

**CIVIL PRACTICE STANDARDS  
SENIOR DISTRICT JUDGE MARCIA S. KRIEGER**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

*Effective December 1, 2019*

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# UNIFORM CIVIL PRACTICE STANDARDS

## I. SCOPE, PURPOSE, AND CONSTRUCTION

### Civ. Practice Standard 1.1

#### SCOPE OF THE CIVIL PRACTICE STANDARDS

**(a) Title and Citation.** These practice standards should be cited as Civ. Practice Standard, Subdivision, Paragraph, Subparagraph, and Item (e.g., Civ. Practice Standard 1.1(a)).

**(b) Scope.** These practice standards apply in all civil actions before the Honorable Senior Judge Marcia S. Krieger.

**(c) Purpose.** NO PROVISION

**(d) Construction.** These practice standards supplement the Local Rules for the District of Colorado.

**(e) Access to Practice Standards.** NO PROVISION

**(f) Applicable Rules.** Those appearing in the District Court should be familiar with and follow:

- (1) The Federal Rules of Civil Procedure;
- (2) The Federal Rules of Evidence; and,
- (3) The Local Rules of Practice of the United States District Court for the District of Colorado.

**(g) Communications with Chambers.**

- (1) Substance of a Case or Proceeding. Unless specifically authorized, neither counsel nor *pro se* litigants may communicate about the substance of a case by telephone, e-mail or letter to the Court. Any communication with regard to the substance of the case must be filed. Chambers staff is not authorized to give legal advice or grant oral requests over the telephone.
- (2) Scheduling. For scheduling of hearings or trials, please contact chambers at **303-335-2289**.
- (3) Courtroom Operations. For information regarding the courtroom, including telephonic connection, courtroom equipment and technology, courtroom protocol, trial preparation, use of deposition transcripts, the submission of trial exhibits and witness lists, or the use of exhibits at

trial, please contact chambers at **303-335-2289**.

- (4) Transcripts. If you need to order a transcript, you must first identify the Court Reporter who conducted the hearing. The reporter's name will be listed in the minutes of the hearing as shown in the Court's docket. Once you have identified the reporter's name, you may contact them directly at the phone number listed in the "Contact Us" section of the Court's website.

Requests for a real-time, daily, or hourly copy must be made at least thirty days before the trial or hearing.

- (5) Filings. For information about filing documents electronically please contact the ECF Help Desk at 1-866-365-6381 or 303-335-2050. If you have questions about the status of a motion or order, please utilize the PACER system.

If a filing is made less than 48 hours before a hearing, please notify Chambers by e-mail at [Krieger\\_Chambers@cod.uscourts.gov](mailto:Krieger_Chambers@cod.uscourts.gov) or by telephone at **303-335-2289**.

- (6) Courtesy copies. Absent Court Order, no courtesy copy of any filing or exhibit should be delivered to chambers.
- (7) Proposed Orders and Documents. Submission of proposed orders and other proposed documents (*voir dire* questions, proposed jury instructions, etc.) shall be by filing in CM/ECF, only. Do not submit proposed documents by e-mail, or otherwise.

## II. PLEADINGS, MOTIONS, AND OBJECTIONS

### **Civ. Practice Standard 6.1 CONTINUANCE OR EXTENSION OF TIME**

**(a) Continuances of Hearings and Trials.** Motions to continue are strongly discouraged because of the adverse effects they have on case management. Motions to continue shall be submitted in writing to the Court as far in advance as possible of the matter to be continued and should not be made at the time of a hearing or trial. Stipulations for continuance are not effective unless and until approved by the court. To be granted, such motions must show good cause.

**(b) Motions for Extension of Time.** To be granted, such motions require a showing of good cause. Unless the circumstances are unanticipated and unavoidable, the following do not constitute good cause: inconvenience to counsel or parties, press of other business, scheduling conflicts (especially when more than one attorney has entered an appearance for a party), or agreements by counsel. Requested extensions of time, even if stipulated, may be denied if the extension adversely affects the scheduling of the case or other cases. In addition, if extensions are granted, they may prevent the determination of the matter prior to a scheduled hearing or trial.

