

PRACTICE STANDARDS
(Civil cases)

**CHIEF JUDGE PHILIP A. BRIMMER
UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

**Courtroom A701
Alfred A. Arraj United States Courthouse**

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Effective: December 1, 2023

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I. GENERAL PROCEDURES

A. Applicable Rules

Those appearing in the District Court 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 Version 6.1 or the most current version); and
5. These Practice Standards.

B. Access to Local Rules and Practice Standards

1. Copies of the local rules are available at <http://www.cod.uscourts.gov/LocalRules/Rules.aspx>, from the District Court's home page <http://www.cod.uscourts.gov/Home.aspx> under "Local Rules," and from the clerk of the court in **Room A105**.

2. Copies of these Practice Standards are available at <http://www.cod.uscourts.gov/JudicialOfficers/ActiveArticleIIIJudges/HonPhilipABrimmer.aspx>, from the District Court's home page <http://www.cod.uscourts.gov/Home.aspx> under "Judicial Officers," and from the clerk of the court in **Room A105**.

C. Communications with Chambers

1. My judicial assistant is **Sarah Mahoney, 303-335-2794**.
2. For information about the status of a motion or document, please contact the case administration specialist, **303-335-2113**.
3. For information about courtroom technology, trial preparation, or submission of trial exhibits, please contact my courtroom deputy clerk, **Sabrina Grimm, 303-335-2039**.
4. My court reporter is **Janet Coppock, 303-335-2106**.
5. Please do not contact the law clerks about procedural or scheduling matters.

D. Proposed orders

On occasion, chambers staff may direct a party to transmit proposed orders by electronic mail to brimmer_chambers@cod.uscourts.gov. If so, the proposed order or document should be submitted as an attachment in Word format. The e-mail message should identify the case number and the document attached. Do not send documents directly to chambers by electronic mail unless asked to do so.

E. Discovery

Discovery deadlines and limitations will be set by the assigned magistrate judge. The presumptive discovery period is six months.

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 and *United States v. West*, 828 F.2d 1468, 1469-70 (10th Cir. 1987). Oral or written motions to continue 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. When a motion to continue is granted, all parties will be notified as soon as practicable.

G. Motions for Extensions of Time

1. Motions for extension of time require a showing of good cause, which must be established with particularity. The following reasons do **not** constitute good cause: agreement of counsel, inconvenience to counsel or to the parties; the press of business; conflicts in scheduling; or practice as a sole practitioner.

2. Any motion for extension of time shall be filed no later than **three** business days before the date the motion, response, reply, or other paper is due.

3. This practice standard is subject to D.C.COLO.LCivR 6.1(a), which governs extension by stipulation.

H. Settlement

1. **Jury Trials** – If a settlement is reached before a hearing or trial, please advise my judicial assistant, **Sarah Mahoney, 303-335-2794**, as soon as possible. If a matter is resolved during the weekend before trial, please file a notice via CM-ECF as soon as possible. However, no deadline, hearing or trial will be vacated except upon the filing of papers sufficient to resolve the matter and the issuance of an order. If counsel are unable to file the appropriate documents before the hearing or trial, counsel shall appear at the scheduled hearing or trial to memorialize the settlement on the record. Please be aware that jury costs may be assessed in accordance with D.C.COLO.LCivR 54.2 if a matter is resolved after noon on the last business day before trial.

2. **Bench Trials and Hearings** – If a settlement of a contested motion or case to be tried to the court is reached before the hearing or trial, please advise my judicial assistant, **Sarah Mahoney, 303-335-2794**, as soon as possible. A motion hearing or bench trial will be vacated only if pleadings sufficient to resolve the matter (e.g., motion, stipulation, and proposed order) are filed **no later than noon on the last business day before the scheduled hearing or trial**. If counsel and any pro se party are unable to file the appropriate documents by this deadline, counsel and any pro se party shall appear as scheduled to recite the settlement terms on the record. If a matter is resolved during the weekend before trial, please file a notice via CM-ECF as soon as possible.

3. Settlement discussions are encouraged; however, hearings, trials, and pretrial deadlines will not be continued or vacated to facilitate settlement negotiations or alternative dispute resolution.

