PRACTICE STANDARDS

For Civil and Criminal Matters Before

William J. Martínez
United States District Judge
U.S. District Court for the District of Colorado

Courtroom A801
Chambers A841
Alfred A. Arraj U.S. Courthouse
901 19th Street
Denver, CO 80294-3589

Telephone: 303/335-2805
Facsimile: 303/335-2144
E-mail: martinez_chambers@cod.uscourts.gov

"Justice, sir, is the great interest of man on Earth." **Daniel Webster, 1845**

Revised and effective 1 December ~~2013~~2014

I. INTRODUCTION

A. Purpose and Authority

1. These Revised Practice Standards are adopted to secure the just, speedy, and inexpensive determination of every action. Except as otherwise provided, they shall apply to all matters addressed by the Court on or after 1 December ~~2013~~2014. These Revised Practice Standards may be further revised without notice and may be modified by orders entered in specific cases. They have the force and effect of the orders of this District Court, and are to be cited as "WJM Revised Practice Standards".

2. Failure to follow the Local Rules of Practice for the United States District Court for the District of Colorado (the "Local Rules") or the procedures outlined herein may result in an order striking the noncompliant filing or otherwise addressing the noncompliant action. Repeated failure to follow these procedures may result in an order granting other proper relief, including sanctions.

B. Relation to Local Rules

The procedures outlined in these Revised Practice Standards are in *addition* to the requirements set forth in the Local Rules of Practice for the United States District Court for the District of Colorado ("Local Rules").

II. GENERAL PROCEDURES

A. Applicable Rules

Those appearing in the District Court must know and follow:

1. The Federal Rules of Civil Procedure and/or the Federal Rules of Criminal Procedure;

2. The Federal Rules of Evidence;

3. The Local Rules; and

4. The Electronic Case Filing Procedures (Civil and Criminal).

B. Communications with Chambers

1. For information about the status of a motion or document, please utilize the CM/ECF system, or contact my Docket Clerk, Eileen Van Alphen, at 303/335-2045.

2. For information about courtroom technology, trial preparation, use of deposition transcripts, the submission of trial exhibits and witness lists, or the use of exhibits at trial, please contact my Courtroom Deputy Clerk, Deb Hansen, at 303/335-2102.

3. If you need to reach my Court Reporter or wish to order a transcript, please contact Gwen Daniel at 303/335-2111.

4. For other information or assistance, you may contact my Chambers at 303/335-2805. **Please do not contact my Chambers about substantive matters.** My staff is not authorized to give legal advice or grant oral requests over the telephone.

5. *Ex parte* communications: Unless specifically authorized, neither counsel nor *pro se* litigants may communicate about a case by letter to the Court. All communications must be made in the form of a motion, brief, notice, or status report, served on all opposing counsel and *pro se* parties.

C. Pretrial Matters Handled by the Magistrate Judge

The Magistrate Judge and I will work together as a team to manage your case and administer justice to the best of our abilities. Among other responsibilities s/he has in your case, the Magistrate Judge will generally manage pretrial discovery and adjudicate any pretrial discovery disputes which might arise. I reserve the right, however, to handle any pretrial matters that I deem necessary, including matters relating to pretrial discovery disputes.

D. Deadlines

1. Fed. R. Civ. P. 6 controls the computation of all time requirements in these procedures, and shall apply to all pretrial motions filed in criminal cases.

2. Motions seeking an extension of time to file a document, or for the continuance of a hearing, must be sought by way of an appropriate written motion filed as far in advance of the deadline or setting as possible. All such motions must clearly establish good cause for the requested extension or continuance. Absent a true emergency, no motion for an extension of time to file a document or for continuance of a hearing shall be considered unless it is filed **on or before the court business day preceding the original filing deadline or hearing date**.

3. Due to the extraordinary disruption to the Court's calendar caused by the rescheduling of trials, motions for continuance of a trial date (jury or bench) are heavily discouraged and will rarely be granted. Such motions will be denied absent a showing of substantial good cause arising out of truly compelling circumstances.

E. Citations

1. Citations shall be made pursuant to the most current edition of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n *et al*. eds., (19th ed. 2010)).

2. General references to cases, pleadings, depositions, or documents are insufficient if the document is over one page in length. The parties shall provide specific references in the form of precise citations, including page number or paragraph number to identify those portions of the cases, pleadings, depositions, or documents relevant to the argument presented.

F. Testimony by Telephone or Video Conference

1. Together with Fed. R. Civ. P. 43(a) for trials and 43(c) for motions, this Practice Standard governs requesting and taking testimony by telephone or video conference. A party may request that testimony be presented by telephone or video conference at a trial or hearing. A request for presentation of testimony by telephone or video conference shall be made by written motion or stipulation filed at least 7 days before the trial or hearing at which testimony is proposed to be taken by telephone or video conference.

2. I will determine whether in the interests of justice the testimony may be taken by telephone or video conference. The granting of such motion is also subject to the availability of necessary equipment. If I order testimony to be taken by telephone or video conference, I may also issue such orders as are appropriate to protect the integrity of the proceedings.

III. MOTIONS PRACTICE

A. General

All motions should be accompanied by a proposed Order sent to my Chambers via e-mail (martinez_chambers@cod.uscourts.gov), preferably in WordPerfect, Arial, 12 point font.

B. Separate Motion Required

All requests for the Court to take any action, make any type of ruling, or provide any type of relief must be contained in a **separate**, written motion. A request of this nature contained within a brief, notice, status report or other written filing does not fulfill this Practice Standard. This requirement applies to all civil and criminal actions.

C. Page Limitations

Apart from papers filed in relation to a motion for summary judgment brought pursuant to Fed. R. Civ. P. 56, all motions and briefs, including papers filed in relation to an early motion for partial summary judgment filed within 30 days after entry of the initial scheduling order (see WJM Revised Practice Standard E.2, below), as well as all Rule 72 objections and responses thereto, shall comply with the following page limitations:

1. Opening and responsive motions or briefs shall not exceed 15 pages, and any reply brief shall not exceed 10 pages. Motions and briefs shall be combined and will be considered one paper for purposes of computing page limitations. These page limitations shall include all text, with the exception of the attorney or party signature block(s) and the certificate of service.