### **Civ. Practice Standard 7.1 CITATIONS**

Citations shall be made pursuant to the most current edition of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION. All case law citations shall be to the official reporter, when available. For unpublished decisions, citations should be to Westlaw, if available. If no Westlaw citation is available, a copy of the opinion shall be attached to the filing.

### **Civ. Practice Standard 7.3 GENERAL INFORMATION**

**(a)–(d) NO PROVISION**

**(e) Motions Hearings.** Generally, motions are decided without oral argument. If the Court deems oral argument necessary, the Court will contact the parties in order to schedule oral argument. Motions may be determined without a hearing or may be set for an evidentiary hearing or oral argument, or set for a law and motion hearing. Law and motion hearings are usually short (15 minutes), non-evidentiary, and intended to set appropriate preparation deadlines for an evidentiary hearing or to hear brief oral argument. Counsel shall appear thirty (30) minutes before the time set for any hearing to confer with opposing counsel about what issues are in dispute and what issues have been resolved.

**(f) Forthwith Hearings on Motions.** A “forthwith hearing” is a hearing that cannot be handled in the normal course of notice and setting due to a need for immediate judicial intervention. A request for forthwith hearing must be made by a separate motion stating the reason(s) warranting immediate action and whether notice was given to all parties or why such notice could not be given. A courtesy call to the Judge’s Chamber advising that such a motion is being filed is appreciated and will help facilitate prompt consideration.

**Civ. Practice Standard 7.4  
MOTIONS *IN LIMINE***

Motions *in limine* are not favored. If parties believe that motions *in limine* are necessary, they should raise it in the proposed final pretrial order and at the final pretrial conference.

**Civ. Practice Standard 7.5  
RULE 702 MOTIONS**

(1) Fed. R. Evid. 702 motions must be made by the deadline specified in the Trial Preparation Order and in compliance with Senior Judge Krieger’s procedure set forth on the Court’s website. Failure to file a Rule 702 motion within the time set in the Trial Preparation Order shall be deemed a waiver of all foundational objections contemplated by Rule 702.

(2) At trial, admissible expert testimony can be presented either by live testimony or by stipulated admission of an expert’s pre-trial report, but not by both means. If an expert testifies, the expert’s pre-trial report will not be received.

(3) In either a bench or jury trial, an expert’s qualifications can be established by admission of a written curriculum vitae.

**Civ. Practice Standard 7.6  
DISPOSITIVE MOTIONS**

Motions seeking relief pursuant to Fed. R. Civ. P. 12 or 56 are governed by D.C.COLO.LCivR. 7.1(d) and 56.1, respectively. Deadlines will be applied strictly. The overuse of motions filed pursuant to Fed. R. Civ. P.12(b)(6) and 56 unreasonably delays the progress of civil litigation. Counsel are well-advised to avoid reflexively filing such motions.

**Civ. Practice Standard 7.6.1  
FED. R. CIV. P. 12(b) MOTIONS**

**(a) Procedure.** Motions brought pursuant to Fed. R. Civ. P. 12(b) are discouraged if the defect is correctable by the filing of an amended pleading. Counsel should confer prior to the filing of the motion to determine whether the

deficiency can be corrected by amendment (e.g., failure to plead fraud with specificity) and should exercise their best efforts to stipulate to appropriate amendments. If such a motion is nonetheless filed, counsel for the movant shall include in the motion a conspicuous statement describing the specific efforts undertaken to comply with this Practice Standard. This Practice Standard shall not apply in cases where the non-movant is proceeding *pro se*.

**(b) Motions.** All requests for relief under any part of Fed. R. Civ. P. 12 must be brought in a single motion. All motions to dismiss shall state in the caption or in the opening paragraph under which rule or subsection thereof such motion is filed.

**(c) Contents.** Motions brought pursuant to Fed. R. Civ. P. 12(b)(1)-(5) shall identify the grounds for dismissal, which party has the burden of proof, the material facts, and whether materials outside the pleadings should be considered. If matters outside the pleadings are pertinent, the motion may be set for evidentiary hearing or treated as one brought pursuant to Rule 56.