4. Partial Case Settlement/Dismissal – Parties shall comply with Fed. R. Civ. P. 41(a)(1)(A) for filing stipulated dismissals. Rule 41 permits the dismissal of fewer than all parties so long as all claims against a particular party are dismissed. However, if a plaintiff seeks to dismiss some, but not all claims, against a defendant, the proper procedure is for plaintiff to amend the complaint pursuant to Fed. R. Civ. P. 15.

5. Except in extraordinary circumstances, the court will not retain jurisdiction (including through open-ended administrative closure) over cases that have been settled. The proper mechanism for enforcing a settlement is, in almost all cases, through a new action. Any motion or stipulation for dismissal requesting that the court retain jurisdiction after dismissal shall explain in detail

the extraordinary circumstances necessitating such an approach.

II. COURTROOM PROCEDURES

A. Courtroom Protocol

1. Please observe traditional courtroom decorum: stand when addressing the court, address the court as “Your Honor,” and request permission to approach the bench. It will not normally be necessary for counsel to approach a witness on the stand. The courtroom deputy, upon request of counsel, will hand an exhibit to the witness.

2. If you have a question about courtroom protocol, please contact my courtroom deputy clerk, **Sabrina Grimm, 303-335-2039**.

B. Recording of Proceedings

1. The official record of all trials and proceedings will be taken either by a realtime reporter or by electronic sound recording (audiotape). Prior to the beginning of any proceeding, please provide the court reporter with your name and email address.

2. The realtime reporter assigned to the court is **Janet Coppock, 303-335-2106**. Transcripts of proceedings may be ordered from Ms. Coppock. Requests for realtime, daily, or hourly copy must be made at least **thirty days** before the trial or hearing. Further details can be obtained from Ms. Coppock.

C. Exhibits

1. When providing the court with conventionally submitted materials and when submitting exhibits electronically, the parties shall submit a USB drive containing the exhibits and/or videos.

2. When to File – For motion hearings, exhibit lists shall be filed via CM-ECF **two** business days before the hearing. For trials, see Section IV.E. concerning the Trial Preparation Conference.

3. Format of Exhibit List – Parties must use the form of exhibit list available on the District Court website at

<http://www.cod.uscourts.gov/JudicialOfficers/ActiveArticleIIIJudges/>

[HonPhilipABrimmer.aspx](#).

4. Each party must pre-mark all exhibits that will be used or identified for the record in a hearing or trial. Each party must provide a copy of each exhibit to opposing counsel or any pro se party before a hearing or trial. For trials, see Section IV.E.2. Exhibits not timely pre-marked or exchanged before a hearing or trial may not be admitted. For trial exhibit lists, please add at least ten additional blank rows at the end of the exhibit list to accommodate any additional exhibits that may be introduced.

5. Exhibit labels can be obtained from the clerk's office before trial. Plaintiff's exhibits should be marked with yellow labels, using numbers. Defendant's exhibits should be marked with blue labels, using alphabetical letters for the first twenty-six exhibits. For example, if there are twenty-six or fewer exhibits, label them A through Z. If there are more than twenty-six exhibits, begin marking them as A-1 through A-99, then B-1 through B-99, etc. (i.e. do not use labels A through Z). Do not use double or triple letters. The civil action number should also be placed on each of the exhibit stickers.

6. Exhibits must be bound, e.g., in three-ring notebooks or folders, and the notebook or folder labeled with the following information: (i) caption, (ii) nature of proceeding, (iii) scheduled date and time, and (iv) "original" or "copy." If exhibits are not bound and labeled properly, the hearing or trial may be delayed or continued until they are. If a party has fewer than five exhibits, the exhibits need not be bound.

7. Number of Sets of Exhibits – For hearings and trials, each party should bring separate sets of bound exhibits for (a) the court, (b) the courtroom deputy clerk, (c) the court reporter, (d) the judge's law clerk, (e) opposing counsel, and (f) the witness stand.

8. Stipulated Facts – Any stipulations of fact should be formatted as a pleading and marked as an exhibit.

D. Witness Lists

1. When to File – For motions hearings other than Rule 702 hearings, witness lists shall be filed via CM-ECF **two** business days before the hearing. For Rule 702 hearings, see Section III.G. For trials, see Section IV.E. concerning the Trial Preparation Conference.

2. Format – Parties should use the form of witness list available on the District Court website at <http://www.cod.uscourts.gov/JudicialOfficers/ActiveArticleIIIJudges/HonPhilipABrimmer.aspx>.

