

MEMORANDUM RE: PRETRIAL AND TRIAL PROCEDURES

TO: Counsel

FROM: Judge Lewis T. Babcock
Courtroom C-401 - Chambers C-450
Byron G. Rogers Courthouse
1929 Stout Street, Denver, CO 80294

This memorandum will acquaint you with my pretrial and trial procedures for civil and criminal cases. These procedures supplement the Federal Rules of Civil and Criminal Procedure and the Local Rules of this district. Please familiarize yourself with and follow these procedures so that your case can be efficiently and fairly tried.

The magistrate judge assigned to the case may set scheduling, status, settlement and pretrial conference dates. Counsel will obtain final trial preparation conference and trial dates at the scheduling conference. The attached checklists will help you to prepare for evidentiary hearings, final trial preparation conferences, and trial.

There is one lectern in the courtroom from which the attorneys are asked to address the court, witnesses, and jury. Plaintiff tables are to your left as you face the bench.

Ordinarily, only the courtroom deputy will hand exhibits or depositions to the witnesses. Thus, you may simply say, "Please look at exhibit number one...." or "Please refer to your deposition taken on . . ." and the exhibit or deposition will be given to the witness.

Jury trials are normally set to begin on Monday at 9:00 a.m. Counsel will be present to go over the attached trial checklist with the courtroom deputy at 8:30 a.m. Jury selection will begin at 9:00 a.m. 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.

The normal trial day begins at 9:00 a.m. and continues until 4:00 p.m. Lunch recess normally is from 12:00 noon to 1:00 p.m. We will take a mid-morning and mid-afternoon break.

The courtroom is equipped with a high resolution digital presenter for evidence presentation, VHF, and DVD. My courtroom deputy is Emily Seamon. Any questions regarding training on equipment in the courtroom or regarding courtroom procedures may be directed to her at 303-335-2044. Transcripts may be ordered directly from the official court reporter present at the hearing. Requests for special services, such as daily copy or realtime, should be made at least 30 days in advance of the trial date.

We are sensitive to the anxieties of trial practice, so we hope to minimize apprehension about local practices. If you have any questions, call my secretary, Judy Poor at 303-844-2527.

Law clerks working with me may speak to counsel only pursuant to my specific instructions. Please do not call the law clerks on procedural or scheduling matters.

Thank you for your cooperation.

INSTRUCTIONS FOR FINAL TRIAL PREPARATION CONFERENCE

1. Submit a witness list containing the names and addresses of each witness to be called in your case in chief. 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.
2. Submit a list of proposed exhibits. 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 be prepared to stipulate to the admissibility of exhibits at the final trial preparation conference.
3. Submit the witness and exhibit lists using the Electronic Case Filing System (ECF) connected through the Court's web site at <http://www.cod.uscourts.gov>.
4. Provide citations to any case law that counsel believe 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.

5. Submit any stipulated amendments to the pretrial order using the Electronic Case Filing System (ECF) connection through the Court's web site at <http://www.cod.uscourts.gov>.

6. Motions in limine are discouraged.

CHECKLIST FOR TRIAL

Prior to Day of Trial

1. At least five days before trial begins the following should be filed using the Electronic Case Filing System (ECF) connection through the Court's web site at <http://www.cod.uscourts.gov>:
 - A. Proposed Voir Dire Questions.
 - B. For trial to the Court, proposed Findings of Fact and Conclusions of Law. Counsel are requested to state their proposed findings as nearly as possible in the same order as their anticipated order of proof at trial. Counsel are also requested to key their closing arguments to their proposed findings and conclusions so as to point out the evidence they rely on to support their proposals.
 - C. Trial Briefs. Unless otherwise ordered, briefs shall be limited to 10 pages. It is helpful to flag evidentiary questions in the trial brief rather than by motion in limine.

2. At least five days before trial begins the following should be e-mailed to our chamber's e-mail address at [Babcock Chambers@cod.uscourts.gov](mailto:Babcock_Chambers@cod.uscourts.gov):
 - A. Proposed Jury Instructions with sources and authority. Number the copies of the proposed instructions, i.e., "Plaintiff's Instruction No. 1", to facilitate the instruction conference. There will be an additional opportunity to submit proposed instructions during the trial.

