CIVIL PRACTICE STANDARDS
MAGISTRATE JUDGE SCOTT T. VARHOLAK

(Revised August 1, 2022)

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Alfred A. Arraj United States Courthouse
901 19th Street, Courtroom A-402
Denver, Colorado 80294

Telephone: 303.335.2365

Email: Varholak_Chambers@cod.uscourts.gov

Webpage: https://tinyurl.com/MagistrateVarholak

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 Varholak's staff is available to answer questions of an administrative or logistical nature. You may contact Magistrate Judge Varholak's law clerks at 303.335.2365. Please keep in mind, however, that Magistrate Judge Varholak's staff is 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 Varholak's Courtroom Deputy, Monique Ortiz, at 303.335.2086.

(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 Varholak_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 ECF Help Desk at 866.365.6381 or 303.335.2050. The Clerk's Office may be reached at 303.844.3433.

(E) **Transcripts.** All proceedings before this Court will be audio-recorded. Electronic copies of the audio recording may be requested from the Courtroom Deputy, Monique Ortiz, at 303.335.2086. 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 A-402 of the Alfred A. Arraj United States Courthouse, 901 19th Street, Denver, Colorado 80294. Please be advised that anyone seeking entry into the Courthouse will be required to show valid photo identification.

(B) **Decorum.** Please observe traditional courtroom decorum, including standing when addressing the Court and requesting permission to approach the bench or a witness. Because the proceedings are audio-recorded, it is imperative that speakers utilize one of the provided microphones.

(C) **Telephonic Appearances.** Requests to appear by telephone may be made by emailing chambers at Varholak_Chambers@cod.uscourts.gov and copying all counsel of record. For non-evidentiary hearings, leave to appear by telephone will be liberally granted, provided that both sides are in full compliance with all court orders and the case is making satisfactory progress. When a request is granted, all parties that wish to participate by telephone shall do so by calling 888.808.6929 at the scheduled time and utilizing access code: 2805116#. The participants may hear the conclusion of a prior hearing at the time they call in and are instructed to simply wait until their case is called.

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 and the imposition of appropriate sanctions.

(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. The parties must discuss their respective positions in detail, providing the legal and factual basis for each position, as well as any compromise position that would be acceptable.

2. *Step Two*: If the parties' efforts to meet and confer are unsuccessful, the parties shall **jointly** call chambers at 303.335.2365 to arrange for a discovery hearing before the Court on a time and date convenient for all parties. The parties should be prepared to discuss the sufficiency of the parties' meet and confer efforts and the need for briefing of the issues in dispute during this initial call. The parties may request to appear by telephone at the discovery hearing, but the Court encourages the parties to attend in person when practical.

3. *Step Three*: At least three business days prior to the hearing, the parties shall submit via email (Varholak_Chambers@cod.uscourts.gov) a brief joint statement setting out each party's position with regard to each dispute. The joint statement should not be filed on the Electronic Court Filing system. The purpose of the Court's discovery dispute procedures, including the requirement of a joint statement in lieu of seriatim briefing, is to resolve the parties' discovery disputes in the most efficient and cost-effective manner possible. Thus, while the Court does not impose any specific page limitation on the parties' joint statement, 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. 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.

(C) **Document Retention.** The parties shall retain the original copy of all documents submitted to the Court during the discovery dispute process (*e.g.*, joint statements, discovery responses, documents submitted for *in camera* review) until 60 days beyond the later of the time to appeal or the conclusion of any appellate proceedings.

V. MOTION PRACTICE

(A) **Meet and Confer.** The Court reminds the parties of their obligation pursuant to D.C.COLO.LCivR 7.1(a) to meet and confer prior to filing a motion or initiating the discovery dispute process described above. Any motion that does not contain a certificate of compliance with D.C.COLO.LCivR 7.1(a) may be stricken or denied as a matter of course.

(B) **Formatting and Page Limitations.**

1. The parties shall comply with the presiding Article III District Judge's practice standards for all motions referred to this Court.

2. To the extent the case is pending before this Court on consent, a motion is limited to 20 pages, a response is limited to 20 pages, and any reply is limited to ten pages.

3. Any motion for leave to file excess pages should be filed at least one business day prior to the deadline for filing the brief at issue.

4. All papers submitted to the Court should be in an easily readable format, with all text, including footnotes, in 12-point font and at least one-inch margins.

