruction should

be numbered (e.g., “Stipulated” or “Government’s [Defendant’s] Proposed” Instruction No. 1) for purposes of making a record at the Final Trial Preparation Conference. A party’s written objection to a proposed instruction should immediately follow the objected to instruction and accompanied by that party’s counter-proposed instruction, if any. A counter-proposed instruction should be a redlined version of the opposing party’s proposed instruction. For examples on how to submit the jury instructions, see Case Nos. 16-cr-00111-JLK, Doc. 81, and 16-cv-02327-JLK, Doc. 148. The parties are expected to work together to craft the instructions and should exchange proposals and attempt to work through objections well before the submission due date.

4. The parties shall submit their instructions and verdict forms via CM/ECF and email them in an editable Word format to Kane_Chambers@cod.uscourts.gov.
5. Stipulated Facts: All stipulations of fact should be formatted as a jury instruction and will be read as any other instruction.

D. Trial Briefs

Trial briefs identifying issues and legal authority with which you wish me to be familiar before trial may be helpful, as may timelines or glossaries of names, technical terms, abbreviations, or acronyms. Trial briefs must be submitted **no later than seven days before the Final Trial Preparation Conference**.

E. Final Trial Preparation Conference

1. A Final Trial Preparation Conference will be held approximately three to ten days before trial. **Counsel who will try the case and a representative for each party must attend.**
2. The Pretrial Order should be reviewed by counsel before this final conference because it will control the course of the conference and the trial. If proposed amendments to the Pretrial Order are believed to be necessary, counsel must file a motion requesting such amendments **no later than seven days before the Final Trial Preparation Conference**.
3. The parties should be prepared to argue any pending motion *in limine* or other evidentiary objections at the Final Trial Preparation Conference.
4. The jury instructions and verdict form will be reviewed and counsel will be offered the opportunity to make their record on any objections.
5. Timelines, glossaries, or similar demonstrative aids need not be filed in CM/ECF but shall be provided to the court and opposing counsel at the Final Trial Preparation Conference.
6. One court copy of the parties’ proposed exhibits shall be delivered to my chambers, and one copy should be provided to opposing counsel, **no later than seven days before the Final Trial Preparation Conference**. The original set and additional copy of the final exhibits may be brought to the courtroom the first morning of the trial, along with exhibits needing to

be replaced in the copies already provided to the court and opposing counsel based on rulings from the Final Trial Preparation Conference.

F. Pretrial Deadlines

At the appropriate time, the parties will be directed to contact chambers to set the pretrial and trial dates. The court will then issue an order confirming the trial and Final Trial Preparation Conference dates and specifying deadlines for the tasks to be completed before the Final Trial Preparation Conference. Those deadlines are roughly:

- 1) Expert Motions will be due 30 days after the Pretrial Conference.
- 2) Motions *in Limine* will be due 60 days after the Pretrial Conference.
- 3) The parties' proposed Jury Instructions and Verdict Forms will be due 90 days after the Pretrial Conference.
- 4) The deadline for any objections to deposition designations will be seven days before the Final Trial Preparation Conference.
- 5) The deadline to file Witness and Exhibit Lists and to deliver a copy of the exhibits to the court will be seven days before the Final Trial Preparation Conference.

VII. JURY TRIALS

1. Optional Exhibit Notebooks for Individual Jurors. There is equipment available in the courtroom for parties to present exhibits to the jury and the court. However, if the parties so choose, counsel may provide each juror with a notebook containing copies of the parties' key exhibits to reference in the courtroom during the trial. (Only the original set of exhibits will be available in the jury room during deliberations.)
 - a. If used, counsel should confer and provide one individual juror notebook for each juror that includes selected exhibits of each party.
 - b. Individual juror exhibit notebooks should **include only those exhibits previously admitted by stipulation or admitted at the Final Trial Preparation Conference.** If additional key exhibits are admitted during the trial, the parties may provide the courtroom deputy with copies of these additional admitted exhibits to be placed in the individual juror exhibit notebooks.
2. Trial Schedule. Counsel will be present to deliver the exhibits and go over any last-minute items with the courtroom deputy at 8:30 a.m. on the first day of trial. The normal trial day begins at 9:00 a.m. and continues until 4:30 p.m. Lunch recess normally is from 12:00 to 1:15 p.m. We may continue beyond 4:30 p.m., but jurors have a right to rely on their being excused for the day no later than 5:00 p.m. For the convenience of everyone, additional recesses are scheduled for 10:15 to 10:30 a.m. and 3:15 to 3:30 p.m. If a recess is needed at any other time, make a request, and it will be granted.

3. Voir Dire. I will conduct a *voir dire* examination. Counsel will have 30 minutes per side to conduct supplemental *voir dire*. I do not require counsel to submit *voir dire* questions in advance, but if they choose to do so, they should be submitted at least **two business days before the Final Trial Preparation Conference**. **No questions concerning jury nullification or agreement or disagreement with any applicable law contained in the instructions or to be offered will be permitted.**
4. Note-taking and Questions. Jurors will be permitted to take notes during the trial and to submit questions for the court or for counsel in writing. Copies of juror questions will be provided to counsel and a record made outside the presence of the jury before an answer is given.
5. Jury Instructions. I will use the Statement of the Case or Preliminary Instruction during *voir dire* and will read all but the closing instructions to the jury after they are sworn in. After being sworn in, each individual juror will also receive a notebook of instructions, which (unless otherwise ordered) will be compiled by my staff and may include the forms of verdict. Counsel are encouraged to use the instructions in opening statements and in presenting their case. In addition to any record created at the Final Trial Preparation Conference or other supplemental jury instruction conference(s), counsel will be provided the opportunity to make a record of objections before final arguments and after the close of evidence.