

*Our bondage to law is the price we
pay for freedom.*
Judge Robert T. Mann

**PRACTICE STANDARDS
CIVIL ACTIONS**

TO: Counsel and Parties
FROM: Judge Robert E. Blackburn, United States District Judge
RE: Practice Standards Civil Actions

I. PURPOSE AND RELATION TO OTHER RULES

A. Purpose And Authority

1. Consistent with Fed. R. Civ. P. 1, these practice standards are adopted to secure the just, speedy, and inexpensive determination of every civil action. These practice standards shall apply to all motions, petitions, applications, responses, replies, objections, orders, and all other papers filed on or after **December 1, 2013**, and to all hearings and trials conducted on or after **December 1, 2013**. They may be revised without notice and may be modified by orders entered in specific cases.

2. **These practice standards have the force and effect of the orders of this court.**

B. Relation To Local Rules

1. These practice standards supplement, not supplant or supersede, the Local Rules of Practice of the United States District Court for the District of Colorado-Civil.

C. Access To Local Rules & Practice Standards

1. Copies of the local rules are available [here](#) and from the clerk of the court in **Room A105**.

2. Copies of these practice standards are available [here](#) and from the clerk of the court in **Room A105**.

II. GENERAL PROCEDURES

A. Applicable Rules

1. Those appearing in the District Court must know and follow:
 - a. The Federal Rules of Civil Procedure;
 - b. The Federal Rules of Evidence;
 - c. The Local Rules of Practice of the United States District Court for the District of Colorado;
 - d. The Electronic Case Filing Procedures (Civil Version 5.1 or the most current version); and
 - e. These practice standards.
2. Failure to comply with the foregoing rules or procedures or the practice standards of this court may result in the imposition of appropriate sanctions, including, but not limited to, striking noncomplying papers, punishing contempt of court, vacating hearings or trials, or dismissing claims or the action.

B. Communications with Chambers

1. For information about the status of a motion or document, please utilize the CM/ECF system available [here](#), or the PACER system available [here](#), or from the District Court's home page (www.cod.uscourts.gov) at "PACER."
2. For other information or assistance, please contact **Susan Schmitz**, at **303-335-2350**. **Please do not contact the law clerks about procedural or scheduling matters. They may speak to counsel only pursuant to the specific instructions of the court.**

C. Service by Electronic Means

1. You may be directed to transmit proposed orders or other pleadings or papers by e-mail to blackburn_chambers@cod.uscourts.gov. The proposed order or document should be submitted as an attachment in preferably Word Perfect format (preferably Word Perfect 12 or a later version of Word Perfect) or Word, using an Arial 12 point font. The e-mail message should identify the case number and document attached. **Do not send documents directly to chambers by facsimile or e-mail unless requested or ordered to do so by the court.**

D. Citations

1. Citations shall be made pursuant to the most current edition of **THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION** (currently the 19th ed. 2010).

2. General references to cases, pleadings, depositions, or documents are insufficient if the document is more than one page in length. Whenever possible, specific references in the form of pinpoint citations shall be used to identify relevant excerpts from cases, pleadings, depositions, or documents.

3. Whenever practicable, a citation to an unpublished opinion should include its Westlaw® citation.

4. These practice standards should be cited as REB Civ. Practice Standard, Part, Section, Subsection, Paragraph, Subparagraph, and Sub-subparagraph (e.g., REB Civ. Practice Standard V.F.3.a.1.a.).

E. Typeface

1. All papers filed with the court by anyone other than a judicial officer shall be in an Arial 12 point font (exclusive of footnotes and endnotes). Noncomplying papers may be stricken.

F. Continuances of Hearings and Trials

1. Motions to continue are strongly discouraged because of the adverse effects they have on case management.

2. Motions to continue (including motions to vacate or reset) hearings and trials shall be determined pursuant to D.C.COLO.LCivR 6.1 and 7.1(d), and ***United States v. West***, 828 F.2d 1468, 1469-70 (10th Cir. 1987).

3. Oral or written motions to continue made at the time of a hearing or trial are unacceptable.

4. Stipulations for continuance shall not be effective unless and until approved by the court.

G. Motions for Extensions of Time

1. Motions for extension of time are strongly discouraged because of the adverse effects they have on case management. Thus, motions for extension of time will be granted only in rare and exceptional circumstances.

2. Motions for extension of time require a showing of **good cause**, which must be established **with particularity**.

3. The following **do not** constitute good cause: agreement by counsel, inconvenience to counsel or the parties; press of business; conflicts in scheduling (*a fortiori*, when more than one attorney has entered an appearance for a party); or practice as a sole practitioner.