2. Objections filed under Fed. R. Civ. P. 72 shall be limited to 10 pages, and any response to such objection shall be limited to 7 pages. **In conformity with Rule 72, no reply brief in support of an objection will be accepted.** These page limitations shall include all text, with the exception of the attorney or party signature block(s) and the certificate of service.

3. Exceptions to the above page limitations will be made only in exceptional circumstances where I decide that the complexity or numerosity of the issues compel a motion, brief, objection, or response of greater length. Permission to file such papers of greater length shall be sought by way of an appropriate motion filed in advance of the deadline for filing the brief. A motion requesting such permission must include sufficient detail to allow me to discern the necessity of additional pages.

D. Special Instructions Concerning Motions to Dismiss

1. In my view the overuse of motions filed pursuant to Fed. R. Civ. P. 12(b)(6) in this District unreasonably delays the progress of civil litigation. Motions brought pursuant to this Rule are strongly discouraged if the defect is correctable by the filing of an amended pleading. Counsel should confer prior to the filing of a Rule 12(b)(6) motion to determine whether the deficiency (*e.g.*, failure to plead fraud with specificity) can be corrected by amendment, and should exercise their best efforts to stipulate to appropriate amendments. If such a motion is nonetheless filed, counsel for the movant shall include in the motion 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's fees and costs assessed personally against them. This Practice Standard shall not apply in cases where the non-movant is proceeding *pro se.*

2. All motions to dismiss shall state in the caption or in the opening paragraph under which rule or subsection thereof such motion is filed. All requests for

relief under any part of Fed. R. Civ. P. 12 must be brought in a single motion.

3. If a motion to dismiss is filed pursuant to Fed. R. Civ. P. 12(b)(1) or 12(b)(6) and matters outside the pleadings are presented with the motion, the motion shall include a brief statement addressing whether the motion should be converted to a motion for summary judgment.

E. Special Instructions Concerning Motions for Summary Judgment

1. In my view the overuse of motions filed pursuant to Fed. R. Civ. P. 56 in this District unreasonably delays the progress of civil litigation. Counsel are well-advised to avoid reflexively filing a motion for summary judgment.

2. Subject to any other order I might enter in a particular case with regard to motions filed under Fed. R. Civ. P. 56, each party shall be limited to the filing of a single motion for summary judgment customarily filed at the conclusion of pretrial discovery. In addition, however, within 30 days after entry of the initial scheduling order, a party may also file one early motion for partial summary judgment ("Early Motion for Partial Summary Judgment") which presents a substantial and well-supported argument for significantly reducing the claims or issues in the case. No party may file a second motion for summary judgment, or a second Early Motion for Partial Summary Judgment, without prior leave of court, which shall be granted in only the most extraordinary circumstances.

3. Opening and responsive briefs on motions for summary judgment (other than Early Motions for Partial Summary Judgment) shall not exceed 20 pages, and any reply brief shall not exceed 12 pages. Motions and briefs shall be combined and will be considered one paper for purposes of computing page limitations. These page limitations shall exclude the statements of fact sections described below, but will otherwise include all text apart from the attorney or party signature block(s) and the certificate of service.

4. All motions for summary judgment, including Early Motions for Partial Summary Judgment, must contain a section entitled "Movant's Statement of Material Facts." This Statement shall set forth in simple, declarative sentences, all of which are separately numbered and paragraphed, each material fact the movant believes supports movant's claim that movant is entitled to judgment as a matter of law. Each statement of fact must be accompanied by a specific reference to admissible evidence in the record which establishes that fact.

5. Any party opposing the motion for summary judgment, or an Early Motion for Partial Summary Judgment, shall provide a "Response to Movant's Material Facts" in its brief, admitting or denying the asserted material facts set forth by the movant. The admission or denial shall be made in 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 admissible evidence in the record supporting the denial.

6. If the party opposing the motion for summary judgment, or the Early Motion for Partial Summary Judgment, believes there are additional disputed questions which have not been adequately addressed by the movant, 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 movant is entitled to judgment as a matter of law. Each separately numbered and paragraphed fact shall be accompanied by specific reference to admissible evidence in the record which establishes the fact or demonstrates that it is disputed.

7. The statement of facts sections in opening and responsive briefs on motions for summary judgment shall not exceed 20 pages, and the statement of facts sections in any reply brief to such motion shall not exceed 8 pages. The statement of facts sections in opening and responsive briefs on Early Motions for Partial Summary Judgment shall not exceed 10 pages, and the statement of facts sections in any reply brief shall not exceed 5 pages. Statement of facts sections in excess of these page limits will be stricken, unless leave of court for the filing of longer fact sections has previously been obtained. The statement of facts sections are intended to comprise a comprehensive recital of all facts material to the motion. Any recitation of material facts set forth outside of these statement of facts sections shall count against the page limits on legal argument set forth above.

8. If a reply brief is filed pursuant to D.C.COLO.LCivR 56.1, it shall contain:

a. A separate section titled "Reply Concerning Undisputed Facts," containing any factual reply which movant cares to make regarding the facts asserted in movant's motion to be undisputed. Any such factual reply shall be made in separate paragraphs numbered to correspond to the movant's motion and the opposing party's response and shall be supported by specific references to material in the record.

b. A separate section titled "Response Concerning Additional Disputed Facts" admitting or denying the additional disputed facts set forth by the non-moving party. The admission or denial shall be made in paragraphs numbered to correspond to the non-moving party'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.