(D) **Motion Hearings.**

1. Generally, motions are decided without oral argument. If the Court determines that oral argument would be useful, the Court will set a

hearing on the motion. As the circumstances require, the Court may order an expedited briefing schedule and/or hearing.

2. The Court is strongly committed to supporting the development of the next generation of trial lawyers. The Court encourages parties and senior attorneys to allow less experienced practitioners the opportunity to argue motions and examine witnesses. The parties should advise the Court prior to the hearing (including in any request for oral argument) if a lawyer of four or fewer years of experience will be arguing the motion. Where appropriate, the Court may permit more experienced counsel of record to provide assistance to the less experienced attorney who is arguing the motion.

(E) **Motions for Extension of Time.**

1. This Court will apply the practice standards of the presiding Article III District Judge to analyze whether good cause has been shown to warrant the requested extension.

2. To the extent the case is pending before this Court on consent, please file any motion for an extension of time at least three business days prior to the operative deadline and include a statement reflecting how many other extensions have been granted in the case and whether the requested extension would affect any other date currently set in the case.

(F) **Motions to Amend.**

1. The parties are reminded to comply with the requirements of D.C.COLO.LCivR 15.1 when filing any amended pleading or motion for leave to amend a pleading. Pursuant to D.C.COLO.LCivR 15.1(b), "[a] party who files an opposed motion for leave to amend or supplement a pleading shall attach as an exhibit a copy of the proposed amended or supplemental pleading which strikes through (*e.g.*, ~~strikes through~~) the text to be deleted and underlines (*e.g.*, <u>underlines</u>) the text to be added."

2. If an amended pleading is filed (either with leave of the Court or as of right) and there is a pending motion to dismiss the prior iteration of the pleading, the motion to dismiss is moot. *See, e.g., Gilles v. United States*, 906 F.2d 1386, 1389 (10th Cir. 1990) ("a pleading that has been

amended under Rule 15(a) supersedes the pleading it modifies") (internal quotation marks omitted).

(G) **Motions for Protective Order.**

1. Parties seeking a protective order must file a motion that conforms to the requirements of D.C.COLO.LCivR 7.1 and attaches as an exhibit the form of protective order proposed by the moving party.

2. To the extent a party objects to the form of protective order proposed by the moving party, the objecting party shall attach as an exhibit to its response to the motion a copy of the protective order proposed by the moving party which strikes through (*e.g.*, ~~strikes through~~) the text the objecting party proposes to delete and underlines (*e.g.*, underlines) the text the objecting party proposes to add.

3. When practical, the Court encourages the parties to stipulate to the entry of the template protective order available on Magistrate Judge Varholak's webpage on the Court's website (https://tinyurl.com/MagistrateVarholak).

(H) **Motions to Dismiss.**

1. The parties shall comply with the presiding Article III District Judge's practice standards for any motion to dismiss referred to this Court.

2. To the extent the case is pending before this Court on consent, Federal Rule of Civil Procedure 12(b) motions to dismiss are discouraged if the alleged defect is correctable by the filing of an amended pleading. The parties **must confer** prior to the filing of any motion where the alleged deficiency is correctable by amendment (*e.g.*, failure to plead fraud with specificity) and should exercise their best efforts to stipulate to appropriate amendments. If such a motion is nonetheless filed, the movant shall include a conspicuous statement describing the specific efforts undertaken to comply with this Practice Standard. Counsel are on notice that failure to comply with this Practice Standard may subject them to an award of attorney fees and costs assessed personally against them. The requirement to confer shall not apply in cases where the non-movant is proceeding pro se.

(l) **Motions for Summary Judgment.**

1. 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. To the extent the case is pending before this Court on consent:

    i. A party may not file multiple motions for summary judgment without prior permission from the Court. This procedure contemplates a single motion by each "side." Plaintiffs whose interests are aligned shall file a single motion for summary judgment. Similarly, defendants whose interests are aligned shall file a single motion for summary judgment.

