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 2022

COMMONLY OVERLOOKED STANDARDS

II.D.2: Procedures for seeking extensions of time (augmenting D.C.COLO.LCivR 6.1).

III.C.1: Page limitations.

III.D: Procedures governing Rule 12 motions to dismiss (superseding D.C.COLO.LCivR 7.1(b)(2)).

III.F.4: Appropriate and inappropriate responses to factual allegations in summary judgment briefing.

III.G.3 & H.1: Timing of motions *in limine* and Rule 702 motions.

IV.A.3: Requests for civil trials exceeding 5 days.

TABLE OF CONTENTS

I. INTRODUCTION 1

A. Purpose and Authority 1
B. Relation to Local Rules 1

II. GENERAL PROCEDURES 1

A. Applicable Rules 1
B. Communications with Chambers 1
C. Pretrial Matters Handled by the Magistrate Judge 2
D. Deadlines 2
E. Citations 3
F. Testimony by Telephone or Video Conference 3

III. MOTIONS PRACTICE AND FILING OF REQUIRED NOTICES 4

A. General 4
B. Separate Motion Required 4
C. Page Limitations 4
D. Special Instructions Concerning Motions Brought Under Fed. R. Civ. P. 12 5
E. Special Instructions Concerning Motions Brought Under Fed. R. Civ. P. 15(a) 6
F. Special Instructions Concerning Motions for Summary Judgment 6
G. Motions *in Limine* 8
H. Motions Under Fed. R. Evid. 702 9
I. Fed. R. Civ. P. 72 Objections and Responses 10
J. Oral Argument and Evidentiary Hearings 10
K. Notice of Supplemental Authority 11
L. Sur-Reply or Supplemental Brief/Notice 11
M. Motions to Bifurcate Trial 11

IV. FINAL PRETRIAL CONFERENCE AND FINAL TRIAL PREPARATION CONFERENCE 11

A. Final Pretrial Conference 11
B. Final Trial Preparation Conference 12
C. Notice of Settlement in Civil Cases After Trial Has Been Set (Settlements Not Requiring Court Approval) 16
D. Notice of Settlement in Civil Cases After Trial Has Been Set (Settlements Requiring Court Approval) 16

V. COURTROOM PROCEDURES FOR TRIALS AND HEARINGS 16

A. Hard Copy Transcripts 16
B. Realtime Reporting 17
C. Trial Setting 17
D. Reserved 17
E. Trials 17
1. General Scheduling Matters 17
2. Opening Statements 17

3. Examination of Witnesses ... 17
4. Bench Conferences ... 18
5. Closing Arguments ... 18
F. Exhibits ... 18
G. Depositions ... 19
H. Witness Lists ... 20
I. Glossary of Technical ... 20
J. Trials to the Court ... 21
K. Selection of Juries in Civil Jury Trials ... 21
L. *Batson* Challenges ... 22
M. Selection of Juries in Criminal Jury Trials ... 22
VI. JURY INSTRUCTIONS, STATEMENT OF THE CASE, AND VERDICT FORMS 22
A. General Information ... 22
B. Stipulated Instructions & Statement of the Case ... 22
C. Disputed Instructions ... 23
D. Authority for Stipulated and Disputed Instructions ... 23
E. Special Procedure for the Party Objecting to a Disputed Instruction ... 23
F. Form of Submission ... 24
G. Jury Instruction Conference ... 24
H. Juror Notes & Instructions ... 24
VII. MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION ... 24
VIII. STANDING ORDER FOR CERTAIN EMPLOYMENT CASES ... 25
IX. SPECIAL INSTRUCTIONS FOR CRIMINAL MATTERS ... 26
A. General Information ... 26
B. Deadlines ... 26
C. Reserved ... 26
D. Order to Confer Regarding Discovery Motions ... 27
E. Expert Disclosures ... 27
F. Plea Agreements ... 27
G. Notices of Disposition ... 28
H. Joint Motions ... 28
I. Hearings ... 28
1. Change of Plea Hearing ... 28
2. Sentencing Hearing & Related Filings ... 29
3. Final Hearing on Petition on Supervised Release ... 29
J. Superseding Indictments ... 30
K. Motions to Suppress ... 30

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 2022. 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.