4. Any motion for extension of time shall be filed no later than **three (3)** business days before the date the motion, response, reply, or other paper to which the extension applies is due.

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

H. Settlement

1. Settlement discussions are encouraged at all phases of the litigation process, especially early on; however, hearings, trials, and pretrial deadlines will not be continued or vacated to facilitate settlement negotiations or alternative dispute resolution.

2. If a settlement of a contested motion or a matter to be tried to the court or to a jury is reached before the hearing or trial, please advise **Susan Schmitz** during business hours at **303-335-2350** or after hours via e-mail to blackburn_chambers@cod.uscourts.gov.

III. COURTROOM PROCEDURES

A. Recording of Proceedings

1. The realtime reporter assigned to the court is **Tracy Weir** at **303-335-2358**. Transcripts of proceedings may be ordered from Ms. Weir. Requests for realtime, daily, or hourly copy must be made at least **thirty (30) days** before the trial or hearing. Further details can be obtained from Ms. Weir.

B. Exhibits

1. Each party must pre-mark all exhibits that will be used or identified for the record in a hearing or trial. Whenever possible, each party must provide a copy of each exhibit to opposing counsel or any pro se party before a hearing or before a trial pursuant to the Trial Preparation Conference Order. Exhibits not timely pre-marked or exchanged before a hearing or trial may not be admitted. Any stipulation of fact should be marked and marshaled as an exhibit.

2. The parties shall submit a single, joint list of exhibits listed numerically and consecutively using the Parties' Joint Exhibit List form. (The form is available online [here](#) and in the clerk's office **Room A105**.)

a. Exhibits to which the parties have stipulated shall be listed first with the "stipulated" box checked;

b. The remaining exhibits shall be listed numerically and consecutively;

c. Do not mark an exhibit making reference to the party offering it, e.g., do not mark an exhibit as “Plaintiff’s Exhibit _____” or “Defendant’s Exhibit _____”; and

d. The case number shall appear on each exhibit sticker or label.

3. 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.

4. Number of Sets of Exhibits

a. For hearings, separate sets of bound exhibits must be brought to the hearing for the court, the law clerk, the courtroom deputy clerk, and the witness stand.

b. For trials, the Trial Preparation Conference Order will specify the number of sets of exhibits.

5. Before any hearing or trial, each party shall submit to the courtroom deputy clerk an original and two copies of the Witness List and Exhibit List preferred by the court. Forms are available online [here](#) and in the clerk’s office in **Room A105**.

C. 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 **forty-five (45) days** before trial, and counter designations shall be made not later than **thirty (30) days** before trial.

4. Objections to any properly designated portion of a deposition shall be filed not later than **fourteen (14) days** after the filing of the corresponding designation. 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)); (3) objection; and (4) ruling. Additionally, the portion, i.e., the relevant excerpt, of the transcript of the deposition that is the subject of an objection shall be filed with the objections. Objections may be resolved before trial to facilitate appropriate redaction.

Item #	Testimony	Objection	Ruling
1.			

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

6. For bench trials, depositions will 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 (2) 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**.

D. Videotape Depositions

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

2. Evidence to be presented by deposition shall be designated with as much specificity as practicable.

3. Initial designations shall be made not later than **forty-five (45) days** before trial, and counter designations shall be made not later than **thirty (30) days** before trial.

4. Objections to any properly designated portion of a deposition shall be filed not later than **fourteen (14) days** after the filing of the corresponding designation. Additionally, the portion, i.e., the relevant excerpt, of the transcript of the deposition that is the subject of an objection shall be filed with the objections. 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)); (3) objection; and (4) ruling. Additionally, the portion, i.e., the relevant excerpt, of the transcript of the deposition that is the subject of an objection shall be filed with the objections. Objections may be resolved before trial to facilitate appropriate redaction.

Item #	Testimony	Objection	Ruling
1.			

E. Glossary

1. Not later than **five (5) business days** before commencement of a hearing, a bench trial, a jury trial, or any other proceeding, counsel and any pro se

party shall file and provide the court, the court reporter, the courtroom deputy clerk, opposing counsel, and any pro se party with a glossary of any difficult, unusual, scientific, technical, and/or medical jargon, words, names, terms and/or phrases.

