PRACTICE STANDARDS - CIVIL ACTIONS
MICHAEL E. HEGARTY
UNITED STATES MAGISTRATE JUDGE

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I. PURPOSE AND RELATION TO OTHER RULES

A. The purpose of these practice standards is to facilitate "the just, speedy, and inexpensive determination of every action and proceeding," as contemplated by Fed. R. Civ. P. 1.

B. These standards are supplementary to the Federal Rules of Civil Procedure, the Local Rules of Practice for the District of Colorado, and the Practice Standards of the District Judge when I am serving in a referral capacity. If there is a contradiction between a standard contained herein and a standard prescribed by a presiding District Judge, the District Judge's standard governs.

C. When my jurisdiction is ancillary to that of a presiding District Judge, I view my responsibility in civil cases as shepherding a case according to the practice standards and policies of the presiding District Judge. Therefore, any given situation presented to me may be treated differently depending on the practice standards and policies of an assigned District Judge. The presiding District Judge's preferences are primary.

D. When I am the presiding judge pursuant to 28 U.S.C. § 636(c) and D.C.COLO.LCivR 40.1 (providing for consent to the trial jurisdiction of a U.S. Magistrate Judge), the practice standards stated herein shall govern, subject to the federal and local rules.

II. GENERAL INFORMATION AND PROCEDURES

A. Applicable Rules

1. Those appearing in the District Court, including attorneys and *pro se* litigants must know and comply with:

   a. the Federal Rules of Civil Procedure;

   b. the Federal Rules of Evidence;

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

   d. the assigned District Judge's practice standards;

   e. these practice standards; and

   f. the Electronic Case Filing Procedures.

2. Failure to comply with these rules, procedures and practice standards may result in a filing being denied without prejudice or simply stricken, or, in more significant breaches, an order or recommendation issued for the dismissal with or without prejudice of the lawsuit.

B. Communications with Chambers

1. My Chambers consists of myself and two lawyers (a career law clerk and a term law clerk). We also have a courtroom deputy assigned to Chambers, who is located in the Clerk's Office. When contacting Chambers, therefore, you will be speaking with a lawyer. Please conduct all communications with the appropriate level of professionalism, and please instruct your staff to do the same.

2. *Ex parte* communications with my Chambers are not permitted, except for the purpose of discussing settlement. This means that unilaterally contacting Chambers for any reason other than settlement discussions is inappropriate.

   There are circumstances in which contacting Chambers by telephone or email is appropriate, with all parties conferenced together on the call or copied on the email. This includes, for example, the rescheduling of a conference or hearing. To avoid the filing of a motion when a conference or hearing needs to be rescheduled, the Court encourages the parties to conference together and call Chambers or send an email with all parties copied to Chambers to choose an available date.

Joint telephone calls or emails to Chambers for the purpose of setting hearings for discovery disputes are also appropriate and encouraged, and in certain circumstances required by the Scheduling Order or as otherwise ordered by the Court.

If you call Chambers, please be prepared to provide your case number. If you email Chambers, please identify your case number in the subject line of your email.

3. Be sure to read, in its entirety, any order setting a conference, hearing, oral argument, or trial. Oftentimes the answer to a question is stated within the order setting the proceeding.

4. Chambers phone number: (303) 844-4507

5. Chambers email: hegarty_chambers@cod.uscourts.gov

6. My courtroom deputy is Christopher Thompson. Please direct any questions regarding courtroom proceedings or equipment to him at (303) 335-2326 or Christopher_D_Thompson@cod.uscourts.gov.

7. In this District, Magistrate Judges are not assigned an official court reporter. However, all proceedings are audio-recorded by the courtroom deputy. Audio recordings may be requested from my courtroom deputy by contacting him at (303) 335-2326. For transcripts, please contact Patterson Transcription Company at (303) 755-4536 **or** AB Litigation Services at (303) 629-8534.

C. Courtroom Procedures

1. Please be prompt and prepared (*e.g.*, know the case and relevant issues) for any conference, hearing, argument, or other setting. Court time is valuable for litigants, counsel, and court staff.

2. Unless otherwise ordered, all conferences, hearings, or other settings shall be held in Courtroom A501 on the fifth floor of the Alfred A. Arraj United States Courthouse, 901 19th Street, Denver, Colorado, 80294. Only when attending a Settlement Conference, please let my Chambers know that you have arrived by utilizing the intercom by the door to the right of the entrance to Courtroom A501.