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, Tram Vo, at 303/335-2100.

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

3. If you need to reach my Court Reporter or wish to order a transcript, please contact Mary George at 303/335-2109.

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 or telephone call to the Court. All communications must be made in the form of a motion, brief, notice, or status report, and must be 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. I strongly encourage the parties to consult the Court's Electronic Discovery Guidelines and Checklist, available on the Court's website at http://www.cod.uscourts.gov/CourtOperations/RulesProcedures/ElectronicDiscoveryGuidelinesandChecklist.aspx.

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 for Extension of Time

a. 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.

b. In a civil case, service on the client, as required by D.C.COLO.LCivR 6.1(c), must be noted in the Certificate of Service and must identify the individual(s) who received such service, including, if appropriate, the name and title of any individual who received service on behalf of a client that is not a natural person.

c. Absent a compelling reason: (a) no motion for an extension of time to file a document shall be considered unless it is filed **on or before the original filing deadline date**; and (b) no motion for continuance of a hearing shall be considered unless it is filed **on or before the court business day preceding the original 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. For purposes of this Practice Standard, "substantial good cause" does not include previously scheduled trial settings unless that trial is before a judicial officer of this Court.

E. Citations

1. Citations shall be made pursuant to the most current edition of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION, or a comprehensive equivalent, such as THE INDIGO BOOK: AN OPEN AND COMPATIBLE IMPLEMENTATION OF A UNIFORM SYSTEM OF CITATION (https://law.resource.org/pub/us/code/blue/IndigoBook.html).

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. For hearings set with less than 7 days' notice, counsel should call chambers as early as possible once the hearing is set to advise of the intent to file such a motion, and thereafter should file the motion as far as possible in advance of the hearing date.

2. I will determine whether in the interest 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. Due to problems I have experienced with testimony by cellphone, any order approving a request for telephonic testimony also usually includes a directive that the witness be available via a landline telephone number. Any party intending to move for leave to present telephonic testimony shall keep this practice in mind.

III. MOTIONS PRACTICE AND FILING OF REQUIRED NOTICES

A. General

1. Parties need not submit a proposed order with their motion. If I would prefer to have a proposed order, you will receive an e-mail or telephone call from my Chambers.

2. Motions with separately filed briefs or memoranda in support are discouraged. I prefer the motion itself and all supporting arguments to be contained within a single document. Relatedly, all exhibits filed in support of a motion must be appended as separate, individual attachments to that pleading. For example, Exhibit 1 should be filed as ECF No. 1-1, Exhibit 2 as ECF No. 1-2, *etc.* In no event, however, will a separate motion and brief in support thereof be accepted unless they are filed contemporaneously.

3. Exhibits to a motion, response, or reply must be filed on the same calendar day as the motion, response, or reply. Exhibits filed on a later day may be summarily stricken.

4. If parties file what they deem to be an "emergency" motion, they must call Chambers or e-mail martinez_chambers@cod.uscourts.gov at the time the motion is filed.

5. If a motion filed on the docket becomes moot for any reason, the party who filed the motion is directed to file a brief statement informing the Court of this fact and the reasons the motion is now moot.

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. Although the requirement applies to cross-motions for summary judgment, the requirement does *not* apply to objections to summary judgment evidence (see III.F.4, below) unless the objecting party is seeking total or partial exclusion of expert testimony under Federal Rule of Evidence 702. This requirement also does *not* apply to requests to convert a Fed. R. Civ. P. 12(b)(6) motion to one for summary judgment; such a request should instead be included in the response to the Fed. R. Civ. P. 12(b)(6) motion (see also III.D.3, below).

C. Page Limitations

1. All page limitations stated below are inclusive of all text except for: (1) the table of contents and/or table of authorities (if included—I do not require these

items); (2) the attorney or party signature block(s); and (3) the certificate of service. To the extent a party files a motion and a separate brief or memorandum in support, the combined length of both documents shall not exceed the stated page limitation (but see WJM Revised Practice Standard III.A.2, above).