9. Exceptions to the above page limitations will be made only in extraordinary circumstances where I decide that the complexity or numerosity of the

issues and/or disputed facts compel briefs of greater length. Permission to file briefs in excess of these page limitations shall be sought by way of an appropriate motion filed well in advance of the current filing deadline. A motion requesting such permission must include sufficient detail to allow me to discern the necessity of additional pages.

F. Motions *in Limine*, Motions Under Fed. R. Evid. 702, & Trial Briefs

1. Motions *in limine* are permitted. Those motions *in limine* which are evidence-driven and/or depend for their resolution upon the context in which the evidence is offered will almost certainly, however, not be ruled upon until trial.

2. Each party shall be limited to one motion *in limine,* which motion shall address all difficult or unusual evidentiary issues the party anticipates will arise at trial. Each such motion shall be limited to 8 pages, and each response thereto shall be limited to 4 pages. **No reply brief in support of a motion *in limine* will be permitted.** In cases with multiple plaintiffs and/or multiple defendants, only one motion *in limine* or one joint motion *in limine* per side shall be permitted. In these cases, the motion or joint motion shall be limited to 10 pages, and the response thereto shall be limited to 5 pages. **No reply brief in support of a joint motion *in limine* will be permitted.** All text in these filings will count against said page limits except for the attorney or party signature block(s) and the certificate of service. Motions or responses in excess of the foregoing page limits will be permitted only upon a showing of substantial good cause. Upon the filing of a motion, or joint motion, *in limine*, I will promptly set a deadline for filing the response thereto, which generally will be shorter than that permitted under Local Rule and well in advance of the date of the Final Trial Preparation Conference.

3. In civil cases, all motions *in limine* must be filed not later than 21 days prior to the Final Trial Preparation Conference. In criminal cases, all motions *in limine* must be filed not later than 7 days prior to the Final Trial Preparation Conference.

4. Motions under Fed. R. Evid. 702 often require additional time for the Court to fully analyze. Thus, parties should file such motions as early as is practicable and, in all civil cases, not later than 70 days (ten weeks) prior to the Final Trial Preparation Conference. All Rule 702 motions 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, or methodology. The movant shall also specifically state whether an evidentiary hearing is being requested. If the motion includes such a request, the movant shall discuss why the applicable law compels an evidentiary hearing. In the responsive filing, the non-moving party shall specifically address the issue of whether the circumstances do or do not require an evidentiary hearing. Rule 702 motions requiring an evidentiary hearing may be referred to the assigned Magistrate Judge for hearing and decision.

5. I will determine prior to the Final Trial Preparation Conference whether trial briefs will be accepted from counsel in any particular case. If so, the

parties shall contemporaneously file their trial briefs within such time and page limits as I shall direct, addressing *only* those issues as to which I have stated I am seeking input. No responsive or reply trial briefs shall be accepted.

G. Oral Argument and Evidentiary Hearings

While oral argument and/or evidentiary hearings on motions may be requested by a party, they will be scheduled at my sole discretion. Requests for oral argument which do not effectively address why the parties' written submissions inadequately analyze the matter at hand will be denied. Preference in scheduling oral argument on a contested motion will be given in those instances in which at least one party certifies to the Court that said oral argument will be handled by an attorney of record in the case who has seven years or less of legal experience.

H. Motion for Leave to Cite Supplemental Authority

A motion for leave to cite new relevant authority may be filed if the supplemental authority was issued after briefing on a motion had closed. Such a motion shall be limited to the case title, citation, date of decision, and a single-sentence reference to the issue to which the movant believes the new decision pertains. No comment on the significance of the decision, or its interpretation, may be made, and no responsive comment will be permitted.

I. Sur-Reply or Supplemental Brief/Notice

No sur-reply, supplemental brief, or supplemental "notice" may be filed without prior leave of Court granted for good cause shown.

IV. FINAL PRETRIAL CONFERENCE AND FINAL TRIAL PREPARATION CONFERENCE

A. Final Pretrial Conference

1. Unless ordered otherwise, the Final Pretrial Conference will be conducted by the Magistrate Judge assigned to the case. The Proposed Final Pretrial Order shall be prepared in accordance with the Instructions for Preparation of Final Pretrial Order as set forth in ~~D.C.COLO.LCivR, Appendix G.~~the "Instructions Final Pretrial Order" which can be found on this Court's Website under the link for Forms http://www.cod.uscourts.gov/CourtOperations/RulesProcedures/Forms.aspx.

2. Voluminous Evidence: In preparation for trial, parties shall either: (1) redact voluminous evidence to reflect only the relevant portions and portions necessary for context; or (2) consistent with the requirements of Fed. R. Evid. 1006, prepare and offer charts, summaries, or calculations to communicate the contents of voluminous evidence to the Court and jury. Although a complete original or copy of the

evidence on which a redacted exhibit or Rule 1006 chart, summary, or calculation is based need not be offered and admitted into evidence, such underlying evidence must itself be admissible and available to the parties for examination or copying and to the Court for production if so ordered.

The parties shall include any redacted evidence or Rule 1006 chart, summary, or calculation they intend to use at trial in the list of exhibits set forth in the Final Pretrial Order and in the exhibit copies exchanged following the Final Pretrial Conference. The voluminous evidence on which such redacted, summary, chart, or calculation exhibit is based shall be identified in an appendix to the exhibit list and such underlying evidence shall be made available to the other parties at the time the parties exchange exhibits.

B. Final Trial Preparation Conference

1. I will preside over the Final Trial Preparation Conference, which generally will be scheduled approximately 2 weeks before trial in civil cases, and approximately 1 week before trial in criminal matters. Counsel who will try the case, as well as all *pro se* parties, must attend the Final Trial Preparation Conference. Failure of chief trial counsel or *pro se* parties to attend the conference may result in sanctions, including, without limitation, vacating the trial date, striking claims or defenses, and/or awarding attorney's fees.