IV. MOTIONS AND OBJECTIONS PRACTICE

A. Motions Not Addressed In D.C.COLO.LCivR 7.1(d)

1. Excluding motions filed under Fed. R. Civ. P. 56 or 65, or under Fed. R. Evid. 702, all motions not covered by or addressed in D.C.COLO.LCivR 7.1(d), including, but not limited to, motions presenting issues *in limine* or only contested issues of fact, shall be marshaled and determined in the time and manner prescribed by D.C.COLO.LCivR 7.1(d).

B. Page Limitations

1. Excluding motions filed under Fed. R. Civ. P. 56 or 65, or under Fed. R. Evid. 702, all other motions, objections (including objections to the recommendations or orders of United States Magistrate Judges), responses, and concomitant briefs shall not exceed **fifteen (15) pages**. If a party elects to file more than one Rule 12(b) motion, then opening briefs and response briefs shall not exceed **fifteen (15) pages** total for all such motions (not each such motion) filed by that party. Motions and briefs shall be combined and shall be considered one paper for purposes of computing page limitations. Replies shall not exceed **ten (10) pages**. These page limitations shall 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.

2. Motions for summary judgment or partial summary judgment and response briefs shall not exceed **twenty (20) pages**. Reply briefs shall not exceed **ten (10) pages**. These page limitations shall include the motion, 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 (20) pages** total for all such motions (not each such motion) filed by that party.

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.

3. A “noncomplying” motion, objection, response, or reply is a paper that does not conform in form or substance to the procedural, formatting, or technical requirements of the apposite statute, regulation, rule of civil procedure, local rule, or these practice standards.

D. Responses and Replies

1. A response shall clearly and completely identify by title, court CM/ECF docket number, and date filed the antecedent motion or petition to which response is made. Similarly, a reply shall clearly and completely identify by title, court CM/ECF docket number, and date filed the antecedent response to which reply is made.

E. Motions *In Limine*

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

2. In the extremely limited circumstances in which a motion *in limine* is necessary, it shall be filed and determined in the time and manner prescribed by D.C.COLO.LCivR 7.1(d), and REB Civ. Practice Standard IV.B.1.

V. TRIALS

A. Final Pretrial Conference

1. The form of Final Pretrial Order under the section titled **CLAIMS AND DEFENSES** shall include the following provisions:

a. Any party may elect to omit a summary of the claims, counterclaims, cross-claims, defenses and affirmative defenses. If a party includes a narrative summary, it shall not exceed one page in length.

b. Regardless whether a narrative summary is included, this part of the order shall include a separate enumeration of each claim, counterclaim, cross-claim, defense, and affirmative defense to be tried and identify the party with the burden of proof. If a claim, counterclaim, cross-claim, defense, or affirmative defense is asserted under state law, the parties shall designate which state’s law applies. Within each separately enumerated claim, counterclaim, cross-claim, defense, or affirmative defense, the parties shall enumerate separately each essential or material element comprising the claim or defense. If the parties disagree about the allocation of the burden of proof or the essential elements of a claim or defense, their dispute shall be noted in a footnote with citations supporting the competing positions.

B. Trials To Court

1. For a trial to the court, not less than **five (5) business days** before trial,

counsel and any pro se party **shall** (i) file in CM/ECF **and** (ii) submit by e-mail to blackburn_chambers@cod.uscourts.gov proposed findings of fact, conclusions of law, and orders. Counsel and any pro se party are requested to state their proposed findings of fact as nearly as possible 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.

2. For a trial to the court, a proper resumé or *curriculum vitae*, marked and marshaled as an exhibit, generally will suffice for the qualification of an expert witness.

C. Jury Trials

1. Jury trials will begin with jury selection at the time specified in the Trial Preparation Conference Order.

2. The jury shall consist of **nine (9)** jurors. Pursuant to Fed. R. Civ. P. 47(b) and 28 U.S.C. §1870, each side shall have **three (3)** peremptory challenges.

3. Not less than **five (5) business days** before trial, the parties shall file the *voir dire* questions each proposes to propound to the venire.