3. The Court's strong preference is for the litigants to appear for courtroom settings in person. However, litigants and counsel whose offices are located outside of the Denver metropolitan area or who cannot reasonably make a personal appearance may appear at certain conferences remotely. Please call Chamber at least two business days prior to the conference to request such an appearance.

4. Please observe traditional courtroom decorum by rising to address the Court and by requesting permission to approach the bench and any witness. When speaking, please speak into a microphone. The microphone is the only method by which the proceeding is recorded.

III. MOTIONS PRACTICE

A. Motions Generally

1. The Court will not consider any motion that fails to comply with D.C.COLO.LCivR 7.1(a) (conferring with the opposing side and indicating whether the motion is opposed). Any motion that does not contain a certificate of compliance with D.C.COLO.LCivR 7.1(a) may be stricken or denied as a matter of course.

2. As circumstances dictate, the Court may set a motion for immediate oral argument or hearing. Pursuant to D.C.COLO.LCivR 7.1(d), the Court may also set an expedited briefing schedule or rule on a motion before it is fully briefed when appropriate.

3. Before filing a motion for an order relating to a discovery dispute between parties, the movant must request a conference with the Court by submitting an email, copying all parties, to hegarty_chambers@cod.uscourts.gov. *See* Fed. R. Civ. P. 16, cmt. 2015 Amend. The Court will determine at the conference whether to grant the movant leave to file the motion. Non-parties seeking relief regarding a subpoena should file the appropriate motion and not request a discovery conference.

4. Except motions filed under Fed. R. Civ. P. 56, motions and response briefs shall be no longer than 20 pages, and reply briefs shall be no longer than 15 pages. I will expand the page limit only on motion demonstrating good cause. Please know that I may strike any motion or brief I consider to be verbose, redundant, unintelligible, or that otherwise fails to comply with these standards and/or the applicable court rules.

5. Any exhibits attached to motions shall be prepared as follows: the Plaintiff will number exhibits as Plaintiff's Exhibit 1, Plaintiff's Exhibit 2, etc. and the Defendant will number exhibits as Defendant's Exhibit 1, Defendant's Exhibit 2, etc. If the movant attaches exhibits to its reply brief, the exhibits' numbers shall continue from those attached to the motion. Each exhibit shall be filed as a separate attachment to the motion or brief in CM ECF. Each motion or brief shall cite to an exhibit by its number and not the document's name (*e.g.*, "Plaintiff's Exhibit 1 (Plaintiff's Deposition)" or "Plaintiff's Exhibit 1" not "Plaintiff's Deposition").

B. Motions for Summary Judgment

1. The parties shall comply with a presiding District Judge's practice standards for any motion for summary judgment referred to this Court.

2. To the extent the case is before this Court on consent, a party may not file multiple motions for summary judgment without prior permission from the Court. This procedure contemplates a single motion by each "side." Plaintiffs whose interests are aligned shall file a single motion for summary judgment. Similarly, defendants whose interests are aligned shall file a single motion for summary judgment. Parties need not file a separate "supporting" brief with the motion; all facts and argument shall be contained in the single motion.

3. Pursuant to D.C.COLO.LCivR 56.1, all motions for summary judgment must include a statement of undisputed facts. The statement of undisputed facts should be set out in a separate section of the brief, with each material undisputed fact set forth in a simple, declarative sentence in a separately numbered paragraph. Each undisputed fact must be supported by a specific reference to evidence in the record establishing that fact.

4. Any party opposing the motion for summary judgment shall include a separate section in its response admitting or denying each of the moving party's undisputed facts. Each admission or denial shall be contained in a separately numbered paragraph corresponding to the moving party's paragraph numbering. Each denial shall be accompanied by a brief factual explanation and a specific reference to evidence in the record supporting the denial. If the party opposing the motion believes that there are additional material disputed facts that have not been addressed by the moving party's statement, the party, in a separate section of the brief, shall set forth each additional material fact in a simple, declarative sentence in a separately numbered paragraph. Each additional disputed fact must be supported by a specific reference to evidence in the record establishing that fact.

5. If the moving party files a reply in support of its motion, it shall contain: (1) a separate section containing any factual reply the movant wishes to make regarding the opposing party's response to the moving party's statement of undisputed facts, made in separately numbered paragraphs corresponding to the moving party's original paragraph numbering; and (2) a separate section admitting or denying the additional disputed facts set forth by the opposing party, which shall be presented in the same format prescribed above for the opposing party to respond to the moving party's statement of undisputed facts.