2. The Final Trial Preparation Conference is counsel's opportunity to invite my attention to any significant problems or issues which need to be resolved or addressed before trial, or which may arise during the course of trial. At the Final Trial Preparation Conference, I will inform counsel whether and as to which specific issues contemporaneous trial briefs will be permitted pursuant to WJM Revised Practice Standard III.F.5. In addition, at this Conference, I will discuss some or all of the following matters with counsel, as appropriate to the case at bar:

a. Length of opening statements beyond the presumptive 20 minutes per side allowed by these Revised Practice Standards;

b. The timing and presentation of witnesses and evidence;

c. Anticipated evidentiary issues, including the need for scheduling of hearings outside the presence of the jury;

d. Stipulations as to fact or law;

e. Anticipated trial testimony via deposition, including compliance with WJM Revised Practice Standard V.G;

f. Any outstanding motions;

g. The identity of all counsel and parties/parties' representatives who will be present at trial; and

h. The continuing viability (if any) of settlement discussions.

Finally, at the Conference I will review with counsel the parties' compliance with the filing requirements set forth in WJM Revised Practice Standard IV.B.4, below.

3. At Final Trial Preparation Conferences held in criminal cases only, I will also discuss the following items with counsel:

a. Compliance with any Discovery & Scheduling Order requirements regarding notice of intent by the prosecution to introduce evidence pursuant to Fed. R. Evid. 404(b); and

b. Seating of the alternate juror(s) as it relates to following the Criminal Jury Selection Protocol I will use in criminal trials; see WJM Revised Practice Standard V.M, below.

4. In all cases, civil and criminal, counsel for the parties shall file the following materials not later than 7 days prior to the Final Trial Preparation Conference:

a. A Final Witness List (using the form below) containing the name of each witness to be called, the proposed date of testimony, and the anticipated length of the witnesses' direct and cross examination testimony. Witnesses not listed in the Final Pretrial Order may not be included in the Final Witness List without prior leave of Court for substantial good cause shown.

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez

Case No. _____ Date: _____

Case Title: _____

_____ FINAL WITNESS LIST
(Plaintiff/Defendant)

WITNESS	PROPOSED DATE(S) AND LENGTH OF TESTIMONY
_____	_____
_____	_____
_____	_____

Copies of this form are available on the District Court's website or from my Courtroom Deputy Clerk.

b. A Final List of Proposed Exhibits (using the form below). Plaintiff's Exhibits shall be numbered (1, 2, 3, etc.) and Defendant's Exhibits shall be lettered (A, B, C, etc.). If Defendant has more than 26 proposed exhibits, it shall use every letter (A-Z) for the first 26 exhibits, and it shall then mark the remaining exhibits A1 through A99, B1 through B99, etc. Defendant shall not use double or triple letters for any of its exhibits (*e.g.*, AA, BB, or AAA, etc.). In addition, there shall be no duplicate exhibits (*i.e.,* exhibits listed on both Plaintiff's and Defendant's exhibit lists). The parties shall stipulate to the admissibility of exhibits to the maximum extent possible and indicate all stipulated exhibits on the list submitted at the Final Trial Preparation Conference.

FINAL LIST OF PROPOSED EXHIBITS

CASE NO._____ PLAINTIFF'S LIST_____ DEFENDANT'S LIST____ THIRD PTY DEFTS. LIST____

CASE CAPTION:_____ vs. _____ PAGE NO. _____ DATE_____

LIST PLAINTIFF'S EXHIBITS BY NUMBERS (1, 2, 3, etc.) and DEFENDANT'S BY LETTER (A, B, C, etc.)

EXHIBIT NO./LTR	WITNESS	DESCRIPTION	ADM/AUTH	STIP	OFFER	REC'D	REFUSED	RULING RSVD.	COMMENTS/ INFO.

<u>Please retain all column headings on all separate pages of this form included in a party's exhibit binder(s).</u> Copies of this form are available from the District Court website or from my Courtroom Deputy Clerk.

c. Proposed *voir dire* questions. On the morning of the first day of trial I will inform counsel whether they are precluded from asking any of their proposed *voir dire* questions, and at that time I will also inform the parties of the length of attorney *voir dire* questioning that will be permitted. Apart from reasonable follow up questions, counsel will not be permitted to ask questions during attorney *voir dire* which I have not previously approved.

d. Any stipulated or proposed amendments to the Final Pretrial Order for consideration by the Court. The Final Pretrial Order will not be amended without prior leave of Court to prevent manifest injustice.

e. A **brief and concise** list of issues and/or motions that require resolution prior to, or at, trial. Do not repeat here issues raised in a party's motion *in limine* and/or trial brief, if any.

Formatted: Font: Bold

f. In trials to the Court, the parties shall also submit **Preliminary** Proposed Findings of Fact and Conclusions of Law, along with a Proposed Order for Judgment or other remedy or relief. The parties shall follow the formatting requirements for their proposed findings of fact as specified in WJM Revised Practice Standard III.E.4.

1. Findings of Fact: To the maximum extent possible, the parties shall stipulate to the material facts. Proposed findings of fact should be stated as nearly as possible in the same order as their anticipated order of proof at trial. To the extent that the parties cannot agree on one version of facts, each party shall submit their own proposals and underline all disputed facts.

2. Conclusions of Law: Conclusions of law need not be underlined even if disputed. Counsel shall key their closing arguments to their preliminary proposed findings and conclusions so as to point out the evidence upon which they rely to support their proposed findings and conclusions.

V. COURTROOM PROCEDURES FOR TRIALS AND HEARINGS

A. Hard Copy Transcripts

If you require hourly or daily copy transcripts for a trial, you must make arrangements with my Court Reporter at least 10 days before trial. If you require hourly or daily copy transcripts for a hearing or oral argument, my Court Reporter appreciates as much advance notice as is possible.

B. Realtime Reporting

If you require realtime reporting to your laptop or other electronic device during the course of a trial, hearing, or oral argument, you must consult with my Court Reporter **prior** to the date of the proceeding to ensure that all technical issues have been resolved prior to commencement of the proceeding.