**(d) Format.** With respect to motions brought pursuant to Fed. R. Civ. P. 12(b)(6):

- (1) For each claim for relief that the movant seeks to have dismissed, the movant shall clearly enumerate each element **that movant contends must be alleged, but was not.**
- (2) The respondent should utilize the same format for each challenged claim. If the respondent disputes that a particular element must be alleged, the element should be identified as “**disputed**” and addressed in an accompanying brief. If the respondent contends that a proper and sufficient factual allegation has been made in the complaint, the respondent should specifically identify the page and paragraph containing the required factual allegation.

**(e) Matters outside the pleadings.** Rule 12(b) motions should not be stated in the alternative as a Rule 56 motion for summary judgment. If matters outside the pleadings are submitted in support of or opposition to a Rule 12(b) motion, the party should discuss whether the 12(b) motion should be converted to a summary judgment motion. In such a case, the Court may issue an order to show cause why the motion should not be treated as a Rule 56 motion, or the parol submissions may be disregarded.

#### **Civ. Practice Standard 7.6.2 FED. R. CIV. P. 56 MOTIONS**

**(a) Procedure.** These procedures contemplate the filing of a single motion for summary judgment by a party. A party may **NOT** file multiple motions for

summary judgment without obtaining permission from the Court. Such permission will only be given in exceptional circumstances.

**(b) Statement of Undisputed Material Facts.** NO PROVISION. Note that full compliance with the format requirements set forth below eliminates the need for a separate Statement of Undisputed Material Facts.

**(c) Requirements.** The following format should be used:

(1) For each claim for relief or defense (*as to which judgment is requested*) the motion shall:

(A) identify the party having the burden of proof;

(B) identify each element that must be proved; and

(C) for each identified element, the motion should identify the material, undisputed, or admitted facts<sup>1</sup> that prove the existence or absence of such element and cite to the specific evidence in the record establishing those facts.

(2) The response should utilize the same format for each claim/defense:

(A) if the respondent disputes the movant's statement of the burden of proof on necessary elements, it shall identify the element as disputed.

(B) if the movant has the burden of proof, the respondent shall identify all elements for which there are disputed material facts and identify where in the record the disputed facts are located;

(C) if the respondent has the burden of proof, for each element identified by the movant as lacking proof, the respondent should identify the facts and their location in the record which establish the element.

**(d) Reply Brief.** NO PROVISION

**(e) Label.** All summary judgment exhibits shall be labeled in the CM-ECF system both by exhibit number or letter and by name, *e.g.*, Exhibit 1 - Smith Affidavit.

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<sup>1</sup>Parties may include a separate descriptive summary or chronological recitation of facts, but such presentation does not substitute for the specific identification of the relevant facts under each individual element of each claim.

**(f) Issues.** Failure to follow these procedures will likely delay the resolution of the motion.

**Civ. Practice Standard 7.7  
MOTION FOR DEFAULT JUDGMENT**

NO PROVISION

**Civ. Practice Standard 7.8  
TEMPORARY RESTRAINING ORDERS**

**(a)** NO PROVISION

**(b) Ex Parte Motions.** Counsel need not wait at the Courthouse after filing an *ex parte* motion for a temporary restraining order. In most instances, the Court will consider the matter on the papers as submitted; in the rare circumstance that the Court requires argument or additional information, the Court will contact counsel. As a general rule, *ex parte* motions for issuance of temporary restraining orders will be granted only upon strict compliance with Fed. R. Civ. P. 65(b) and (c). If granted, a return date will be set and the moving party will be ordered to serve the Summons, Complaint, motion, and order on the responding party by a specific date in advance of the return date. If the motion is denied, the Court may treat the motion as one for a preliminary injunction and will promptly set a non-evidentiary law and motion hearing to determine the scheduling of such motion and direct prompt service of the Summons, Complaint and Motion for Preliminary Injunction.

**(c) Initial Hearing.** NO PROVISION

**(d) Hearing.** A preliminary injunction hearing will be an evidentiary hearing. Both parties must be prepared to present evidence in accordance with the Federal Rules of Evidence.