Motions for Summary Judgment other than Early Partial Motions for Summary Judgment	See III.F.7.
Motions *in Limine*	See III.G.2.
Rule 702 motions	Motion and Response Briefs: 10 pages; Reply: 5 pages.
Fed. R. Civ. P. 72 Objections	Objection and Response: 10 pages.
APA, bankruptcy, and ERISA appeal merits briefs	Opening and Response Briefs: 50 pages; Reply Brief: 25 pages.
Habeas Corpus Briefs (*e.g.*, 28 U.S.C. §§ 2241, 2254, and 2255)	Motion and Response: 30 pages; Reply Brief: 15 pages.
ALL OTHER motions (including Early Partial Summary Judgment Motions)	Motion and Response Briefs: 15 pages; Reply: 10 pages.

2. 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 Brought Under Fed. R. Civ. P. 12

1. In my view the overuse of Rule 12 motions unreasonably delay 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. Notwithstanding D.C.COLO.LCivR 7.1(b)(2), counsel must confer prior to the filing of a Rule 12 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 applies equally to plaintiffs and defendants. A party that defends against a Rule 12(b)(6) motion to dismiss by asserting facts not alleged in the complaint/counterclaim violates this Practice Standard. This Practice Standard shall not apply in cases where the non-movant is proceeding *pro se.*

2. All Rule 12 motions 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 Rule 12 must be brought in a single motion.

3. If a motion to dismiss is filed pursuant to Rule 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 Brought Under Fed. R. Civ. P. 15(a)

A party who files a motion for leave to file an amended pleading shall attach as exhibits a clean copy of the proposed amended pleading and a redlined copy of the proposed amended pleading compared against the original pleading.

F. 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, usually but not necessarily filed at the conclusion of pretrial discovery. In addition, however, no later than 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 final disposition of all claims, significantly reducing the claims or issues in the case, or the amount of discovery required, or for materially affecting the settlement calculus. To be clear, a party may file both one early motion for partial summary judgment and one motion for summary judgment. However, 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. 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 supporting evidence in the record.

4. 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, as follows:

a. The admission or denial shall be made in paragraphs numbered to correspond to movant's paragraph numbering.

b. Any denial shall be accompanied by a brief factual explanation of the reason(s) for the denial and a specific reference to supporting evidence in the record.

c. The opposing party may not "deny" an assertion on grounds of evidentiary inadmissibility or other reasons for inadmissibility (including immateriality, irrelevance, lack of authenticity, lack of foundation, incompleteness, waiver, or estoppel). The opposing party "may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible at trial," Fed. R. Civ. P. 56(c)(2), and any party so objecting must include a concise explanation of its objection, but the party must still admit or deny the factual substance of the assertion.

d. The opposing party may not deny an assertion for lack of knowledge, unless (i) in response to an Early Partial Motion for Summary Judgment and such denial is made in good faith, or (ii) the party states within the body of its response a well-grounded request for additional discovery under Fed. R. Civ. P. 56(d) and attaches the affidavit or declaration required by that Rule.

e. The opposing party may not "admit" an assertion in terms such as "Admitted that John Doe *claims* such-and-such," unless the assertion itself is framed in terms of what John Doe "claims." The opposing party must admit or deny the factual substance of the assertion.

f. The opposing party may not respond that a quoted or summarized document "speaks for itself," or similar concepts. The opposing party must admit or deny the substance of the assertion, including, for example, an admission or denial that the document has been quoted or summarized accurately.

g. The opposing party may not refuse to admit or deny, unless such refusal is supported by a recognized privilege.

5. 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 evidence in the record supporting the fact or demonstrating that it is disputed.

6. 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, including material attached to the reply, if necessary.

b. A separate section titled "Response Concerning Additional Disputed Facts" admitting or denying the additional disputed facts set forth by the non-moving party. All of the requirements of III.F.4, above, apply to this Response Concerning Additional Disputed Facts.

7. Page limitations:

a. An Early Motion for Partial Summary Judgment, the response thereto, and any reply, are governed by the default page limitations stated in the table found at III.C.1, above.

b. A traditional summary judgment motion (*i.e.*, one usually but not necessarily filed after the close of discovery), and the response thereto shall not exceed 30 pages. Any reply shall not exceed 15 pages.

c. The parties are free to apportion their allotted number of pages between the various factual sections, on the one hand, and legal argument sections, on the other, as they see fit.