C. Trial Setting

In civil cases, my staff will set dates for a Final Trial Preparation Conference and Trial following entry by the Magistrate Judge of the Final Pretrial Order. In criminal cases, my staff will set the case for a Final Trial Preparation Conference and

Trial following the Discovery Conference with the Magistrate Judge.

D. Length of Trial in Civil Cases

Should the parties request a trial in a civil case lasting longer than 5 days, counsel and/or *pro se* parties shall contact Chambers not later than 3 days after entry of the Final Pretrial Order in order to schedule a status conference with me. At this status conference the parties will address the reasons they believe a trial longer than five days is necessary. **No** trial in excess of 5 days will be set in a civil case until such a status conference is conducted.

E. Trials

1. General Scheduling Matters

Unless directed otherwise, trials will generally be set Monday through Friday, with occasional settings in other matters scheduled at the beginning or end of a trial day. On the first day of trial, counsel must be present at 8:~~00~~30 a.m. to go over any final matters before trial begins. On subsequent trial days counsel must also be present in the courtroom no later than 8:30 a.m. A normal trial day in my Courtroom begins at 8:45 a.m. and will continue until 5:00 – 5:15 p.m. The Court will recess for a lunch break as well as short mid-morning and mid-afternoon breaks.

2. Opening Statements

Opening statements shall generally be limited to 20 minutes per side unless, in my discretion, a short amount of additional time is required, particularly in cases with numerous parties.

3. Bench Conferences

Bench (or “side bar”) conferences are discouraged and will be minimized. Matters that may otherwise justify a bench conference should ordinarily be raised either before or after the trial day, or during a break, and outside the jury’s presence.

4. Closing Arguments

After all the evidence is presented, I will inform counsel how much time will be allotted for closing arguments. The length of the trial is not necessarily determinative of the amount of time counsel will be given to argue his or her case. Plaintiff (or the Government in a criminal case) may use no more than 1/3 of its allotted time in rebuttal. Counsel must inform the Courtroom Deputy Clerk how you will divide your argument and whether you want a warning before your time expires.

F. Exhibits

1. **I require counsel and *pro se* parties to meet and confer in person** prior to the Final Trial Preparation Conference or evidentiary hearing, to review the lists of exhibits they expect to offer into evidence. To the maximum extent possible, the parties are directed to stipulate to the authenticity and admissibility of their proposed exhibits. All such stipulations should be indicated on the Final List of Proposed Exhibits.

2. Please provide three copies of your Final List of Proposed Exhibits to my Courtroom Deputy Clerk on the morning of trial or prior to an evidentiary hearing. All exhibits must be marked with exhibit labels which identify the case number and exhibit number or letter. Counsel and *pro se* parties are encouraged to mark exhibits in a simple fashion to make a cleaner record. For clarity of the record, each exhibit shall consist of one document and not a group of documents as one exhibit.

3. Original Exhibits: At the start of every trial or evidentiary hearing, the parties shall submit a set of original exhibits to my Courtroom Deputy Clerk in three-ring binders, each no larger than three inches wide. These are the exhibits to be used by the witnesses. Please include all exhibits in these binders, including those as to which there is no stipulation on admissibility. In addition:

a. A label shall be placed on the spine of each binder that shows the volume number and which exhibits are contained within each binder.

b. Each original exhibit shall bear an extended tab showing the number or letter of the exhibit.

c. Each document including any attachments thereto shall be paginated.

d. The parties shall provide the Court Reporter with a disk containing copies of all proposed exhibits in a current .pdf format.

4. Copies of Exhibits: In **addition** to the original exhibit binder(s), the parties shall provide copies of exhibits to the Court as follows:

a. Jury trials: Submit **one** copy of all exhibits in three ring binders, each no larger than three inches wide. These copies shall be submitted in the same format as the original exhibits. This is the set of exhibits to which I will refer in the course of jury trials.

b. Bench trials and evidentiary hearings: Prior to any bench trial or evidentiary hearing, counsel and *pro se* parties shall contact my Chambers to determine whether I will require **one or two** sets of additional exhibits in their case. These exhibits shall be in three ring binders, each no larger than three inches wide. These copies shall be submitted in the same format as the original exhibits. These are the exhibits to which I, and in some

cases, my law clerk, will refer in the course of bench trials or evidentiary hearings.

5. Exhibits for Jurors: Due to the technological equipment available in the courtroom, exhibit notebooks for jurors are no longer permitted.

6. Use of Exhibits at Trial or Evidentiary Hearing: The Courtroom Deputy Clerk will present the exhibit binder(s) to the witnesses. This will permit examining counsel to state simply: "Please look at Exhibit No. 1". Counsel need not approach the witness as part of this examination process.

G. Depositions

The use of depositions is governed by Fed. R. Civ. P. 32 and the following procedures. All original deposition transcripts should be delivered to the Courtroom Deputy Clerk before the start of trial by the party in possession of same.

1. Videotaped Depositions: If videotaped deposition testimony is to be used, the Court and all parties must be given at least 10 days advance notice. The party offering the testimony must arrange any necessary technological equipment.

2. Deposition Testimony: The following requirements govern the use of depositions as testimony at trial:

a. Use with Live Witnesses: Unless otherwise permitted for good cause shown, including purposes provided for under Fed. R. Evid. 801(d)(1), if any party will be calling a witness to testify in person at trial, testimony by that witness via deposition on behalf of any party for substantive (as opposed to impeachment) purposes will **not** be allowed.

