PRACTICE STANDARDS FOR CIVIL CASES

MAGISTRATE JUDGE S. KATO CREWS

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

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S. Kato Crews, Magistrate Judge

A. INTRODUCTION

1. THE COURT'S MISSION

The mission of the United States District Court for the District of Colorado is "to serve the public by providing a fair and impartial forum that ensures equal access to justice in accordance with the rule of law, protects rights and liberties of all persons, and resolves cases in a timely and efficient manner." Litigation is an emotional, stressful, time-consuming, and expensive process. The Court's mission is best served when litigants treat each other with civility. Though litigation is understood to be an "adversarial" process, it is possible for counsel and parties to disagree and zealously advocate their positions, while at the same time treating each other with courtesy and respect. The Court expects nothing less.

2. STATEMENT RE: ATTORNEY MENTORING & TRAINING

The Preamble to the Colorado Rules of Professional Conduct acknowledge that lawyers should "seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession." These goals are best achieved when experienced lawyers provide young and diverse lawyers opportunities to participate in judicial proceedings. "Stand up time" for young and inexperienced lawyers is critical to their development. Many of the types of hearings before magistrate judges of this court are opportune for affording "stand up time." This Court welcomes the active participation of young and inexperienced lawyers, and diverse attorneys, in litigation. The Court encourages seasoned lawyers to facilitate the mentoring and development of other lawyers that will enrich the legal profession and the work of the United States District Court.

3. RELATIONSHIP OF THESE STANDARDS TO ARTICLE III JUDGE PRACTICE STANDARDS AND TO U.S. DISTRICT COURT LOCAL RULES OF PRACTICE

Consistent with Fed. R. Civ. P. 1, these Practice Standards are intended to facilitate the just, speedy, and inexpensive determination of every civil action. These Practice Standards may be modified or supplemented by orders entered in specific cases. These Practice Standards supplement, but do not replace, the Local Rules of Practice. To the extent there is a direct conflict between these Practice Standards and the Local Rules of Practice, the Local Rules of Practice control.

These Practice Standards apply to civil-consent cases before this Magistrate Judge. In those cases in which all parties do not consent to the jurisdiction of the Magistrate Judge, and therefore, a District Judge is the presiding judicial officer, these standards are replaced by the applicable District Judge's practice standards whenever there is a conflict between the two sets of standards.

In all cases assigned to this Magistrate Judge (whether on consent or referral), Section F(3), below, applies to the resolution of discovery disputes.

B. COMMUNICATION WITH CHAMBERS

My Chambers includes my career law clerk and term law clerk. Both of my clerks are lawyers. When contacting Chambers, therefore, you are speaking with a lawyer. Please conduct all communications with my law clerks with the appropriate level of professionalism, and please instruct your staff to do the same.

While the Court cannot engage in *ex parte* communications with counsel or parties, my staff is available to answer questions of an administrative or logistical nature. You may contact my law clerks at (303) 335-2124. Please keep in mind, however, that my staff is not permitted to provide legal advice, interpret orders or rules, grant oral requests, or provide specific information about the progress of any pending motion.

We also have a courtroom deputy assigned to Chambers, who is located in the Clerk's Office. My courtroom deputy is Amanda Montoya. Please direct questions regarding courtroom proceedings, technology, or other equipment needs, to her at (303) 335-2096.

Documents required to be submitted to chambers pursuant to local rule, court order, or these practice standards, shall be submitted via email to Crews_Chambers@cod.uscourts.gov. Please include the case number, case name, and document description in the subject line of the email.

C. COURTROOM PROCEDURES & DECORUM

Please be prompt and prepared for any conference, hearing, or other setting. Court time is valuable for litigants, counsel, and court staff. Unless told otherwise, 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.

D. SCHEDULING CONFERENCES

Please plan to attend the Scheduling Conference in person if you are within the Denver metropolitan area, and be prepared to discuss the specific pretrial needs of your case. In addition to reviewing the proposed Scheduling Order, typical issues covered during the Scheduling Conference include: (1) the basis for the schedule proposed, particularly if the discovery deadline is set beyond six months from the Scheduling Conference; (2) the scope of anticipated Electronically Stored Information ("ESI"); (3) the manner by which ESI will be exchanged; (4) the need for a Protective Order and/or ESI Protocol; (5) the status of any alternative dispute resolution attempts; and (6) any special issues facing the Parties.

Along with filing, please submit the proposed Scheduling Order, proposed Protective Order, and/or proposed ESI Protocol in Microsoft Word format directly to my Chambers at Crews_Chambers@cod.uscourts.gov.

E. JOINT STATUS REPORTS

If during the Scheduling Conference the Court sets a deadline for a Joint Status Report, the Joint Status Report must address the following three areas: (1) generally summarize each parties' respective activities in discovery through the date of the Joint Status Report; (2) alert the Court to any pending and unresolved discovery disputes, if any; and (3) update the Court on the likelihood of settlement. Any subsequent Joint Status Reports ordered by the Court shall address these three points unless otherwise ordered.