E. Depositions

1. Together with Fed. R. Civ. P. 32, this practice standard governs the use of depositions in court proceedings.

2. Evidence to be presented by deposition shall be designated with specificity, i.e., by page(s) and line(s).

3. Initial designations of deposition testimony shall be made not later than 45 days before trial, and counter designations shall be made not later than 30 days before trial.

4. Objections to any properly designated portion of a deposition shall be filed and determined in the time and manner prescribed by D.C.COLO.LCivR 7.1(d) and these Practice Standards. Objections shall be presented in a table that has four columns (see sample table below): 1) item number; 2) testimony (identified with specificity, i.e., by page(s) and line(s) of an accompanying transcript); 3) objection; and 4) ruling. The objection shall attach the relevant portion of the deposition transcript with the testimony at issue highlighted and sufficient context to allow the court to decide the objection. Objections may be resolved before trial to facilitate appropriate redaction.

| Item # | Testimony | Objection | Ruling |
|--------|-----------|-----------|--------|
| 1. | | | |

5. For jury trials, parties must provide a person to read the deposition answers.

6. For bench trials, depositions will usually not be read in open court. Instead, the court will read them in chambers in any requested sequence. At the beginning of the trial, the offering party shall provide the courtroom deputy clerk with **two copies** of the relevant deposition transcript marked as an exhibit

with plaintiff's designated portions highlighted in yellow, the defendant's in blue, and any other party's in green.

F. Videotaped Depositions

1. Together with Fed. R. Civ. P. 32, this practice standard governs the use of videotaped depositions in court proceedings.

2. Evidence to be presented by videotaped deposition shall be designated with as much specificity as practicable, e.g., by time stamp or counter reading.

3. Initial designations shall be made not later than 45 days before trial, and counter designations shall be made not later than 30 days before trial.

4. Objections to any properly designated portion of a videotaped deposition shall be filed and determined in the time and manner prescribed by D.C.COLO.LCivR 7.1(d) and these Practice Standards. Objections shall be presented in a table that has four columns (see sample table below): 1) item number; 2) testimony (identified with specificity, i.e., by page(s) and line(s) of an accompanying transcript and by hour and minute of the tape); 3) objection; and 4) ruling. Objections may be resolved before trial to facilitate appropriate redaction.

| Item # | Testimony | Objection | Ruling |
|--------|-----------|-----------|--------|
| 1. | | | |

G. Special Equipment (Audio/Video)

The court has audio-visual and other special equipment that may be used by the parties. A listing of available equipment can be found on the District Court's website at

<http://www.cod.uscourts.gov/AttorneyInformation/GeneralAttorneyInformation.aspx>, under "Courtroom Technology Manuals for Attorneys." Notify the courtroom deputy clerk, **Sabrina Grimm, 303-335-2039**, no later than **fourteen days** before a hearing or trial concerning the date and time you need such equipment

or need your own equipment to be brought through security for use in the courtroom.

III. MOTIONS PRACTICE

A. Page Limitations

All motions, objections (including objections to the recommendations or orders of United States Magistrate Judges), responses, and briefs shall not exceed **fifteen pages** (This limit does not apply to motions for summary judgment.). Replies shall not exceed **ten pages**. Motions and briefs shall be combined and will be considered one paper for purposes of computing page limitations. These page limitations include the cover page, jurisdictional statement, statement of facts, procedural history, argument, authority, closing, signature block, and all other matters, except the certificate of service. **The body of the text and all footnotes shall be no smaller than 12-point type.**

Motions to exceed the page limitations set forth in these Practice Standards will be granted only upon a showing of good cause. Any such motion shall indicate the number of pages of the proposed document and the reason why the additional pages are necessary.

B. Responses and Replies

1. Deadlines – See D.C.COLO.LCivR 7.1(d) and D.C.COLO.LCivR 56.1(a) for applicable time limits for filing responsive and reply briefs. Rule 6 of the Federal Rules of Civil Procedures controls the computation of time. For extensions of time for filing such briefs, see Section I.G.

2. A response shall identify by title **and CM-ECF docket number** the pleading to which it responds. Similarly, a reply shall identify by title **and CM-ECF docket number** the response to which it replies. No surreply or supplemental briefs shall be filed without leave of court.