    ii. Pursuant to D.C.COLO.LCivR 56.1, all motions for summary judgment must include a statement of undisputed facts. For cases pending before this Court on consent, the statement of undisputed facts must be set out in a separate document, the Separate Statement of Facts, filed as an attachment to the motion for summary judgment. In a three-column format, the Separate Statement of Facts shall set forth in the first column each material undisputed fact in a simple, declarative sentence supported by a specific reference to evidence in the record establishing that fact. Each material undisputed fact shall be numbered sequentially and presented in a separate row of the document. The second and third columns of the Separate Statement of Facts shall be left blank. In addition to filing the Separate Statement of Facts with the Court, the moving party shall provide an editable, electronic version of the document to the opposing party for the opposing party's use in preparing the updated Separate Statement of Facts to be filed with its opposition.

    iii. Any party opposing the motion for summary judgment must file an updated version of the Separate Statement of Facts in a three-column format as an attachment to its opposition to the motion for summary judgment. The first column shall consist of the undisputed statements of material fact provided by the moving party—*i.e.*, the exact information contained in the moving

party's Separate Statement of Facts. In the second column, directly adjacent to the recitation of the moving party's material facts and supporting evidence, the opposing party must state whether the fact is "disputed" or "undisputed." To the extent a fact is disputed, immediately following the word "disputed" in the second column, the opposing party shall state the nature of the dispute and include a specific reference to evidence in the record establishing that the fact is in dispute. If the opposing party believes that there are additional material facts that have not been addressed by the moving party's statement (*e.g.*, facts regarding an affirmative defense), the opposing party shall set forth in the second column each additional material fact in a simple, declarative sentence supported by a specific reference to evidence in the record establishing that fact. Each of these additional material facts shall be numbered sequentially and presented in a separate row following the moving party's statement of material undisputed facts. The third column of the Separate Statement of Facts shall be left blank. In addition to filing the Separate Statement of Facts with the Court, the opposing party shall provide an editable, electronic version of the document to the moving party for the moving party's use in preparing the updated Separate Statement of Facts to be filed with its reply.

iv. If the moving party files a reply in support of its motion, it must file a further updated version of the Separate Statement of Facts in a three-column format as an attachment to its reply in support of the motion for summary judgment. The first and second columns shall consist of the exact information contained in the Separate Statement of Facts attached to the opposing party's opposition. In the third column, directly adjacent to the opposing party's statement regarding whether the fact is "disputed" or "undisputed," the moving party may include any factual reply regarding the opposing party's response. If the opposing party added additional material facts to the Separate Statement of Facts, the moving party also must state whether the additional facts are "disputed" or "undisputed" in the third column directly adjacent to the additional facts. To the extent a fact is disputed, immediately following the word "disputed" in the third column, the moving party shall state the nature of the dispute and include a specific reference to evidence in the record establishing that the fact is in dispute.

v. An example of the format for the Separate Statement of Facts is attached.

(J) **Motions to Exclude Expert Testimony.**

1. 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. To the extent the case is pending before this Court on consent, a party who wishes 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.

    i. The deadline for filing a motion to exclude expert testimony shall coincide with the deadline for filing dispositive motions.

    ii. 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, methodology).

    iii. 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 a joint witness list and joint exhibit list and exchange any exhibits anticipated to be introduced at the hearing.

VI. TRIAL PROCEDURES FOR CONSENT CASES

(A) **Final Pretrial Conference.** The Court will conduct a final pretrial conference pursuant to Federal Rule of Civil Procedure 16(e) and D.C.COLO.LCivR 16.3. The form to be utilized for the Proposed Final Pretrial Order is available from the Court's website at www.cod.uscourts.gov. The Court will set dates for the trial preparation conference and the trial at the final pretrial conference. If the

parties request a trial lasting longer than five days, they should be prepared to present argument to the Court for why a trial of that length is necessary.

(B) **Trial Preparation Conference.** Following the final pretrial conference, the Court will issue a Trial Preparation Conference Order specifying the tasks to be completed in advance of the conference. Counsel who will try the case must attend the trial preparation conference, which will generally be conducted approximately two weeks prior to trial.

(C) **Motions *in Limine*.** If the Court is forewarned about particular evidentiary disputes that are anticipated to arise during trial, the Court is able to make a more informed ruling on the evidentiary issue. As a result, the Court permits and often finds helpful motions *in limine*. However, because the admissibility of evidence often depends upon the context in which the evidence is offered, the Court may be unable to rule on a motion *in limine* prior to trial.

1. Each party is permitted to file a single motion *in limine*, with each discrete evidentiary dispute separately numbered.