**Civ. Practice Standard 7.9  
TESTIMONY BY TELEPHONE OR VIDEO**

**(a) General Information.** “Remote testimony” includes live, one-way or two-way testimony by telephone or video. It does not apply to deposition testimony preserved on video.

- (1) A party may request that remote testimony be presented at any trial or hearing. Except in extraordinary circumstances, such request should be made by written motion or stipulation filed at least twenty-one days before the trial or hearing. The motion should include:

- (A) the reason(s) such testimony should be taken remotely and what means will be used; and
  - (B) a detailed description of all testimony which is proposed to be presented remotely.
- (2) Any objection to a request to present remote testimony shall be filed within seven days of that motion.
- (3) The court shall determine whether, in the interest of justice, the testimony may be presented from a remote location. The factors to be considered include but are not limited to the following:
- (A) whether there is a statutory right to live or remote testimony;
  - (B) the cost savings to the parties;
  - (C) the availability of appropriate equipment to permit the presentation of remote testimony;
  - (D) the availability of the witness to physically appear in court;
  - (E) the relative importance of the issue or issues for which the testimony is offered;
  - (F) whether credibility of the witness is a material issue;
  - (G) whether the case is to be tried to the court or to a jury; and
  - (H) whether the presentation of remote testimony would unreasonably inhibit the ability to cross examine the witness.
- (4) If remote testimony is approved, the proponent of the testimony shall ensure that an officer authorized to administer oaths by the law of the jurisdiction in which the witness is located be physically present with the witness to certify the witness' identity and to administer the oath. At least seven days prior to the testimony, the parties shall exchange all exhibits they intend to use with the witness.

**Civ. Practice Standard 10.1**  
**FORMAT**

**(a)Font.** NO PROVISION

**(b)Page Limitations.** The Court does not impose page limitations on any filings. However, the Court encourages parties to be as concise as possible, and may

elect to disregard the remainder of any filing that becomes redundant, cumulative, or irrelevant.

**Civ. Practice Standard 16.6**  
**ALTERNATIVE DISPUTE RESOLUTION**

**(a) Settlement.** In addition to D.C.COLO.LCivR 16.6, the following applies:

- (1) **No continuances.** Settlement discussions are encouraged at all phases of the litigation process. However, hearings, trials and pretrial deadlines will not be continued or vacated to facilitate settlement negotiations or alternative dispute resolution, or in anticipation of the filing of settlement documents.
- (2) **Notice of Settlement.** If a settlement is reached before a hearing or trial, please advise chambers at **(303) 335-2289**. Notwithstanding any telephone call, no deadline, hearing or trial will be vacated except upon the filing of papers sufficient to resolve the matter and issuance of an order. If counsel and/or any *pro se* party are unable to file the appropriate documents before the hearing or trial, counsel and/or any *pro se* party shall appear at the scheduled hearing or trial to memorialize the settlement on the record.
- (3) **Partial Case Settlement/Dismissal.** If fewer than all claims or defenses are resolved by a settlement, a motion requesting approval of same shall specify what claims, defenses and parties will be affected by the settlement/dismissal and which will remain. The proposed order shall set out a proposed revised caption, deleting parties whose claims have been resolved, to be used on all subsequent pleadings. An order will not be issued when parties stipulate to a dismissal of their case pursuant to Fed. R. Civ. P. 41(a)(1)(A).

**III. COURTROOM PROCEDURES**

**Civ. Practice Standard 17.1**  
**GENERAL INFORMATION**

**(a) Court Appearances.**

- (1) Unless otherwise directed, all matters to be heard by the Article III judge to whom the case has been drawn will be heard in the courtroom assigned to that Judge. Matters to be heard by the magistrate judge will be in the courtroom assigned to that magistrate judge.

