

PRACTICE STANDARDS FOR CIVIL CASES

MAGISTRATE JUDGE SUSAN PROSE

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

**Byron G. Rogers Courthouse
1929 Stout Street
Denver, CO 80294**

**Courtroom C205
Chambers C254**

(303) 335-2722

Prose_Chambers@cod.uscourts.gov

Effective May 23, 2023

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I. GENERAL PURPOSE AND RELATION TO OTHER RULES

(A) **Purpose.** These Civil Practice Standards are intended to facilitate “the just, speedy, and inexpensive determination of every action and proceeding,” as contemplated by Federal Rule of Civil Procedure 1. They are intended to supplement, rather than supplant or supersede, the Federal Rules of Civil Procedure and the Local Rules of Practice for the District of Colorado. In addition, with regard to cases referred to this court, parties should adhere to the practice standards of the presiding Article III District Judge.

(B) **Applicable Rules.** Those appearing in this court, including attorneys and pro se litigants, must know and comply with:

1. [The Federal Rules of Civil Procedure](#);
2. [The Federal Rules of Evidence](#);
3. [The Local Rules of Practice for the United States District Court for the District of Colorado](#);
4. [The Electronic Case Filing Procedures](#);
5. The presiding Article III District Judge’s practice standards (if applicable); and
6. These Civil Practice Standards.

II. COMMUNICATIONS WITH CHAMBERS

(A) **Case Information and Scheduling.** While the court cannot engage in ex parte communications with counsel or parties, Magistrate Judge Prose’s staff is available to answer questions of an administrative or logistical nature. You may contact Magistrate Judge Prose’s law clerks at (303) 335-2722. Please keep in mind, however, that the law clerks are not permitted to provide any type of legal advice, interpret orders or rules, grant oral requests over the telephone, or provide information about the progress of any pending motion.

- (B) **Courtroom Operations.** Any questions regarding courtroom proceedings or equipment may be addressed to Magistrate Judge Prose’s Courtroom Deputy, Camden Pommenville, at (303) 335-2726.
- (C) **Documents Submitted to Chambers.** Documents required to be submitted to chambers pursuant to local rule, court order, or these Civil Practice Standards shall be submitted via email to Prose_Chambers@cod.uscourts.gov. Please include the case number, case name, and document description in the subject line of the email. The parties are not required to submit proposed orders unless specifically requested by the court.
- (D) **Filings.** For information about electronic filing, please contact the Clerk’s Office at (303) 844-3433. Pro se parties may contact the Pro Se Clinic at (303) 380-8786 regarding how to apply for authorization to e-file or see the instructions currently available through [Electronic Case Filing \(ECF\) | US District Court of Colorado \(uscourts.gov\)](https://www.uscourts.gov/electronic-case-filing).
- (E) **Transcripts.** All proceedings before this court will be audio-recorded. Electronic copies of the audio recording may be requested from the Courtroom Deputy, Camden Pommenville, at (303) 335-2726. Transcripts may be requested by contacting Patterson Transcription Company at (303) 755-4536 or AB Litigation Services at (303) 629-8534.

III. COURT APPEARANCES

- (A) **Location.** All proceedings are conducted in Courtroom C205 of the Byron G. Rogers Courthouse, 1929 Stout Street, Denver, Colorado 80294. Please be advised that anyone entering the Courthouse will be required to show valid photo identification.
- (B) **Telephonic Appearances.** Litigants and counsel whose offices are located outside the Denver metropolitan area or who cannot reasonably make a personal appearance at a court hearing may request to appear by telephone. Requests should be made by emailing chambers at Prose_Chambers@cod.uscourts.gov and copying all counsel of record. When a request is granted, all parties authorized to participate by telephone shall do so by calling 571-353-2301, guest meeting ID 868150043, at the scheduled time. Please do not use a speaker phone, introduce yourself each time it is not clear who is speaking, and please mute your phone when not speaking.

IV. DISCOVERY DISPUTES

(A) **Purpose.** To avoid unnecessary and expensive motion 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. These discovery dispute procedures do not apply to pro se litigants who are incarcerated or to issues involving non-parties, such as enforcing, quashing, or modifying subpoenas issued pursuant to Federal Rule of Civil Procedure 45.