G. Motions *in Limine*

1. A motion *in limine* is a request that the Court exclude certain evidence that the moving party expects an opposing party to offer at trial. Motions *in limine* are permitted. A proper motion *in limine* (i) presents a substantial evidentiary question that likely requires more careful consideration than is normally possible in the middle of a trial, (ii) attaches the relevant portions of any exhibit the party seeks to exclude, and/or (iii) quotes the expected testimony the party seeks to exclude, or illustrative examples of such testimony, or summarizes such testimony if no transcript is available (*e.g.*, from a deposition or prior hearing). A motion *in limine* that does not meet these requirements may be denied out of hand. A motion *in limine* that is a veiled motion for summary judgment may also be denied out of hand. A motion seeking exclusion of expert testimony under Rule 702 is governed separately (see III.H, below). Those motions *in limine* which depend for their resolution upon the context in which the

evidence is offered will almost certainly not be ruled upon until trial.

2. Each party shall be limited to one motion *in limine*. Each such motion shall be limited to 10 pages, and each response thereto shall be limited to 5 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 12 pages, and the joint response thereto shall be limited to 6 pages. **No reply brief in support of a joint motion *in limine* will be permitted.** 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. Prior to filing a motion *in limine*, in civil **and criminal** cases, counsel for the moving party must confer, or make reasonable, good-faith efforts to confer, with opposing counsel in an effort to resolve the disputed matter. The motion will include a description of all such efforts made, as well as a summary of the nonmovant's position on the relief sought. All motions *in limine* must be filed no earlier than 70 days before the Final Trial Preparation Conference and, in civil cases, no later than 21 days prior to the Final Trial Preparation Conference. In criminal cases, all motions *in limine* must be filed no later than 10 days prior to the Final Trial Preparation Conference. **I note that the Final Trial Preparation Conference is *not* the same as the Final Pretrial Conference held before the Magistrate Judge.**

H. Motions Under Fed. R. Evid. 702

1. In my experience, many Rule 702 motions are veiled dispositive motions, in the sense that the moving party seeks to exclude expert evidence and thereby leave the opposing party without evidence necessary to prove an element of its claim or defense. In most circumstances, such a tactic contradicts the strong preference for deciding cases on their merits. Moreover, the vast majority of purported Rule 702 arguments go to weight and not admissibility. Therefore, to the extent a Rule 702 motion has arguable merit and would leave the opposing party without evidence necessary to prove an element of its claim or defense, I may, in my discretion, *sua sponte* consider whether to grant leave to the non-movant to supplement the challenged expert opinion(s). A party considering filing a Rule 702 motion should carefully weigh whether it is better to reveal its challenges early and potentially give the opponent a chance to correct deficiencies before trial, or to save its challenges for cross-examination at trial.

2. The following deadlines apply to any motion made under Federal Rule of Evidence 702, including under *Daubert* and related cases, regardless of how the motion is styled (*i.e.*, whether styled as a motion to strike, a motion to exclude, or otherwise):

a. In civil cases, such motions must be filed no later than 70 days (10 weeks) before the Final Trial Preparation Conference, unless the motion challenges expert evidence submitted in support of summary judgment briefing, in which case the motion must be filed contemporaneously with the summary judgment response or reply, as appropriate. This practice standard concerns only the filing deadlines for Rule 702 motions and should NOT be interpreted as permitting more than one Rule 702 motion for any expert witness.

b. In criminal cases, such motions must be filed no later than the deadlines set forth in Section IX.E, below.

3. All Rule 702 motions shall:

a. Identify with specificity each opinion the moving party seeks to exclude and the specific ground(s) on which each opinion is challenged, *e.g.*, relevancy, sufficiency of facts and data, or methodology.

b. 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.

4. In any response to a Rule 702 motion, the non-moving party shall specifically address the issue of whether the circumstances do or do not require an evidentiary hearing.

5. Rule 702 motions requiring an evidentiary hearing may be referred to the assigned Magistrate Judge for hearing and decision.