C. Untimely Or Noncomplying Motions, Objections, Responses, or Replies

1. 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*.

2. Untimely or noncomplying objections, responses, or replies may be denied without prejudice, stricken, or ignored.

D. Unopposed Motions

An unopposed motion shall be designated as required by D.C.COLO.LCivR 7.1(c). Proposed orders should be submitted via CM-ECF along with all motions. Proposed orders should not be sent via email to chambers unless requested. Do not submit proposed judgments, since judgments are prepared by the clerk of the court.

E. Motions *In Limine*

Motions *in limine* are discouraged when the motion cannot be resolved until evidence is presented at trial. Instead, such evidentiary issues can be flagged in a trial brief. If motions in limine are filed, they must be filed **fourteen days** before the trial preparation conference. Any responses to the motions in limine shall be filed **seven days** before the trial preparation conference. (For motions to exclude expert witness testimony, see Section III.G.)

F. Dispositive Motions

1. Procedures for motions seeking relief pursuant to Fed. R. Civ. P. 12 or 56 are governed by D.C.COLO.LCivR. 7.1(b) and 56.1, respectively. Deadlines will be applied strictly.

2. Motions to Dismiss – FED. R. CIV. P. 12(b)

a. Rule 12(b) motions are discouraged if the defect is correctable by the filing of an amended pleading. Counsel should confer prior to the filing of the motion if the deficiency is correctable by amendment (e.g., failure to plead fraud with specificity) and should exercise their best efforts to stipulate to appropriate amendments. Rule 12(b) motions should not be stated in the alternative as a Rule 56 motion for summary judgment. For Rule 12(b) motions, the following format should be used:

i. For each claim for relief that the movant seeks to dismiss pursuant to Rule 12(b)(6), clearly enumerate each element **that movant contends must be alleged, but was not.**

ii. The respondent should utilize the same format for each challenged claim. If the respondent disputes a particular element, the element should be identified as “**DISPUTED**” and briefed. If the respondent contends that a sufficient factual allegation has been made in the complaint, the respondent should identify the page and paragraph containing the required factual allegation.

iii. 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.

b. If a party elects to file more than one Rule 12(b) motion, opening briefs and response briefs shall not exceed **fifteen pages** total for all such motions (not each such motion) filed by that party.

3. **Motions for Summary Judgment – FED. R. CIV. P. 56**

a. Motions and response briefs shall not exceed **twenty pages**. Reply briefs shall not exceed **ten pages**. These page limitations shall include the motion for summary judgment, cover page, jurisdictional statement, statement of facts, procedural history, argument, closing, signature block, and all other matters, except the certificate of service. If a party elects to file more than one Rule 56 motion, then the motions and response briefs shall not exceed **twenty pages** total for all such motions (not each such motion) filed by that party. The body of the text and **all footnotes** shall be no smaller than 12-point type.

b. Because of the voluminous factual materials which are frequently submitted with motions for summary judgment, all Rule 56 motions must comply with the following requirements:

i. In a section of the brief required by Rule 56.1(a) of the United States District Court for the District of Colorado Local Rules of Practice (Civil) styled “Statement of Undisputed Material Facts,” the movant shall set forth in simple, declarative sentences, **separately numbered and paragraphed**, each material fact which the movant believes is not in dispute and which supports movant's claim that movant is entitled to judgment as a matter of law.

ii. Each separately numbered and paragraphed fact **must** be accompanied by a specific reference to material in the record

which establishes that fact. General references to pleadings, depositions, or documents are insufficient if the document is over one page in length. See D.C.COLO.LCivR 56.1(c) regarding the marking of exhibits. A “specific reference” means:

- In the case of materials filed with the court, the title of the document, the date on which it was filed or served, and a specific paragraph or page and line number; or, if the document is attached to the motion, the paragraph or page and line number;
- 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;
- In the case of depositions or other documents bearing line numbers, the specific page and line(s) establishing the fact;
- In the case of affidavits submitted in support of the motion, the specific paragraph number establishing the fact;
- In the case of other materials not numbered by paragraph, line, or page, a reference which will enable the court to ascertain the fact without reviewing the entire document; the effort at specificity may be made by highlighting, manual underscoring, or pagination supplied by the movant.