2. Motions *in limine* shall not be filed prior to the final pretrial conference but must be filed at least 14 days prior to the trial preparation conference with responses due seven days thereafter. No replies shall be filed without prior permission of the Court.

(D) **Jury Instructions and Verdict Forms.**

The Court encourages the parties to review the template preliminary and closing jury instructions on Magistrate Judge Varholak's webpage on the Court's website (https://tinyurl.com/MagistrateVarholak). The Court's preference is to use these instructions for standard trial matters.

1. *Deadlines*.

   i. At least 30 days prior to the trial preparation conference, the parties shall begin meeting and conferring regarding proposed jury instructions and verdict form(s).

   ii. At least 14 days prior to the trial preparation conference, the parties shall jointly file the proposed jury instructions and verdict form(s) as separate documents utilizing the Electronic Court

Filing system and shall also submit the documents in Microsoft Word format via email (Varholak_Chambers@cod.uscourts.gov). The proposed jury instructions shall be jointly filed and submitted via email as a single document, with each applicable category of instructions included. The proposed verdict form(s) shall be jointly filed and submitted in the same manner.

iii. At least seven days prior to the trial preparation conference, each party shall file a memorandum explaining their position with regard to each competing and each non-stipulated jury instruction and non-stipulated verdict form utilizing the Electronic Court Filing system.

2. *Jury Instruction Format*. Each proposed jury instruction should begin on a new page and be numbered sequentially, in the order that the proposed instruction should be read to the jury. The instructions should be categorized and labeled as follows:

i. Stipulated Instructions: A stipulated instruction is an instruction to which all parties agree. Stipulated instructions should be identified as "Stipulated Instruction No. 1," "Stipulated Instruction No. 2," etc.

ii. Competing Instructions: A competing instruction is an instruction addressing an issue about which the parties agree an instruction is necessary, but disagree about the appropriate language for the instruction. Competing instructions should be identified as **"**Plaintiff's Competing Instruction No. 3" and "Defendant's Competing Instruction No. 3," etc.[1] **Competing instructions must address the same issue and be designated using the same number, *i.e.*, "Plaintiff's Competing Instruction No. 3" and "Defendant's Competing Instruction No. 3" must address the same issue.**

[1] If there are multiple plaintiffs or multiple defendants, each plaintiff or defendant shall identify and enumerate each of their individual competing or non-stipulated jury instructions, using the party's name (or abbreviated name) in place of the "Plaintiff" or "Defendant" designation.

iii. Non-stipulated Instructions: A non-stipulated instruction is an instruction requested by any party to which any other party objects, but does not tender a competing instruction. Non-stipulated instructions should be identified as "Plaintiff's Non-Stipulated Instruction No. 4" or "Defendant's Non-Stipulated Instruction No. 4," etc.

iv. Each proposed instruction should specifically identify the source and any supporting legal authority for it. In diversity cases applying Colorado law, the parties should submit instructions and verdict form(s) that conform to the most recent edition of Colorado Jury Instructions for Civil Trials (CIJ-Civ).

3. *Verdict Form Format*. The parties shall similarly identify whether the proposed verdict form(s) are stipulated or contested.

(E) **Exhibit and Witness Lists.**

1. *Deadlines*.

i. At least seven days before the trial preparation conference, the parties shall file proposed witness and exhibit lists utilizing the Electronic Court Filing system. The Court's preferred format for exhibit lists and witness lists is attached. Any stipulation of facts should be formatted as a pleading and marked as an exhibit.

ii. Two days after the witness lists are filed, each party shall file a statement estimating the amount of time that will be required for its cross-examination of each of the opposing party's witnesses.

iii. At least seven days before trial, the parties shall exchange the exhibits listed on their trial exhibit lists.

2. Each party must pre-mark all exhibits that will be used or identified for the record at trial. Exhibit labels may be obtained from the Clerk's Office. The plaintiff's exhibits should be marked with yellow labels, using numbers. The defendant's exhibits should be marked with blue labels, using alphabetical letters for the first 26 exhibits (A-Z). If there are more than 26 exhibits, begin marking them A-1 through A-99 and

then B-1 through B-99 and so forth. The civil action number should also be included on the exhibit sticker.

3. Exhibits must be bound in three-ring binders labeled with the following information: (1) case caption; (2) nature of proceeding; (3) scheduled date and time; (4) identification of contents (*e.g.*, Exhibits 1-50; Exhibits A-Z); and (5) "original" or "copy." The parties shall provide three separate sets of bound exhibits and shall also provide a flash drive containing digital copies of all exhibits and the exhibit list.