- (2) Court time is valuable to litigants, counsel, and court staff. Counsel should arrive one-half hour before any scheduled hearing or trial and confer to confirm what issues are in dispute and what stipulations can be made.
- (3) If a scheduled matter is called for hearing and a party or a party's counsel is not present, the matter may be moved to the end of the docket, reset for hearing, a default entered, sanctions imposed, or other orders entered as appropriate. If a party is not prepared as required by the order setting the hearing, the matter may be reset without deference to the parties' needs; the request for relief, defense(s), or objection(s) may be denied; or other sanctions may be imposed.
- (4) Counsel – and, where specifically directed, the parties – shall appear personally at all hearings unless leave to appear by telephone has been timely sought and expressly granted. Motions seeking leave to appear by telephone should be made at least **three days** before the scheduled hearing date. For non-evidentiary hearings, leave to appear by telephone will be liberally granted, providing that both sides are in full compliance with all prior orders and the case is making satisfactory progress. Leave to appear by telephone for evidentiary hearings will be granted only in exceptional circumstances.

**(b) Courtroom Organization and Protocol.**

- (1) Plaintiff's table is closest to the jury box. There is one lectern in the courtroom at which all counsel and parties shall stand to make any statement or argument. Counsel may object by standing at counsel table. Absent prior court order, no person should be addressed by first name. Counsel may not approach a witness at the witness stand. If something is to be tendered to a witness it should be supplied to the Courtroom Deputy Clerk.
- (2) **Turn off all cell phones and pagers before entering the courtroom.**
- (3) No soda, coffee or food is allowed in the courtroom. Water bottles are permitted, and water and cups are provided.
- (4) Stand when addressing the court. 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. Please refer to all other persons by their surnames, prefaced by Mr. or Ms. unless another title is appropriate.

**(c) Recording of Proceedings.** The official record of all trials and proceedings will be taken by a real-time reporter. Prior to the beginning of any proceeding, please provide the court reporter with your business card.

**(d) Audio Visual Aids.** The court has a VCR, DVD player, monitors, screens, white pads, easels, and an ELMO. A Courtroom Technology Manual for attorneys is available at the Court's website. Technology training can be scheduled by calling chambers – the attorney presenting the case at trial or hearing must attend such training.

**(e) Glossary.** NO PROVISION

### **Civ. Practice Standard 18.1 EXHIBITS**

**(a) Format.** NO PROVISION

**(b) When to File and Exchange.** Exhibit lists shall be filed and exhibits shall be exchanged at least **three business days** before commencement of the trial or hearing. It is not necessary to submit exhibit books to the Court prior to a trial or hearing.

**(c) Exhibit Lists.** NO PROVISION

**(d) Exhibit Notebooks.**

(1) Paper exhibits must be bound in three-ring notebooks or folders, and tabbed with the appropriate exhibit number. The notebook or folder should be labeled with the following information:

**(A)** caption,

**(B)** nature of proceeding,

**(C)** scheduled date and time,

**(D)** "original" or "copy," and

**(E)** if more than one volume is submitted, the binder should contain the volume number and the numbers of the exhibits contained (i.e., Volume I, Exhibits 1-25)

If exhibits are not bound and labeled properly, the hearing or trial may be delayed or continued until they are. Pages of multi-page exhibits

must be numbered consecutively to avoid having the pages separated or omitted.

- (2) **Two** full sets of exhibit notebooks shall be provided to the Courtroom Deputy at the commencement of the hearing or trial -- one containing the original exhibits and one containing a copy of the exhibits for the Court.

**(e) Voluminous Evidence.** In preparation for trial, parties shall either:

- (1) redact voluminous evidence to reflect only the relevant portions and portions necessary for context; or
- (2) consistent with the requirements of Fed. R. Evid. 1006, prepare and offer charts, summaries, or calculations to communicate the contents of voluminous evidence to the Court and jury. Although a complete original or copy of the evidence on which a redacted exhibit or Rule 1006 chart, summary, or calculation is based need not be offered and admitted into evidence, such underlying evidence must itself be admissible and available to the parties for examination or copying and to the Court for production if so ordered.
- (3) The parties shall include any redacted evidence or Rule 1006 chart, summary, or calculation they intend to use at trial in the list of exhibits set forth in the Final Pretrial Order and in the exhibit copies exchanged following the Final Pretrial Conference. The voluminous evidence on which such redacted, summary, chart, or calculation exhibit is based shall be identified in an appendix to the exhibit list and such underlying evidence shall be made available to the other parties at the time the parties exchange exhibits.