iii. 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.

iv. Any party opposing the motion for summary judgment shall, in a section of the brief required by Rule 56.1(a) of the United States District Court for the District of Colorado Local Rules of Practice (Civil) styled “Response to Statement of Undisputed Material Facts,” admit or deny the asserted material facts set forth by the movant. The admission or denial shall be made in separate paragraphs numbered to correspond to 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 material in the record supporting the denial.

v. If the party opposing the motion believes that there exist additional **disputed** questions of fact which it has not adequately addressed in the submissions it has made pursuant to subparagraph (iv) above (for example, disputed facts concerning an affirmative defense), the party shall, in a separate section of the party's brief styled "Statement of Additional Disputed Facts," set forth in simple, declarative sentences, **separately numbered and paragraphed**, each additional, material disputed fact which undercuts movant's claim that it is entitled to judgment as a matter of law. Each separately numbered and paragraphed fact shall be accompanied by a **specific reference** to material in the record which establishes the fact or at least demonstrates that it is disputed. Similarly, if the party opposing the motion believes that there exist additional **undisputed** facts, the party shall, in a separate section of the party's brief styled "Statement of Additional Undisputed Facts," set forth in simple, declarative sentences, **separately numbered and paragraphed**, each additional, material undisputed fact which undercuts movant's claim that it is entitled to judgment as a matter of law. Each separately numbered and paragraphed fact shall be accompanied by a **specific reference** to material in the record which establishes the fact or at least demonstrates that it is undisputed.

vi. Any reply brief must comply with the following requirements:

--In a separate section styled "Reply Concerning Undisputed Facts," include any factual reply which movant cares to make regarding the facts asserted in its motion to be undisputed, supported by **specific references** to material in the record. The reply will be made in separate paragraphs numbered according to the motion and the opposing party's response.

--In a separate section styled "Response Concerning Disputed Facts" or a separate section styled "Response Concerning Additional Undisputed Facts" (with respect to each fact which the opposing party, pursuant to subparagraph (v) above, claims to be in dispute or to be undisputed), either admit that the fact is disputed or

undisputed or supply a **brief** factual explanation for its position that the fact is undisputed, accompanied by a **specific reference** to material in the record which establishes that the fact is undisputed. This will be done in paragraphs numbered to correspond with the opposing party's paragraph numbering.

vii. The sole purpose of these procedures is to establish facts and determine which of them are in dispute. **Legal** argument is not permitted here and should be reserved for separate portions of the briefs. If, for example, a party believes that an established fact is immaterial that belief should be expressed in the part of the brief devoted to legal argument, and the fact should be admitted. If, on the other hand, a party believes that the reference to materials in the record does not support the claimed fact, that fact may be denied and **factual** argument may appropriately be made pursuant to these procedures.

viii. 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.

ix. Failure to follow these procedures may result in an order striking or denying the motion or brief or may cause the court to deem certain facts as admitted. Repeated failure to follow these procedures may result in an order granting other proper relief.

G. 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 motion 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, methodology. See Fed. R. Evid. 702. Motions and responses shall not exceed **fifteen pages** without permission of the court; replies shall not exceed **ten pages** without permission of the court.

The deadline for filing all such motions shall be set by the court at the scheduling conference. The time for filing responses and replies shall be governed by D.C.COLO.LCivR 7.1(d). If a deadline has not been set at the scheduling conference, such motions shall be filed thirty days after the deadline for disclosure of rebuttal expert witnesses.

IV. TRIALS

A. Final Pretrial Conference

The assigned magistrate judge will hold a final pretrial conference as prescribed by Fed. R. Civ. P. 16(e) and D.C.COLO.LCivR 16.3. The form to be used for the Final Pretrial Order can be found on the District Court website.

B. Trial Settings

Whenever practicable, the case will be set for trial and for Trial Preparation Conference during the final pretrial conference before the assigned magistrate judge; otherwise, immediately after the final pretrial conference counsel and pro se parties shall contact Chambers via conference call (303-335-2794) or email (brimmer_chambers@cod.uscourts.gov) to set the case for trial and for Trial Preparation Conference.

C. Length of Trial

Should the parties request a trial lasting longer than five days, the order setting trial will reflect the court's ruling on the number of days for the trial.