6. A Rule 702 motion shall **not** be styled as a "motion *in limine*."

I. Fed. R. Civ. P. 72 Objections and Responses

1. In order to provide a parallel opportunity to respond to an objection as is provided under Rule 72(b), parties may file a response to an objection made under Rule 72(a) within 14 days after being served with a copy of the objection.

2. **In conformity with Rule 72, no reply in support of an objection made under either Rule 72(a) or Rule 72(b) will be accepted.**

J. 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. 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 eight years or less of legal experience.

K. Notice of Supplemental Authority

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 single-sentence reference to the issue to which the movant believes the new decision pertains (including a citation to the location in previously filed briefing where the issue has been raised). No comment, briefing, or responsive comment as to the significance or interpretation of the decision may be made absent further order from me.

L. Sur-Reply or Supplemental Brief/Notice

No sur-reply, supplemental brief, or supplemental "notice of authorities" for decisions issued **before** briefing on a motion has closed, or the substantial equivalent thereof, may be filed without prior leave of Court granted for good cause shown.

M. Motions to Bifurcate Trial

Any motion to bifurcate trial must be filed no later than 21 days before the date on which the proposed Final Pretrial Order is due.

N. Notice of Scheduled Settlement Conference/Mediation

Within one week of scheduling a settlement conference with a U.S. Magistrate Judge or a mediation with a private mediator, the parties shall file a Notice of Scheduled Settlement Conference or Mediation with the Court which includes the date of the settlement conference. No later than three court days after the settlement conference or mediation, the parties shall file a Notice of Outcome of Settlement Conference/Mediation with the Court which includes the outcome of their efforts and both sides' positions regarding whether continued settlement negotiations would be fruitful.

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 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 for production to the Court 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.

3. 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.

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 in person. Failure of trial counsel or *pro se* parties to attend the conference in person may result in sanctions, including, without limitation, vacating the trial date, striking claims or defenses, awarding attorneys' fees, and/or counsel not in attendance at the Conference not being permitted to try the case.

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 IV.B.8. In addition, at this Conference, counsel shall be prepared to address each of the following matters, 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, and title or capacity, of all lawyers, parties, and assistants (legal and technical) who will be seated at counsel and supporting tables during 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 specifically, 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);

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; and

c. Civilian dress and seating location of the defendant, as well as whether s/he will be required to be restrained other than at the ankles, feet, or legs.

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 (i) the name of each witness to be called, (ii) the proposed date of testimony, and (iii) the anticipated length of the witnesses' direct and cross examination testimony (the parties must therefore work together ahead of time to provide cross-examination estimates to each other). **The parties must indicate whether witnesses are designated as "will call" or "may call" witnesses.** In addition, there shall be no duplicate witnesses. If more than one party designates the same witness, only one party shall list that witness,

and that party shall include the words "cross-designated" or "cross-designated by [party name(s)]" (as appropriate) after the witness's name. For a cross-designated witness, the estimate of cross-examination time shall account for my practice of excusing compliance with Fed. R. Evid. 611(b) as to such witnesses and requiring the cross-examining attorney to also present his or her direct examination of that witness during the time allotted for cross-examination. 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 & DATE	PROPOSED LENGTH OF TESTIMONY
____________________________	Direct:_______Cross:________Total:________
____________________________	Direct:_______Cross:________Total:________
____________________________	Direct:_______Cross:________Total:________

An editable copy of this form is available at http://www.cod.uscourts.gov/JudicialOfficers/ActiveArticleIIIJudges/HonWilliamJMartinez.aspx.

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 authenticity and admissibility of exhibits to the maximum extent possible and indicate all stipulated exhibits on the list submitted before the Final Trial Preparation Conference. **This practice standard supersedes Fed. R. Civ. P. 26(a)(3)(B).**

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	AUTHEN-TICITY	STIP	OFFER	REC'D	REFUSED	RULING RSVD.	COMMENTS/ INFO.

Please retain all column headings on all separate pages of this form included in a party's exhibit binder(s). An editable copy of this form is available at http://www.cod.uscourts.gov/JudicialOfficers/ActiveArticleIIIJudges/HonWilliamJMartinez.aspx.