Formatted: List Paragraph

b. All Trials: Not later than 21 days prior to trial, counsel shall exchange with each other their designation of anticipated deposition and videotape deposition testimony. Plaintiff's designations shall be highlighted in yellow and Defendant's designations highlighted in blue. In sufficient time to allow for the filing of final objections with the Court as set forth in WJM Revised Practice Standard V.G.3 below, subsequent to the original exchange, counsel shall notify opposing counsel of any counter-designated deposition testimony, exchange objections to all designated testimony, and make a good-faith attempt to resolve such objections.

c. Jury Trials: The party offering non-videotape deposition testimony is required to provide a person to read the answers from the witness stand at trial.

d. Court Trials: At the Final Trial Preparation Conference I will

determine how depositions will be used at trial. In general, depositions will not be read in open court in bench trials.

3. Objections to Use of a Deposition: Not later than 7 days prior to trial, the parties shall file with the Court their designated deposition testimony, highlighted as set forth above, along with the objections thereto highlighted in red, and with a notation as to the basis for the objection. I will endeavor to notify the parties of my rulings on these objections the morning of the first day of trial or of the evidentiary hearing. If the parties' respective deposition designations are in excess of 100 pages, they shall submit said designations to Chambers in hard copy form in 3 ring binders with the appropriate color highlighting, in addition to filing them with the Court in the customary electronic fashion via CM/ECF. The only pages of a deposition transcript which need be provided to Chambers and/or filed electronically are those pages in which the actual designations appear, along with such additional pages or portions of pages immediately before and after such designations as may be reasonably necessary to provide the Court with the proper context for its rulings

H. Witness Lists

Prior to the commencement of every trial or hearing, each party shall provide the Courtroom Deputy Clerk with 3 copies of its Final Witness List. Counsel at this time shall also provide one copy of the Final Witness List to the Court Reporter.

I. Glossary of Technical Terms

If testimonial evidence is expected to include more than the isolated use of technical, scientific, or otherwise unusual verbiage, at the beginning of the trial or hearing, counsel offering such evidence shall provide the Court, as well as the Court Reporter and all opposing counsel or parties, with a glossary of all such terms.

J. Trials to the Court

1. In all trials to the Court, a comprehensive résumé or curriculum vitae, marked and introduced as an exhibit, generally will suffice for the determination of an expert witness's qualification.

2. In trials to the Court wherein no party orders a trial transcript within 10 days after the conclusion of the trial, then not later than 21 days after such trial has concluded, each party shall file **Final** Proposed Findings of Fact, Conclusions of Law, and Proposed Orders and/or Judgment. If a party contracted for Realtime reporting during the trial, then said party shall cite to the date and time of that portion of the Realtime report relevant to the respective proposed finding of fact.

3. In trials to the Court wherein a trial transcript has been ordered within 10 days after the conclusion of the trial, then not later than 21 days after a trial

transcript has been filed with the Court, each party shall file **Final** Proposed Findings of Fact, Conclusions of Law, and Proposed Orders and/or Judgment. All citations to the trial proceedings shall be by page(s) and line(s) of the pertinent portion(s) of the trial transcript.

4. All Final Proposed Findings of Fact shall be set forth as nearly as possible in the same order as the proof of same came in at trial. **The parties shall follow the formatting requirements for their proposed findings of fact as specified in WJM Revised Practice Standard III.E.4.**

Formatted: Font: Bold, Underline

5. In their Final Proposed Findings of Fact the parties shall also separately set forth all facts as to which the parties have reached a stipulation.

K. Selection of Juries in Civil Jury Trials

In accordance with Fed. R. Civ. P. 47(a) and (b), I will use the following jury selection process in civil cases:

1. The jury in a civil matter shall consist of 8 jurors with no designated alternates. The first 14 prospective jurors on the randomly-selected list generated by the Clerk's office list will be seated in the jury box.

2. I will conduct initial *voir dire* of the prospective jurors. Each ***side*** will then be permitted *voir dire* examination not to exceed the time limit I impose on the first morning of trial. *Voir dire* by counsel or a *pro se* party shall be limited to previously approved questions and appropriate follow-up questions.

3. After *voir dire* is complete, I will entertain challenges for cause. No challenges for cause or statements that the panel is acceptable may be made in front of the jury panel. I alone will conduct the *voir dire* of any replacement juror(s).

4. After any for cause challenges have been resolved, each ***side*** will be allowed to make 3 peremptory strikes, which shall be made using a strike sheet in alternating fashion, beginning with Plaintiff.

L. *Batson* Challenges

In civil cases, a *Batson* challenge needs to be made at the conclusion of the exercise of peremptory strikes and immediately prior to the jury being seated and sworn. **In criminal cases, a *Batson* challenge needs to be made before the juror(s) in question is/are excused from the courtroom.**

M. Selection of Juries in Criminal Jury Trials

In criminal cases I will employ the jury selection process set forth in the

Jury Selection Protocol (Criminal Jury Trials) found on the District Court's website. WJM Revised Practice Standards V.K.2, V.K.3 & V.L apply as well to criminal jury trials. Typically, I will seat one alternate juror in trials scheduled to last two weeks or less, and two alternate jurors in trials scheduled for more than two weeks.

VI. JURY INSTRUCTIONS AND VERDICT FORMS

A. General Information

The parties shall submit proposed jury instructions and proposed verdict forms as set forth below not later than 14 days prior to the Final Trial Preparation Conference in civil cases, and not later than 7 days prior to the Final Trial Preparation Conference in criminal cases. Preliminary instructions need not be submitted because it is my practice to read my own set of preliminary instructions to the jury.

B. Stipulated Instructions

To the maximum extent possible, the parties shall agree on one stipulated set of proposed jury instructions; only true conflict or uncertainty in binding substantive law should prevent such agreement. The parties will also at that time submit a proposed stipulated "Statement of the Case" instruction **not more than one paragraph in length**. I generally will follow the form of preliminary instructions and instructions on substantive legal claims contained in the most current editions of the FEDERAL JURY PRACTICE AND INSTRUCTIONS, TENTH CIRCUIT PATTERN CRIMINAL INSTRUCTIONS and the COLORADO JURY INSTRUCTIONS (Civil & Criminal).