D. Motions in Limine

Motions in limine are discouraged if the court needs to hear evidence at trial in order to resolve them. See Section III.E. If a party files a motion in limine, it is due fourteen days before the trial preparation conference. If motions in limine are filed, they must be filed **fourteen days** before the trial preparation conference. Any responses to the motions in limine shall be filed **seven days** before the trial preparation conference. (For motions to exclude expert witness testimony, see Section III.G.)

E. Trial Preparation Conference

The Trial Preparation Conference will usually be held **approximately two weeks** before trial. Counsel who will try the case must attend in person. Once trial has been set, the court will issue a Trial Preparation Conference Order that will confirm the trial date, confirm the Trial Preparation Conference date, and

specify the tasks to be completed before the Trial Preparation Conference.

1. Jury Instructions and Verdict Forms:

a. **Fourteen days** before the trial preparation conference, counsel and any pro se party shall submit proposed jury instructions and verdict forms. The jury instructions shall identify the source of the instruction and supporting authority, e.g., § 103, Fed. Jury Practice, O'Malley, Grenig, and Lee (6th ed.). The parties shall submit their instructions and verdict forms both via CM-ECF **and** by electronic mail to brimmer_chambers@cod.uscourts.gov in Word format. Verdict forms shall be submitted in a separate file from jury instructions. Within the jury instruction document, each jury instruction shall begin on a new page.

b. Each instruction should be numbered (e.g., "Plaintiff's Instruction No. 1") for purposes of making a record at the jury instruction conference. The parties shall attempt to stipulate to the jury instructions, particularly "stock" instructions and verdict forms.

c. In diversity cases where Colorado law applies, please submit instructions and verdict forms that conform to the most recent edition of CJI-Civ.

2. Exhibit and Witness Lists: **Seven days** before the trial preparation conference, the parties shall file their proposed witness and exhibit lists via CM-ECF. The form of such lists are found at <http://www.cod.uscourts.gov/JudicialOfficers/ActiveArticleIIIJudges/HonPhilipABrimmer.aspx>. **Two days** after witness lists are filed, the parties shall file estimates of time required for their cross-examination of the opposing party's witnesses. **Seven days** before trial the parties shall exchange, whether electronically or in hard copy, the exhibits listed on their trial exhibit lists. For additional matters regarding exhibit and witness lists, see Sections II.C. and II.D. above.

3. Voir Dire: **Seven days** before the trial preparation conference, the parties shall file their proposed *voir dire* questions.

F. Jury Trials

1. Counsel and pro se parties shall be present on the first day of trial at 8:00 a.m. Jury selection will begin at 8:30 a.m. The second day of trial will begin at 8:30 a.m. and continue until 5:00 p.m. The trial day will have morning and afternoon recesses of approximately fifteen minutes duration. A lunch break of

approximately one hour and thirty minutes will be taken at approximately 12:00 p.m. The court typically does not hold trial on Fridays.

2. The jury in civil cases will normally consist of nine jurors. Pursuant to Fed. R. Civ. P. 47(b) and 28 U.S.C. § 1870, each **side** shall have three peremptory challenges.

3. Voir Dire: Unless ordered otherwise, each side shall be permitted *voir dire* examination of **fifteen minutes** after *voir dire* examination by the court.

4. Jurors will be permitted to take notes during the trial.

5. The jury will be instructed before closing argument.

6. Each juror will be given a copy of the written jury instructions for use during deliberations.

G. Trials To Court

1. Trials to court will begin at 8:30 a.m. on the first day of trial.

2. Not less than **two business days** before the trial preparation conference, counsel and any pro se party shall file proposed findings of fact, conclusions of law, and orders. A copy shall also be emailed to chambers in Word format. Counsel and any pro se party are requested to state their proposed findings of fact in the same order as their anticipated order of proof at trial. Counsel and any pro se party are requested to key their closing arguments to their proposed findings of fact and conclusions of law and to emphasize the evidence on which they rely to support their positions.

3. For a trial to the court, a proper résumé or curriculum vitae, marked as an exhibit, generally will suffice for the qualification of an expert witness.

H. Trial Briefs

Trial briefs are encouraged, but not required absent specific court order. If filed, trial briefs shall not exceed **ten pages** and shall be filed not later than **two business days** before the trial preparation conference. A trial brief may not be used as a substitute for a motion.