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. In civil cases, 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.

5. See V.G, below, for procedures and deadlines related to deposition designations.

6. See VI.A–F, below, for procedures and deadlines related to jury instructions.

7. In trials to the Court, the parties shall also submit **Preliminary** Proposed Findings of Fact and Conclusions of Law, no later than 7 days before the Final Trial Preparation Conference. The parties shall file their proposed findings of fact on CM/ECF **and** submit in editable (Word or WordPerfect) format via electronic mail to martinez_chambers@cod.uscourts.gov (preferably in Arial, 12 point format). The parties shall follow the formatting requirements for their proposed findings of fact as specified in WJM Revised Practice Standard III.F.3.

a. 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.

b. 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.

8. I will determine at 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.

C. Notice of Settlement in Civil Cases After Trial Has Been Set (Settlements Not Requiring Court Approval)

To avoid undue disruption to my calendar, I will not vacate a final trial preparation conference, a civil trial setting, or any of its attendant deadlines, on account of a settlement until the parties file either:

1. A Stipulation of Dismissal; or, in the alternative,

2. A Stipulated Notice of Settlement that includes, at a minimum, specific statements that (i) a settlement has been reached by all parties; (ii) a meeting of the minds has been reached as to all material terms of the settlement; and (iii) the settlement will finally and fully resolve all remaining claims in this action.

D. Notice of Settlement in Civil Cases After Trial Has Been Set (Settlements Requiring Court Approval)

If a settlement requires Court approval, I will not vacate a civil trial setting or any of its attendant deadlines unless and until the parties file a motion for preliminary approval of the proposed settlement.

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 both a Final Trial Preparation Conference and for 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. Reserved

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 8:30 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. Examination of Witnesses

The restrictions regarding leading questions in Federal Rule of Evidence 611(c) are meant to ensure, to the greatest extent practicable, that testimony on direct examination is the witness's testimony, not the lawyer's. Although I tolerate an occasional leading question on direct examination when it is useful to move the witness's testimony along, I otherwise readily sustain a "leading" objection unless I am satisfied that the witness falls under Rule 611(c)(2) and is in fact a hostile witness. This is the approach I take at trial even in the case of cross-designated witnesses.

4. 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.

5. 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 (as filed on CM/ECF, displaying the CM/ECF header, and displaying the column headings on each page) 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.

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. Regardless of whether the proceeding is a bench trial, jury trial, or an evidentiary hearing, the parties shall each submit their exhibits on a flash drive for the Court Reporter. If an exhibit cannot be presented in digital form on a flash drive, the party shall contact my Court Reporter (see II.B.3, above) to discuss an alternate format.

b. 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.

c. Bench trials and evidentiary hearings: Submit **two** copies 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. These are the exhibits to which I and 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. However, pursuant to Fed. R. Civ. P. 32(a)(3), this

Practice Standard does not apply to a party's use of an adverse party's deposition testimony.

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: If any party objects to any deposition designations, then not later than 7 days prior to trial, the parties shall jointly file with the Court a single marked-up transcript of their respectively 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 the aggregate, 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 four copies of its Final Witness List (as filed on CM/ECF, and displaying the CM/ECF header).

I. Glossary of Technical Terms

If testimonial evidence is expected to include more than the isolated use of technical, scientific, or otherwise unusual verbiage or acronyms, 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 on CM/ECF **and** submit in editable (Word or WordPerfect) format via electronic mail to martinez_chambers@cod.uscourts.gov (preferably in Arial, 12 point format). 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 the 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 on CM/ECF **and** submit in editable (Word or WordPerfect) format via electronic mail to martinez_chambers@cod.uscourts.gov (preferably in Arial, 12 point format). 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.F.3.**

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 (http://www.cod.uscourts.gov/Portals/0/Documents/Judges/WJM/Jury-Selection-Protocol.pdf). 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 one week or less, and two alternate jurors in trials scheduled for more than one week.