6. I have placed no limitation on the number of pages submitted for a motion and briefs under Fed. R. Civ. P. 56; however, the Court may strike the whole or any part of a filing that is prolix, redundant, immaterial, impertinent, or scandalous.

C. Motion to Exclude Expert Testimony

1. The parties shall comply with a presiding District Judge's practice standards for any motion to exclude expert testimony referred to this Court.

2. To the extent the case is before this Court on consent, a party who wishes to challenge the admissibility of opinion testimony by an expert witness shall file a written motion seeking its exclusion. However, the failure of an opponent to bring such a motion does not relieve the proponent of its burden to show that the proffered testimony is admissible at trial. Unless otherwise ordered, the deadline for filing a motion to exclude expert testimony shall coincide with the deadline for filing dispositive motions.

3. The motion shall identify with specificity each opinion the moving party seeks to exclude and the specific grounds upon which that opinion is challenged (*e.g.*, relevancy, sufficiency of facts, methodology). The movant and respondent shall state whether an evidentiary hearing is requested and, if it is, explain why such a hearing is necessary. If a hearing is set, the Court will notify the parties of its requirements concerning witnesses and exhibits in a separate order.

IV. ALTERNATIVE DISPUTE RESOLUTION ("ADR")

A. Court-sponsored ADR is not mandatory. ADR proceedings (settlement conferences or early neutral evaluations) may be scheduled in various ways, including during the scheduling conference upon consultation with the parties, by motion of the parties, or on my own initiative. If, prior to a scheduled ADR proceeding, one or both parties believe that the matter may not be ripe for resolution, the parties must inform the Court by motion (if opposed) or by telephone/email (if unopposed) to discuss other available dates for rescheduling, or to vacate the conference altogether.

B. Unless otherwise ordered, counsel shall have all parties present at ADR proceedings, including all individually named parties or a representative of each named entity. Counsel shall also have in attendance all individuals with full authority to negotiate all terms and demands presented by the case, and full authority to enter into a settlement agreement, including, but not limited to, an adjustor, if an insurance company is involved. "Full authority" means that the person who attends the ADR proceeding has the complete and unfettered capacity and authority to meet or pay all terms or amounts which are demanded or sought by the other side of the case without consulting with some other person, committee, or agency. If any person has limits upon the extent or amount within which he or she is authorized to settle on behalf of a party, that person does not have "full authority." **This requirement is not fulfilled by the presence of counsel or an insurance adjustor alone.**

C. In exceptional circumstances, the appearance of a party, or an insurance or party representative by telephone may be approved in advance of the ADR proceeding. Any party seeking such relief should file the appropriate motion with the Court after conferring with opposing counsel.

D. No person is ever required to settle a case on any particular terms or amounts. However, both parties must participate in the ADR proceeding in good faith, pursuant to Fed. R. Civ. P. 16(f). If any party or party representative attends the ADR proceeding without full authority, fails to attend the proceeding without prior Court approval, or fails to participate in the proceeding in good faith, and the case fails to settle, that party may be ordered to pay the attorney's fees and costs for the other side. If, prior to the conference, one or both parties believe that the matter may not be ripe for negotiations, the parties may contact Chambers to reschedule the conference to a more appropriate time.

E. Counsel shall prepare and submit **two** position statements: one to be submitted to the other party or parties, and the other to be submitted by email only to the Magistrate Judge, no later than the deadline set forth in the Minute Order setting the ADR proceeding. **Submissions totaling more than thirty pages** are to be submitted to Chambers in **hard copy** via regular mail or hand delivery.

1. The statement(s) presented to opposing counsel shall contain an overview of the case from the presenter's point of view, shall summarize the evidence which supports that side's claims, and may present a demand or offer. These statements should be intended to persuade the opposing clients and counsel.

2. The second statement shall be emailed **only** to my Chambers (<u>not</u> submitted for filing to the court) at *hegarty_chambers@cod.uscourts.gov*. This statement shall contain the content or copies of the first statement along with any confidential comments the party or counsel wishes to make, including any comments with regard to perceived weaknesses in the case and any comments which would be helpful to me in assisting the parties to negotiate a resolution.

V. TRIAL PROCEDURES

A. This section shall apply only to consent cases in which I am the presiding judge pursuant to 28 U.S.C. § 636(c) and D.C. Colo. LCivR 40.1.