F. MOTIONS PRACTICE

1. DUTY TO MEET AND CONFER BEFORE FILING A MOTION

I expect parties to take their conferral obligation seriously. Consistent with the Federal Rules of Civil Procedure and the Local Rules of Civil Practice, parties have an affirmative obligation to meet and confer prior to filing certain motions. The duty to meet and confer requires the parties to discuss the specific dispute at issue and the requested relief, preferably by telephone or face-to-face, and **not solely** through email or written correspondence, and provide opposing counsel a reasonable amount of time to respond prior to filing a motion. The duty to meet and confer also requires the parties to react timely and to be responsive over the course of conferring.

2. PAGE OR WORD LIMITS

The parties shall comply with the presiding Article III District Judge's practice standards for all motions referred to this Court. Different standards may apply for cases pending before me on consent (*see* Section G, below).

3. DISCOVERY DISPUTES

a. When a (Non-incarcerated) *Pro Se* Litigant is Involved

For all discovery disputes involving *pro se* litigants (those parties who are not represented by counsel), the parties shall adhere to the Discovery Procedures for *Pro Se* Civil Cases. These procedures were adopted by all magistrate judges in this district to make the process for addressing discovery disputes uniform when a *pro se* party is involved. These procedures can be found on the Court's website HERE.

b. When a *Pro Se* Incarcerated Litigant is Involved

None of these Discovery Dispute procedures apply to cases in which one party is incarcerated while proceeding *pro se*. In those cases, the parties are free to file discovery motions as necessary.

c. When All Parties Are Represented by Counsel

When *all* parties are represented by counsel, and to avoid unnecessary and expensive motions practice, a party **may not** file an opposed discovery motion without first complying with these discovery dispute procedures. Filing a disputed discovery motion without permission from the Court may result in the motion being stricken and the imposition of appropriate sanctions.

- **Step One:** Counsel shall meet and confer in accordance with D.C.COLO.LCivR 7.1(a) in an attempt to narrow or resolve the discovery dispute. I expect counsel to take the conferral obligation seriously. The duty to meet and confer requires counsel to discuss the specific dispute at issue and the requested relief, preferably by telephone or face-to-face, and **not solely** through email or written correspondence. The duty to meet and confer also requires counsel to react timely and be responsive to opposing counsel's efforts to confer. Counsel should discuss their respective positions in detail, and provide the legal and factual basis for each position. Counsel should discuss any compromise position that would be acceptable.

- **Step Two**: If counsel's efforts to meet and confer are unsuccessful, counsel (not legal staff) shall **jointly** call Chambers at (303) 335-2124 to speak with my law clerk. Counsel should be ready to explain their conferral efforts when contacting Chambers and the nature of their discovery dispute, and should be prepared to identify the specific type of motion counsel would seek to file if a discovery motion were allowed.

- **Step Three:** When counsel contacts Chambers, my law clerk will either: (a) set a date for a status conference with the Court; or, (b) set a date for submission of a Joint Discovery Dispute Report, simultaneous Briefs Regarding Discovery Dispute, or staggered discovery briefing.

    - If a Joint Discovery Dispute Report is ordered, the report **must** address and include headings for the following sections: (1) names of attorneys who participated in the discovery conferral; (2) date conferral conference(s) was held and amount of time the parties conferred; (3) the matters that were resolved by agreement; (4) specific matters that remain to be heard and determined; and (5) detailed explanation of the reasons why agreement could not be reached, with the parties' respective arguments and authorities. There is no word or page limit on these reports—the Court trusts counsel to keep these reports to a reasonable length.

    - If discovery briefs are ordered, it is not necessary for either brief to state the parties' conferral efforts since counsel would have explained those efforts when contacting Chambers, unless the parties' conferral efforts are a central feature of the discovery dispute. When filing discovery briefs, please select the option in CM/ECF for "Brief" when filing the document—**do not select the option for "Motion."** No discovery brief may exceed 2,500 words.

- **Step Four:** After review of the joint report or discovery briefs, I will either: (1) issue a written ruling to resolve the discovery dispute consistent with my authority under 28 U.S.C. § 636(b)(1)(A) and (B), and Fed. R. Civ. P. 72(a) and (b); (2) order a hearing to issue an oral ruling to resolve the discovery dispute; (3) order a hearing to ask additional questions of counsel and entertain additional argument before ruling; (4) order additional briefing (either with or without a hearing); or, (5) authorize appropriate motions to be filed.[1]

4. MOTIONS FOR EXTENSION OF TIME

This Court will apply the practice standards of the presiding District Judge to analyze whether good cause has been shown to warrant a requested extension. Different standards may apply for cases pending before me on consent of the parties (*see* Section G, below).

5. MOTIONS FOR PROTECTIVE ORDER

Parties seeking a blanket protective order in a case should file a joint or stipulated motion complying with the requirements of Fed. R. Civ. P. 16(c)(1), the Local Rules, these Practice Standards and those of the presiding District Judge. The Parties shall attach the proposed protective order as an exhibit, and email a copy in Microsoft Word format to my Chambers at Crews_Chambers@cod.uscourts.gov.