- B. Proposed Verdict Forms.
- 3 D.C.COLO.LCivR 54.2. In order to avoid assessment of jury costs, you must notify the court of a settlement before twelve noon on the last business day before the scheduled trial date.
4. Deposition Testimony. The following guidelines should be used for preparing depositions for use as testimony:
- A. Jury Trials. Advise opposing counsel of your proposed offer by page and line reference to enable the preparation of objections and the offer of additional portions of the transcript. You will be required to provide a person to read the answers.
- B. Court Trials. Depositions will not be read in open court. The Court will read them in chambers in any requested sequence. The offering party shall provide the court with two copies of the transcript each with the plaintiff's designations highlighted in yellow and the defendant's designations highlighted in blue. (The highlighting should be accomplished in advance of trial, so that the highlighted deposition transcripts can be marked as an exhibit and tendered to the courtroom deputy at the beginning of the trial.)
- C. Videotaped Depositions. If videotaped deposition testimony is to be used, the Court must be given at least ten (10) days advance notice, with objections marked on a copy of the written transcript. Objections will be

ruled on before trial and excluded material must then be removed from the tape.

5. Electronic Courtroom Technology. Courtroom C-401 is equipped with a high resolution video presenter. With simple manipulations this video presentation system allows evidence to be displayed on monitors for counsel, the witness, the jury, and the Court, either through hard-copy exhibits or the projection of exhibits imaged through a laptop computer. This evidence presentation system also allows the playing of videotaped depositions in VHS format. For instruction and/or questions regarding the video presentation system, contact my courtroom deputy.

Morning of Trial

1. Witness Lists. Provide three copies of your updated and current list of witnesses to the courtroom deputy and a copy for opposing counsel. Provide four copies of your witness list if having a trial to the Court. One copy will be given to the court reporter to avoid asking of the spelling of the names. (Use the attached form for listing your witnesses.)
2. Exhibit Lists. Prepare an updated and current index of exhibits which you expect to offer, using the attached form. Please ensure each page of the exhibit list contains all identified columns (i.e., stip, offer, rec'd, etc.). You will need to provide three copies of this form for the court and a copy for opposing counsel. You will need to provide four copies and a copy for opposing counsel if having a trial to the Court.

3. Exhibits. Exhibit labels can be obtained from the clerk's office before trial. Plaintiff's exhibits should be marked with the yellow labels, using numbers. Defendant's exhibits should be marked with the blue labels, using alphabetical letters for the first twenty-six exhibits. (A, B, C, etc.) If there are more than twenty-six exhibits, mark them as A-1 through A-99, (A-1, A-2, A-3, etc.) then B-1 through B-99, etc. Do not use double or triple letters. The civil action number should also be placed on each of the exhibit stickers.

A. Original Exhibits. (To be used by the witness.)

1. All original exhibits shall be submitted to the courtroom deputy in 3-ring binders at the start of the trial.
2. A label shall be placed on the spine of each binder that shows the volume number and which exhibits are contained within.
3. Each original exhibit shall bear an extended tab showing the number or letter of the exhibit.
4. Each document shall be paginated, including any attachments thereto.
5. Include all exhibits in these notebooks. (Even those that opposing counsel have not stipulated to.)

- B. Copies of Exhibits for Court and Opposing Counsel. In addition to the original exhibits, copies of all exhibits shall be provided to opposing counsel, the Court (two if it is a trial to court), and the court reporter. The copies shall be submitted in the same format as the original exhibits.
- C. Copies of Exhibits for Jurors. Because the courtroom is equipped with monitors and screens, jury exhibit notebooks are not used.
4. Depositions. All original depositions that you intend to use during trial shall be delivered to the courtroom deputy at the beginning of the trial.
In addition, for court trials, two copies of the highlighted depositions that are going to be used for testimony should be marked as an exhibit and tendered to the courtroom deputy at the beginning of the trial.
5. Terminology. Provide the court, the court reporter, courtroom deputy, and opposing counsel with a glossary of any unusual or technical terminology.
6. Written Curriculum Vitae. In bench trials, a written curriculum vitae, marked as an exhibit, will usually suffice for the qualification of expert witnesses.
7. Jury Instructions. The jury instructions are given before closing arguments. Written instructions will be given to the jury.

EVIDENTIARY HEARINGS IN CIVIL AND CRIMINAL CASES

1. The following shall be submitted to the courtroom deputy before an evidentiary hearing commences:
 - A. Four copies of the Exhibit and Witness Lists.
 - B. An original and three sets of the exhibits which have been identified with an exhibit sticker and placed in 3-ring binders.

*****INFORMATIONAL NOTE TO ATTORNEYS*****

Practices vary among judges with respect to the time for submission of jury instructions, voir dire questions, trial briefs, proposed findings of fact and conclusions of law, and other matters. Individual judges may cover these items in an Addendum to the Pretrial Order or in other court orders. If the case has been referred to a magistrate judge, the Pretrial Order shall be signed by that judicial officer. The order and any objections thereto shall be made in accordance with Fed. R. Civ. P. 72.