B. **Exhibits**: The parties are to prepare exhibit lists, Plaintiff utilizing the numbering system of Plaintiff's Exhibit 1, Plaintiff's Exhibit 2, etc. and Defendant utilizing the numbering system of Defendant's Exhibit 1, Defendant's Exhibit 2, etc. The exhibit lists shall be filed under the Court's Electronic Filing Procedures[1] ***and*** a copy emailed as an attachment in editable Word format to Chambers no later than **three business days** before the trial preparation conference. Stipulations as to authenticity and admissibility shall be set forth on the exhibit lists.

C. **Objections to Exhibits**: Each party shall file objections to exhibits and email an editable Word copy to Chambers no later than **three business days** before the trial preparation conference. The objections shall state in a clear and concise fashion the evidentiary grounds for the objection and the legal authority supporting such objection.

D. **Witness Lists**: No later than **three business day** before the trial preparation conference, counsel shall file their final witness lists, with an estimate of each witness' direct examination testimony time, and email an editable Word copy to Chambers. Each witness designated shall be counsel's representation, upon which opposing counsel can rely, that the witness will be present and available for testimony at trial. Of course, either party is not *required* to call a particular witness; listing the witness only assures their availability.

E. **Deposition Testimony**. In the event deposition testimony will be used, opposing counsel must be given notice of each page and line intended to be used no later than **ten business days** prior to the trial preparation conference. Opposing counsel may then cross-designate testimony. The parties will meet and confer regarding the method of designating testimony so that it can be efficiently presented at trial. Any objections to the testimony must be marked on a copy of the transcript and emailed to Chambers no later than **three business days** before the trial preparation conference. The Court will rule on any objections to deposition testimony prior to trial.

F. **Motions in limine**: Motions in limine shall be filed no later than **twenty business days** before the trial preparation conference. Responses to motions in limine shall be filed **ten business days** before the trial preparation conference.

G. **Trial Briefs**: Trial briefs shall be filed no later than **three business days** before the trial preparation conference. Trial briefs are limited to **twenty pages**. Parties are free to include evidentiary issues as well as the substantive law governing the case.

[1] *See* the Court's Electronic Case Filing Procedures, Civil Cases, which may be accessed on the Court's website.

H. **Proposed Voir Dire**: As the Court has noted, the parties will be permitted approximately fifteen minutes each for voir dire. In order to make this aspect of the trial more efficient, proposed voir dire questions related to the specific subject matter of the case that the Court will ask shall be emailed to Chambers in editable Word format no later than **three business days** before the date of the trial preparation conference. Note, the Court has standard voir dire questions it asks in every jury trial.

I. **Use of Courtroom Technology**: **Twenty business days** before trial, counsel shall notify my courtroom deputy of any need for special accommodation for any attorney, party or witness, any need for technological equipment, such as videoconferencing, or equipment needed for the presentation of evidence using CD-ROM or other electronic presentation of evidence.

J. **Jury Instructions**: The Court has standard opening and closing jury instructions. Please note, in jury trials, closing instructions are given after closing arguments. Copies of written instructions will be provided to the jury for its deliberations.

1. **Three business days** before the trial preparation conference, proposed instructions specific to the relevant substantive issues (*i.e.*, stipulated facts instruction, instructions on the substantive law governing the case) and proposed verdict forms shall be filed and a copy emailed to Chambers in editable Word format. The email shall contain **two versions** of proposed jury instructions: one with authority and one without authority. These instructions shall be considered "opposed." Counsel shall meet and confer concerning instructions and shall submit, independently and utilizing the deadline and the procedure set forth in this paragraph, a set of stipulated instructions. Thus, there will be **three sets of instructions** submitted to the Court: (1) those stipulated by the parties; (2) instructions proposed by the Plaintiff but opposed by the Defendant; and (3) instructions proposed by the Defendant but opposed by the Plaintiff.

K. On the first day of trial, counsel or *pro se* parties shall be prepared as follows:

1. Provide three copies of witness lists to the courtroom deputy and one to opposing counsel.

2. Provide three copies of the exhibit lists to the courtroom deputy.

3. Submit an original list of any stipulated facts and two copies to the courtroom deputy.

4. Original exhibits, properly marked and tabbed, each exhibit numbered sequentially, each page within an exhibit numbered sequentially, filed in one or more binders shall be given to the courtroom deputy and to the Court. There is no requirement to provide separate binders for the jurors, as the exhibits shall be published to the jury by means of the courtroom technology. At the conclusion of trial, the jury will receive the exhibit binder maintained by the courtroom deputy.