(B) **Procedure.**

1. *Step One:* The parties must meet and confer **in person or on the telephone** and make a reasonable, good faith effort to resolve the discovery dispute without the need for judicial intervention. In cases involving a pro se litigant who has provided an email address to the court or the opposing party, the parties may also meet and confer by email but must wait at least 24 hours for a response before proceeding to Step Two. The parties must discuss their respective positions in detail, providing the legal and factual bases for each position, as well as any compromise position that would be acceptable.
2. *Step Two:* If the parties confer but are not successful in resolving their dispute, the parties shall **jointly** call chambers at (303) 335-2722, or email chambers (Prose_Chambers@cod.uscourts.gov), copying all counsel or pro se parties, to arrange for a discovery hearing before the court at a time and date convenient for all parties. The court will set the discovery hearing in person or by telephone, as it deems appropriate.
3. *Step Three:* At least three business days prior to the hearing, each party shall submit separately via email (Prose_Chambers@cod.uscourts.gov) a brief written statement setting out each party's position with regard to each dispute. The party or parties requesting affirmative relief shall attach the relevant discovery requests and responses. While the court does not impose any specific page limitation on the parties' statements, the court encourages the parties to be as succinct as possible, presenting a short statement of each dispute with citations to legal authority where appropriate. These statements should not be filed on the Electronic Case Filing system. Documents shall not be submitted for in camera review without prior permission from the court.

4. *Step Four*: The discovery hearing will be conducted on the record. If the matter is appropriate for immediate adjudication, the court will issue its order on the record at the hearing. If the court determines that the matter requires additional briefing, the court will set an expedited briefing schedule and, if appropriate, a follow-up hearing.

(C) **Disputes During Depositions.** This court recognizes that disputes may arise during depositions that may be resolved most efficiently and effectively if addressed during the deposition. The parties may jointly call chambers at (303) 335-2722 to attempt to arrange a time during the deposition when the court is available to hear the matter. When the parties call chambers with such issues, they must ensure a court reporter is available to make a record of the dispute and its resolution.

V. PROCEDURES FOR SETTLEMENT CONFERENCES

(A) **Party Attendance.** Unless otherwise ordered, counsel shall have all parties attend the settlement conference in person, including all individually named parties and a representative of each named entity. In certain circumstances, the appearance of a party or representative by video or telephone may be approved in advance of the settlement conference. The court does not permit attorneys to appear by telephone or video unless the entire conference is being conducted by videoconference due to extraordinary circumstances.

(B) **Full Authority.** All parties must participate in the settlement conference in good faith pursuant to Federal Rule of Civil Procedure 16(f). For each party, 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 an adjustor if an insurance company is involved.

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 attorneys' fees and costs for the other side.

(C) **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 five business days prior to the date of the settlement conference.

1. *Statement to Opposing Counsel.* The first statement is directed to opposing counsel and all parties participating in the settlement conference. It shall contain an overview of the case from the presenter's point of view, summarize the evidence that supports that side's claims, and may present a demand or offer. These statements should be intended to persuade the opposing parties and counsel.
2. *Confidential Statement to the Magistrate Judge.* The second statement is confidential and shall be emailed to Prose_Chambers@cod.uscourts.gov and not submitted for filing or exchanged with the other parties. This statement shall attach the statement to opposing counsel and include any confidential comments the party or counsel wishes to make. The confidential comments may include comments about the perceived weaknesses in the case, any observations about the weaknesses in the opposing party's case, and any comments that would be helpful to the Magistrate Judge in assisting the parties in negotiating a resolution. Counsel are encouraged to include any information that supports the party's valuation of the case, including jury verdicts, past settlements, and cost of litigation.