The parties are encouraged to follow the protective order approved by the court in *Gillard v. Boulder Valley School Dist. RE-2*, 196 F.R.D. 382 (D. Colo. 2000). In the event the parties cannot agree on the language of the protective order, they shall note their respective positions in the proposed protective order submitted with the motion.

Further, this Court does not routinely include an "attorneys' eyes only" provision in blanket protective orders without first having a conference with the parties to discuss the necessity of such a provision. If the parties feel an "attorneys' eyes only" provision is necessary for their case, they should flag this for the Court in their joint motion and include a request for a status conference to discuss the same.

G. CONSENT CASES

Additional practice standards apply to consent cases pending before me (for example, word limits on motions, responses, and replies; format for summary judgment motions; etc.). The Court will issue a standing order in consent cases that contains those additional requirements.

H. SETTLEMENT CONFERENCES

The Parties acknowledge that by electing to have me conduct a settlement conference, I may become privy to information from the Parties that I might not otherwise receive as the

[1] All hearings are conducted on the record.

referral Magistrate Judge in the case. By proceeding with a settlement conference before me, the Parties agree that my participation in the settlement conference shall not be cause to reasonably question my impartiality going forward in the event their case does not settle at the settlement conference. Counsel are ORDERED to discuss this dynamic with their client(s), and all *pro se* parties or counsel must certify in their confidential settlement statements that they or their client(s) have been advised of this dynamic and acknowledge that my participation in the settlement conference shall not be cause to reasonably question my impartiality going forward if the matter does not settle.

1. PARTY ATTENDANCE

Unless otherwise ordered, counsel shall have all parties present at settlement conferences, including all individually named parties or a representative of each named entity. In exceptional circumstances, the appearance of a party, or an insurance or party representative, by telephone may be approved in advance of the settlement conference. Any party seeking the attendance of a party or insurance or other representative by telephone should contact my Chambers with opposing counsel to set a telephonic status conference to address the request.

2. FULL AUTHORITY

No person is ever required to settle a case on any particular terms or amounts. However, all parties must participate in the settlement conference in good faith, pursuant to Fed. R. Civ. P. 16(f). 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 settlement conference 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 party or party representative attends the settlement conference 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.

3. SETTLEMENT STATEMENTS

Counsel shall prepare and submit two 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 **seven (7) business days** prior to the date of the settlement conference. Statements and exhibits are **limited to thirty-five (35) pages total**. A request for additional pages should be emailed to Chambers (with a copy to the opposing party) no later than **two (2) business days** prior to the position statement deadline. The email should specify the number of additional pages requested, and explain why additional pages are necessary.

a. 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.

b. The second statement shall be emailed to Chambers (not submitted for filing to the court) at Crews_Chambers@cod.uscourts.gov. This statement shall contain the content or copies of the statement provided to the opposing party in addition to any confidential comments the party or counsel wishes to make to the Magistrate Judge. This statement shall also directly address the party's particular interests, concerns, needs, and fears (if any) which may affect the party's settlement position or ability to settle.

I. EARLY NEUTRAL EVALUATION ("ENE")

Local Rule 16.6 defines an ENE as "a nonbinding, non-adjudicative assessment of a case by a magistrate judge." I view an ENE as a process in which the parties meet separately with the magistrate judge and make *informal* presentations of material facts and evidence to obtain an oral evaluation of their positions from the magistrate judge. It is also an opportunity for the magistrate judge to address the parties directly (rather than through the attorneys) and help them understand the process of litigation and how the ultimate fact-finder might perceive the parties' respective positions.

An ENE is not mediation. The purpose of the ENE is not to attempt to settle the case. Therefore, no confidential settlement statements are prepared, and no offers and counteroffers are made or conveyed in an ENE. Rather, the purpose of the ENE is for the parties to receive a neutral evaluation of the case. That evaluation may help the parties later settle, or at a minimum, assess the relative strengths and weaknesses of their case going forward.

ENE's are *only* appropriate when: (a) the parties are unable to agree to participate in mediation; (b) all parties agree to an ENE; and (c) the ENE can be conducted early in the case—preferably before the parties start responding to written discovery and taking depositions. Even when all these conditions are met, however, not every case is an appropriate candidate for an ENE.

In matters before this Court on referral from a presiding District Judge, the referral typically gives the magistrate judge the authority to order and conduct an ENE. Parties interested in seeking an ENE with this Court should raise that issue at the Scheduling Conference or in the proposed Scheduling Order. (Any parties desiring mediation with a magistrate judge must file a motion making that request.)

All conversations with the magistrate judge during an ENE are confidential. Per Local Rule 16.6, "a party or the magistrate judge in an alternative dispute resolution proceeding shall not voluntarily disclose or through discovery or compulsory process be required to disclose any information concerning any communication provided in confidence to the magistrate judge in connection with an" ENE.