**(f) ELMO.** NO PROVISION

**(g) Jury Evidence Recording System (JERS).** NO PROVISION

**Civ. Practice Standard 19.1  
WITNESS LISTS**

**(a) Format.** Parties must use the form of witness list available on the District Court website under Senior Judge Krieger's procedures.

**(b) When to File.** The parties shall prepare and file a single, joint list of witnesses **three business days** prior to the commencement of the scheduled trial or hearing.

**(c) Before Trial.** NO PROVISION

**(d) Witness Presence.** Designations of witnesses as either “will call” or “may call” are not required and will not be deemed binding on either party. Counsel desiring a witness’ physical presence at a trial or hearing shall ensure the presence of that witness either by written stipulation with the opposing party (if the witness is in the control of that party) or by subpoena (in all other circumstances).

**(e) Sequestration Order.** Sequestration orders should be strictly observed. Expert witnesses may not observe trials in which sequestration orders have been entered except with express prior authorization. Witnesses should not be “prepped” or their testimony reviewed during breaks after they have been sworn in. Witnesses who have not yet testified at trial should not be provided transcripts of trial proceedings. However, they may be prepared by asking them questions based upon hypothetical. 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.

#### **IV. Depositions and Discovery**

##### **Civ. Practice Standard 27.1 DISCOVERY IN EMPLOYMENT CASES**

NO PROVISION

##### **Civ. Practice Standard 30.1.1 DEPOSITIONS PROCEDURE AND DESIGNATIONS**

**(a) Procedure.** In all trials and hearings, if the parties intend to offer deposition testimony in lieu of a live witness at trial, that deposition testimony will be presented and objected to as if it were live testimony. If evidence is to be presented through a written deposition transcript in a jury trial, the proponent shall supply a person to read from a written deposition transcript. To accommodate evidentiary objections to deposition testimony presented by video, the proponent must have the technical ability to “mute” excluded responses and efficiently “fast forward” to the next segment of testimony.

**(b) – (i) NO PROVISION**

## V. TRIALS

### **Civ. Practice Standard 44.1 PROCEDURE**

**(a) Final Pretrial Conference.** A final pretrial conference will be held in all civil cases and will be used to set the trial date. Please refer to the Trial Preparation Order – Civil issued in each case.

**(b) Final Pretrial Order.** Please refer to the Trial Preparation Order – Civil issued in each case.

**(c) Trial Settings.** Please refer to the Trial Preparation Order – Civil issued in each case.

**(d) Trial Times.** Will be addressed at the Final Pretrial Conference.

**(e) Trial Briefs.** Trial briefs are not generally requested. In appropriate circumstances, they will be addressed at the Final Pretrial Conference.

### **Civ. Practice Standard 48.1 BENCH TRIALS**

**(a) Time.** Will be addressed at the Final Pretrial Conference.

**(b) Findings of Fact and Conclusions of Law.** Unless otherwise ordered by the Court, do not submit.

**(c) Expert Witness Qualification.** NO PROVISION

### **Civ. Practice Standard 48.2 JURY TRIALS**

**(a) Jury Selection Process.** Please refer to the Court's website under Senior Judge Krieger's procedures.

**(b) Notes.** Jurors will be permitted to take notes during the trial. The jurors' notes will be destroyed after the jury is discharged.

**(c) Questions by Jurors.** Jurors will not be permitted to submit questions for witnesses.

**(d) Bench Conferences.** Side bars are strongly discouraged and will be

minimized. Matters requiring extensive discussions outside the presence of the jury should be raised either before or after the trial day or at the beginning (not the end) of a scheduled recess.

**(e) Timing.** The jury will be instructed before closing arguments.

**(f) Copies.** Each juror will be given a notebook which contains Court information, the preliminary jury instructions, statement of the case and stipulations of fact. The jurors will receive the concluding jury instructions at the time they are charged. The original exhibit book with admitted exhibits will accompany the jury for deliberation. If it is necessary to display an exhibit on a computer, a clean laptop will be supplied to the jury by the Court.

**(g) Jury Instructions and Verdict Form.** Please refer to the Court's website under Senior Judge Krieger's procedures.