C. Disputed Instructions

To the extent that counsel are unable to agree on proposed instructions, each side may tender a set of disputed instructions. Plaintiff's disputed instructions should be clearly labeled as "Plaintiff's" (numbered 1, 2, 3, etc.) and Defendant's disputed instructions should be clearly labeled as "Defendant's" (lettered A, B, C, etc.).

D. Authority for Stipulated and Disputed Instructions

For each stipulated and disputed instruction, the party submitting the instruction shall indicate the source and authority for the instruction. If the source is a pattern instruction not included in the authorities listed in WJM Revised Practice Standard VI.B, a copy of the pattern instruction and the identity of the authority underlying the pattern instruction shall be provided to the Court.

E. Special Procedure for the Party Objecting to a Disputed Instruction

The party objecting to a disputed instruction shall file an objection which contains: (1) an explanation for its objection; (2) the authority relied on in support of its

objection; (3) whether it has submitted an alternate instruction to the disputed instruction, along with the alternate instruction's number or letter; and (4) an explanation for why the alternate instruction should be given, and the authority relied on in support thereof. In civil cases, such objection shall be filed not later than 7 days prior to the Final Trial Preparation Conference. In criminal cases, such objection shall be filed not later than the court business day immediately prior to the Final Trial Preparation Conference.

F. Form of Submission

Parties shall file with the Court **and** submit via electronic mail to martinez_chambers@cod.uscourts.gov (preferably in WordPerfect, Arial, 12 point format) the following sets of jury instructions and proposed verdict form: (1) Stipulated Set with Authority; (2) Plaintiff's Disputed Set with Authority; (3) Defendant's Disputed Set with Authority; (4) Plaintiff's Proposed Verdict Form; (5) Defendant's Proposed Verdict Form (OR a Stipulated Proposed Verdict Form); and (6) Stipulated Statement of the Case.

G. Jury Instruction Conference

I will hold a charging conference before the case goes to the jury. At the charging conference, I will review the proposed final instructions and verdict forms with the parties. I will also at that time address unanticipated matters which have arisen during trial and which require changes to the jury instructions. The parties will have an opportunity to request changes to the proposed instructions and to state their objections to the final instructions on the record. Court staff will prepare a final, clean set of instructions and a verdict form for the jury, to which counsel may refer in the course of their closing arguments. I will instruct the jury before closing argument.

H. Juror Notes & Instructions

Unless I order otherwise, jurors will be permitted to take notes during trial, and will be permitted to consult such notes during their deliberations. In addition, each juror will be given her or his own copy of the written jury instructions for his or her use and consideration during deliberations. The jurors' notes will be destroyed after the jury is discharged.

VII. MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMARY INJUNCTION

A. To minimize delays, I strongly encourage counsel who seek a temporary restraining order to confer in advance with the opposing party's counsel (or, if not yet represented, with the party itself). Counsel need not wait at the Courthouse after filing the motion; the Court will contact counsel if a hearing is required.

B. As a general rule, *ex parte* motions for issuance of temporary restraining orders will be granted only upon strict compliance with Fed. R. Civ. P. 65(b) and (c). In appropriate circumstances, I may instead issue an order to show cause, directing the person sought to be enjoined to appear at a hearing to show cause why the temporary restraining order should not be issued; may deny the motion; or may set a hearing, requiring the movant to serve the order and all underlying papers on the respondent in accordance with Fed. R. Civ. P. 4 and within the time specified in the order. A continuance of the scheduled return date on the order to show cause will ordinarily not be granted absent a stipulation by the parties.

C. At my discretion, a hearing on a motion for temporary restraining order may take the form of an evidentiary hearing at which I apply a relaxed version of the Federal Rules of Evidence, or it may be a non-evidentiary hearing at which a proffer is made by counsel as to the evidence they would present at such an evidentiary hearing, or a combination of the two approaches. If I schedule an evidentiary hearing on a motion for temporary restraining order, the provisions of WJM Revised Practice Standards V.F.1-4 involving the use of exhibits shall apply. At all such hearings, counsel must be prepared to present appropriate legal argument.

D. If I schedule an evidentiary hearing on a motion for preliminary injunction, all parties must be prepared to present evidence in accordance with the Federal Rules of Evidence. The provisions of WJM Revised Practice Standards V.F.1-4, V.G & V.H, involving the use of exhibits, depositions, and witness lists, shall apply to all hearings scheduled on motions for preliminary injunction.

E. If appropriate, I may refer a motion for preliminary injunction to the assigned Magistrate Judge for hearing and recommended decision or, with the consent of the parties pursuant to 28 U.S.C. §636(c), for hearing and disposition by order.

VIII. STANDING ORDER FOR CERTAIN EMPLOYMENT CASES

This Court is participating in a Pilot Program for INITIAL DISCOVERY PROTOCOLS FOR EMPLOYMENT CASES ALLEGING ADVERSE ACTION ("Initial Discovery Protocols"), initiated by the Advisory Committee on Federal Rules of Civil Procedure (see "Discovery Protocol for Employment Cases," under "Educational Programs and Materials" at www.fjc.gov).

A. These Initial Discovery Protocols will apply in all employment cases filed in the District of Colorado on or after 1 December 2012, and which challenge one or more employment actions alleged to be adverse, **except**:

1. Class Actions;

2. Cases in which the allegations involve **only** the following:

a. Discrimination in hiring;
b. Harassment /hostile work environment;
c. Violations of wage and hour laws under the Fair Labor Standards Act;

d. Failure to provide reasonable accommodations under the Americans with Disabilities Act;
e. Violations of the Family Medical Leave Act; or
f. Violations of the Employee Retirement Income Security Act.

B. Parties and counsel in the Pilot Program shall comply with the Initial Discovery Protocols, located on the District Court's website. Within 30 days following the Defendant's submission of a responsive pleading or motion, the parties shall provide to one another the documents and information described in the Initial Discovery Protocols for the relevant time period. **This obligation supersedes the parties' obligations to provide initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1).** The parties shall use the documents and information exchanged in accordance with the Initial Discovery Protocols to prepare the Fed. R. Civ. P. 26(f) discovery plan.