VI. MOTIONS PRACTICE

- (A) **Meet and Confer.** Pursuant to D.C.COLO.LCivR 7.1(a), unless the case meets one of the exceptions of subsection (b) of that rule, the parties must meet and confer prior to filing a motion or initiating the discovery dispute process described in Section IV above. Any motion that does not contain a certificate of compliance with D.C.COLO.LCivR 7.1(a) may be stricken or denied.
- (B) **Hearings on Motions.** As circumstances dictate, the court may set oral argument on motions.
- (C) **Formatting and Page Limits.**
 1. *Compliance with Practice Standards of the Article III District Judge.* The parties shall comply with the presiding Article III District Judge's practice standards for all motions referred to this court.
 2. *Standards for Consent Cases.* In cases pending before this court on consent, **except for motions filed under Federal Rule of Civil Procedure 56**, motions and response briefs shall be no longer than **25 pages** and reply briefs shall be no longer than **15 pages**. These page limits are inclusive of all text except for

(1) the table of contents and/or table of authorities, if included (these items are not required), (2) the signature block, and (3) the certificate of service. With these generous page limits, this court anticipates that additional pages will be necessary only in unique circumstances, such as cases with numerous claims or multiple defendants sued in their individual capacities. The court will expand the page limits on a motion demonstrating good cause, which should be filed **at least one business day** before the filing is due.

This court encourages briefs that include an introduction summarizing the parties' key arguments and succinctly explaining why the relief requested should be granted or denied. A detailed discussion of common standards of review is unnecessary.

In cases pending before this court on consent, all papers must be submitted in an easily readable format with all text, including footnotes, in Times New Roman 12-point font.

(D) Motions for Summary Judgment.

1. *Compliance with Practice Standards of the Article III District Judge.* The parties shall comply with the presiding Article III District Judge's practice standards for any motion for summary judgment referred to this court.
2. *Standards for Number of Motions in Consent Cases.* In cases before this court on consent, the court anticipates that more than one motion for summary judgment per side may be appropriate in certain narrow circumstances where threshold defenses (e.g., lack of jurisdiction or failure to comply with mandatory pre-filing exhaustion requirements) are at issue and should be resolved early in the case. In the absence of such threshold issues, these procedures contemplate a single motion by each side of the case. Plaintiffs whose interests are aligned shall file a single motion for summary judgment. Defendants whose interests are aligned shall file a single motion for summary judgment.
3. *Formatting in Consent Cases.* In cases before this court on consent, all motions for summary judgment must include a statement of undisputed facts pursuant to D.C.COLO.LCivR 56.1. The statement of undisputed facts should be set forth in a separate section of the brief, with each material undisputed fact set forth in a simple declarative sentence in a separately numbered paragraph. Each

undisputed fact must be supported by a specific reference to evidence in the record establishing that fact.

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

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

4. *Length of Motions and Briefs in Consent Cases.* In cases before this court on consent, this court has imposed no page limits for motions and briefs under Federal Rule of Civil Procedure 56. However, this court may strike and order to be refiled any filing of excessive length or that contains redundant or immaterial information.

(E) Notices of Supplemental Authority. In cases pending before this court on consent, a notice of new, relevant authority may be filed if the supplemental authority was issued after briefing on a motion has closed. Such a notice shall be limited to the case title, citation, date of decision, and a brief reference to the relevant issue (including a citation to the location in previously filed briefing where the issue has been raised). No additional analysis shall be included, or any response from the opposing party accepted, absent further order from this court.

(F) Motions to Exclude Expert Testimony.

1. *Compliance with Practice Standards of the Article III District Judge.* The parties shall comply with the presiding Article III District Judge's practice standards for any motion to exclude expert testimony referred to this court.
2. *Standards in Consent Cases.* In cases before this court on consent, a party who seeks to challenge the admissibility of opinion testimony by an expert witness shall file a written motion seeking its exclusion. However, the failure of an opponent to bring such a motion does not relieve the proponent of its burden to show that the proffered testimony is admissible at trial. Unless otherwise ordered, **the deadline for filing a motion to exclude expert testimony shall be the same as the deadline for filing dispositive motions.**

The motion shall identify with specificity each opinion the moving party seeks to exclude and the specific grounds upon which that opinion is challenged (e.g., relevancy, sufficiency of facts, or methodology). The movant and respondent shall state whether an evidentiary hearing is requested and, if it is, explain why such a hearing is necessary. If a hearing is set, at least seven days prior to the hearing the parties shall file joint witness and exhibit lists and exchange any exhibits anticipated to be introduced at the hearing.