4. Jury Instructions and Verdict Forms:

a. Counsel and any pro se party shall confer well in advance of trial, and not less than **thirty (30) days** before trial, and **shall** file in CM/ECF **and** submit by e-mail to blackburn_chambers@cod.uscourts.gov (1) a stipulated statement of claims and defenses to be given to the jury; and (2) those jury instructions and verdict forms that the parties stipulate should be given to the jury. Otherwise, concerning special or disputed instructions or disputed verdict forms, not less than **thirty (30) days** before trial, each party shall tender any proposed special or disputed instruction or disputed verdict form as provided below in Subsections b, c, and d. It is often possible for the parties to stipulate to all “stock” instructions, and frequently the parties are able to agree on most substantive instructions and verdict forms as well. Whenever applicable the parties should use the court’s preferred jury instructions, which are available online [here](#).

b. Proposed instructions and verdict forms shall be filed and submitted by e-mail to blackburn_chambers@cod.uscourts.gov. Instructions and verdict forms submitted by e-mail must be tendered in preferably Word Perfect format (preferably Word Perfect 12 or a later version of Word Perfect) or Word, using Arial 12 point font and double-spaced.

c. **Each instruction and verdict form submitted to chambers via e-mail must be in a separate document or file, so that the court can**

view each separate instruction and verdict form as a single document, as opposed to one of several instructions and/or verdict forms combined in a single document or file.

d. To facilitate preparation, marshaling, and consideration of proposed jury instructions and verdict forms, the parties shall identify and enumerate each individual jury instruction in **both** the heading of each individual jury instruction **and** in the file name for each instruction as follows:

1. **Stipulated** - Stipulated instructions shall be identified as "Stip-01," "Stip-02," etc.

2. **Competing & non-stipulated instructions** - A competing instruction is an instruction addressing an issue about which the parties agree an instruction is necessary, but disagree about its wording. **Competing instructions must address the same issue and be designated using the same number, i.e., Comp-P-01 and Comp-D-01 must address the same issue.** Non-stipulated instructions are those requested by an individual party to which any other party objects, but does not tender a competing instruction.

a. **Plaintiff's competing & non-stipulated** - Competing or non-stipulated instructions submitted by the plaintiff shall be identified as "Comp-P-01," "Comp-P-02," "NonStip-P-01," "NonStip-P-02," etc.

b. **Defendant's competing & non-stipulated** - Competing or non-stipulated instructions submitted by the defendant shall be identified as "Comp-D-01," "Comp-D-02," "NonStip-D-01," "NonStip-D-02," etc.

c. **Multiple parties** - If there are multiple plaintiffs or multiple defendants, then each plaintiff or defendant shall identify and enumerate each of their individual competing or non-stipulated jury instructions in **both** the heading or title **and** in the file name for each instruction using the party's name or abbreviated name in place of the P or D designation. A designation such as "Comp-[party name]-01," or "NonStip-[party name]-01," is sufficient.

3. **Verdict forms & special interrogatories** - The parties shall similarly identify and enumerate all proposed verdict forms and special interrogatories.

e. Tendered instructions and verdict forms must be submitted as attachments to one or more e-mails as technology permits. The attachments must be organized into three groups: 1) Stipulated instructions; 2) Competing

instructions; and 3) Non-stipulated instructions. When submitting proposed instructions and verdict forms, the instructions and verdict forms must be attached to one or more e-mails in the form and order specified below:

1. **Stipulated** – **All** stipulated instructions and verdict forms must appear as a first group of attachments in the e-mail, and the e-mail must clearly indicate the group of attachments that contains all stipulated instructions and verdict forms.

2. **Competing** – **All** competing instructions and verdict forms must appear as a second group of attachments in the e-mail, and the e-mail must clearly indicate the group of attachments that contains all competing instructions and verdict forms.

3. **Non-stipulated** – **All** non-stipulated instructions and verdict forms must appear as a third group of attachments in the e-mail, and the e-mail must clearly indicate the group of attachments that contains all non-stipulated instructions and verdict forms.

f. In diversity cases where Colorado law applies, please submit instructions and verdict forms that conform to CJI-Civ 4th.

g. Not less than **thirty (30) days** before trial, each party shall file a brief or memorandum in support of or opposition to the proposed instructions and verdict forms that are competing or non-stipulated.

h. **At the jury instruction conference (charging conference) after the close of evidence, or any prior jury instruction conference, the court, in its discretion, may consider only those instructions and verdict forms managed in conformity with the foregoing sections or that address unanticipated matters raised during trial.**

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

6. The jury will be instructed before closing argument.

7. Each juror will be given copies of the written jury instructions and verdict forms for their use and consideration during deliberations.

D. Trial Briefs

1. Trial briefs are encouraged, but not required absent specific court order. If filed, trial briefs shall not exceed **ten (10) pages** and shall be filed not later than **five (5) business days** before trial. Please flag evidentiary issues in a trial brief rather than by motion *in limine*. However, a trial brief may not be used as a spurious, belated substitute for a motion that must be filed as a motion.