C. The parties' responses to the Initial Discovery Protocols shall comply with the Fed. R. Civ. P. 26 obligations to certify and supplement discovery responses, as well as the form of production standards for documents and electronically stored information. As set forth in the Initial Discovery Protocols, this Initial Discovery is not subject to objections, except upon the grounds set forth in Fed. R. Civ. P. 26(b)(2)(B).

D. If any party believes that there is good cause why a particular case should be exempted from the Initial Discovery Protocols, in whole or in part, that party may raise the issue with the Court.

IX. SPECIAL INSTRUCTIONS FOR CRIMINAL MATTERS

A. General Information

Unless specifically stated otherwise and where applicable, all of the Revised Practice Standards set forth in this document apply with full force and effect to all criminal matters.

B. Deadlines

The method of computing time set forth in Fed. R. Civ. P. 6 applies to all pretrial motions filed in criminal matters.

C. Trial Settings

Criminal cases will be set for trial immediately following the Discovery

Conference. See D.C.COLO.LCrR 17.1.1. Unless otherwise instructed by the Magistrate Judge, counsel and *pro se* parties shall report to Chambers (Room A841) immediately following the Discovery Conference to set the case for a Final Trial Preparation Conference and Trial.

D. Order to Confer Regarding Discovery Motions

I will not consider any motion related to the disclosure or production of discovery that is addressed by the Discovery Memorandum and Order and/or Fed. R. Crim. P. 16, unless prior to filing the motion counsel for the moving party has conferred or made reasonable, good-faith efforts to confer with opposing counsel in an effort to resolve the disputed matter. If the parties are unable to resolve the dispute, the moving party shall state in the motion the specific efforts which were taken to comply with this Order to Confer. Counsel for the moving party shall submit a proposed order with all such motions, opposed and unopposed. Opposed disclosure or discovery motions which do not demonstrate meaningful compliance with this Order to Confer will be stricken.

E. Expert Disclosures

Expert witness disclosures pursuant to Fed. R. Crim. P. 16 shall be made not later than 14 days prior to the Final Trial Preparation Conference, and any challenges to such experts shall be made not later than 7 days prior to said Conference. Disclosures regarding rebuttal expert witnesses shall be made not later than 7 days prior to the Final Trial Preparation Conference, and any challenges to such rebuttal experts shall be made not later than the day prior to said Conference.

Formatted: Indent: Left: 0", First line: 0"

F. Plea Agreements

Other than in exceptional circumstances in which the interests of justice require otherwise, I do not accept plea agreements prepared pursuant to Fed. R. Crim. P. 11(c)(1)(c).

G. Notices of Disposition

Any Notice of Disposition filed pursuant to D.C.COLO.LCrR 11.1A shall be treated as a pretrial motion within the meaning of 18 U.S.C. § 3161(h)(1)(F) for the purpose of computing time under the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-3174. In accordance with the same local rule, absent an Order permitting or directing otherwise, a Notice of Disposition shall be filed no later than 14 days before the trial date.

H. Joint Motions

In all criminal cases involving two or more defendants, counsel for defendants are strongly encouraged, to the fullest extent possible given the similarity of

the facts and legal positions between or among each other, to file joint, as opposed to individual, motions on all issues and matters of common ground or interest.

Formatted: No underline

I. Hearings

1. Change of Plea Hearing

a. Upon the filing of a Notice of Disposition, my staff will set a change of plea hearing on the Court's calendar.

b. Pursuant to D.C.COLO.LCrR 11.1F, counsel must always bring the signed original and one copy of the "Statement by Defendant in Advance of Change of Plea" and the "Plea Agreement and Statement of Facts" to the courtroom at the time of the hearing. In addition, a copy of the plea documents must be e-mailed to Chambers no less than 7 days before the change of plea hearing. Failure to timely provide these documents to Chambers may cause the hearing to be vacated. All counsel should read the Court's "Order Setting Change of Plea Hearing" carefully.

c. The AUSA assigned to a criminal matter must be present at the change of plea hearing. If that AUSA cannot attend in person, s/he must be present by phone and a fully-briefed substitute AUSA must be physically present in the courtroom.

2. Sentencing Hearing & Related Filings

Formatted: Indent: First line: 1"

a. At the change of plea hearing, my Courtroom Deputy Clerk will set a sentencing hearing on the Court's calendar. The sentencing hearing will generally be set approximately 12 weeks after the change of plea hearing.

b. All sentencing-related motions and sentencing-related statements must be filed no later than 14 days prior to the date of the sentencing hearing. Responses to such motions or statements must be filed at least 7 days prior to the date of the sentencing hearing. In addition, sentencing-related filings are not to be filed under seal unless counsel is able to provide a compelling reason for sealing the filing. In my view, the mere inclusion of information of a personal nature in a filing is not a compelling reason to seal such a filing.

c. Sentencing-related filings not in compliance with this Practice Standard may result in a continuance of the sentencing hearing. The deadlines for filing such papers will be extended only upon the showing of good cause.

d. **The above deadlines do not in any way alter or affect deadlines for the filing of objections or other pleadings established**

pursuant to Fed. R. Crim. P. 32.

3. Final Hearing on Petition on Supervised Release

a. The Probation Officer shall file the Supervised Release Violation Report with the Court not later than 14 days prior to the Final Hearing on Supervised Release.

b. All motions, statements or memoranda regarding any matter to be taken up at the Final Hearing must be filed not later than 10 days prior to the Hearing. Responses to such papers must be filed not later than 5 days prior to the Final Hearing.

c. All filings not in compliance with this Practice Standard may result in a continuance of the Final Hearing. The deadlines for filing such papers will be extended only upon the showing of good cause.