4. A "stipulated" notation on an exhibit list does not automatically result in the admission of that exhibit at trial or hearing. Rather, each exhibit must be offered orally on the record. If parties have stipulated to the authenticity and admissibility of an exhibit, counsel merely needs to so inform the Court upon offering the exhibit by number.

(F) ***Voir Dire* Questions.** At least seven days before the trial preparation conference, the parties shall file any proposed *voir dire* questions that the parties wish the Court to ask the venire. Unless ordered otherwise, each side shall be permitted fifteen minutes of *voir dire* examination after the Court concludes its *voir dire* examination.

(G) **Trial Briefs.** The submission of trial briefs is encouraged, but not required absent specific court order. If filed, trial briefs shall be filed at least seven days prior to the trial preparation conference and shall not exceed ten pages in length. A trial brief shall not contain any request for relief—*i.e.*, shall not be used as a substitute for a motion.

(H) **Trial Schedule.** Unless otherwise instructed, trials generally will begin at 8:30 a.m. and continue until 5:00 p.m. The Court will recess for mid-morning and mid-afternoon breaks of approximately fifteen minutes and for a lunch break of approximately 90 minutes.

(I) **Jury Trials.** For jury trials, counsel and *pro se* parties shall report to the court no later than 8:00 a.m. on the first day of trial and jury selection will commence at 8:30 a.m. The jury in civil cases will generally consist of nine jurors. Pursuant to Federal Rule of Civil Procedure 47(b) and 28 U.S.C. § 1870, each ***side*** shall be permitted three peremptory challenges. Requests for additional peremptory challenges will be addressed at the trial preparation conference. Jurors will be permitted to take notes during the trial. The jury will be

instructed prior to closing arguments and each juror will be provided a copy of the written instructions for use during deliberations.

(J) **Trials to the Court.** At least two business days prior to the trial preparation conference, the parties shall file proposed findings of fact and conclusions of law utilizing the Electronic Court Filing system, and shall email a copy in Microsoft Word format to chambers (Varholak_Chambers@cod.uscourts.gov). The parties are requested to list the proposed findings of fact in the same order as their anticipated order of proof at trial. The parties are encouraged to tailor their closing arguments to the proposed findings of fact and conclusions of law and to emphasize the evidence on which they rely to support their positions. A resume or curriculum vitae, marked as an exhibit, generally will suffice to evidence the qualifications of an expert witness.

SEPARATE STATEMENT OF FACTS

Moving Party's Undisputed Material Facts and Supporting Evidence	**Opposing Party's Response/Additional Facts and Supporting Evidence**	**Moving Party's Reply and Supporting Evidence**
1. Plaintiff's First Undisputed Fact. Ex. 1 (Defendant's Response to Interrogatory 3).	1. Undisputed.	
2. Plaintiff's Second Undisputed Fact. Ex. 2 (Deposition of John Doe), at 12:5-17.	2. Disputed. Although John Doe testified X, Jane Doe testified Y. Ex. A (Deposition of Jane Doe), at 4:1-6.	2. Jane Doe does not have personal knowledge of the issue and thus her testimony does not create a disputed issue of fact. Ex. A, at 10:11-19.
	3. Defendant's First Additional Fact. Ex. B (Plaintiff's Response to Request for Admission 5).	3. Undisputed.
	4. Defendant's Second Additional Fact. Ex. C (Deposition of Peter Doe), at 21:4-9.	4. Disputed. Peter Doe's testimony is contradicted by a contemporaneous email between John Doe and Jane Doe. Ex. 3 (Jan. 12, 2015 email exchange between John Doe and Jane Doe).

CASE CAPTION: _____

CASE NO.: _____

EXHIBIT LIST OF: _____
(Name and Party Designation)

Exhibit	Witness	Brief Description	Stipulation	Offered	Admitted	Refused	**Court Use Only**

NB: For the 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.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

MAGISTRATE JUDGE SCOTT T. VARHOLAK

Case No. _____ Date:_____

Case Caption: _____

_____ WITNESS LIST
(Name and Party Designation)

WITNESS	ESTIMATED DATE(S) AND LENGTH OF TESTIMONY
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