VI. JURY INSTRUCTIONS, STATEMENT OF THE CASE, AND VERDICT FORMS

A. General Information

The parties shall submit proposed jury instructions, the proposed statement of the case, 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. By "preliminary instructions," I mean generic instructions that do not change from trial to trial, including instructions on trial procedures, burden of proof, the definition of evidence, jurors' duties, judging witness's credibility, the nature of deliberation, jury notes, the need for a unanimous verdict, and so forth.

B. Stipulated Instructions & Statement of the Case

1. To the maximum extent possible, the parties shall agree on one stipulated set of proposed jury instructions (labeled S1, S2, S3, etc.); only true conflict or uncertainty in binding substantive law should prevent such agreement. 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).

2. In civil cases, the parties shall discuss whether it would be appropriate to update or in any manner revise the stipulation of facts contained in the Final Pretrial Order. If so, the updated set of stipulated facts shall be filed in a single stipulated jury instruction. If not, the parties shall reproduce the stipulations in the Final Pretrial Order in a stipulated jury instruction.

3. The parties must also propose, in a separate filing, a stipulated "Statement of the Case" instruction **not more than one paragraph in length**, which I will use during jury selection to inform the jurors of the general nature of the case.

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

a. 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.

b. 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 9:00 a.m. on the court business day immediately prior to the Final Trial Preparation Conference.

c. An argument that no evidence supports an opposing party's instruction is not an appropriate objection at this pretrial phase, but must be raised (if at

all) in the context of a Rule 50(a) motion (in civil cases) or a Rule 29(a) motion (in criminal cases).

F. Form of Submission

Parties shall file on CM/ECF **and** submit in editable (Word or WordPerfect) format via electronic mail to martinez_chambers@cod.uscourts.gov (preferably in 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 PRELIMINARY 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 & 6 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, I will also apply a relaxed version of the Federal Rules of Evidence, given that these Rules have been held not to apply in such proceedings. *See Heideman v. S. Salt Lake City*, 348 F.3d 1182, 1188 (10th Cir. 2003). The provisions of WJM Revised Practice Standards V.F.1–4 & 6, V.G, V.H, and V.I (involving the use of exhibits, depositions, witness lists, and glossaries of technical terms), 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.

F. Notwithstanding D.C.COLO.LCiv R 81.1(b), any pending motion for temporary restraining order or preliminary injunction originally filed in state court and re-filed in this Court upon removal will likely be summarily stricken, without prejudice, because the Colorado standard for such relief is not entirely congruent with the federal standard.

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. Reserved

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.

F. Plea Agreements

1. 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). Such a plea agreement will be considered, if at all, only if the parties propose **a sentencing range of not less than 18 months.**

2. No plea agreement shall identify whether a defendant has agreed to cooperate with the United States or other jurisdiction with respect to the investigation or prosecution of others. Consequently, no plea agreement shall contain any reference to any cooperation agreement between the defendant and the government, to any potential for a motion under 5K.1.1 of the United States Sentencing Guidelines ("U.S.S.G."), or to any other statutory or guideline calculation or adjustment predicated on such cooperation.

3. Plea Agreement Supplement

a. In all criminal cases resolved by plea agreement in which the defendant's cooperation against others is part of the agreement, the parties shall prepare and provide to the Court, in addition to the Plea Agreement and Statement by Defendant in Advance of Plea provided for by D.C.COLO.LCrR 11.1(c) and (d), a Plea Agreement Supplement. At the conclusion of the change of plea hearing, the courtroom deputy will file the Plea Agreement Supplement in the Electronic Case Filing ("ECF") system as a Court-only entry.

b. The Plea Agreement Supplement shall contain, in substance, the following statement: "The parties agree that the following additional terms and provisions are part of the Plea Agreement:". Thereafter, the Plea Agreement Supplement shall fully set forth all terms and provisions of the agreement between the parties that were omitted from the Plea Agreement because of the restriction required by IX.F.2, above, together with all U.S.S.G. computations and statutory implications of the additional plea agreement provisions.

c. The Plea Agreement Supplement shall be signed by all persons who sign the Plea Agreement.

d. A copy of the Plea Agreement Supplement shall be provided to Chambers together with the Plea Agreement in the same time and manner as provided for by D.C.COLO.LCrR 11.1(c).

e. The Plea Agreement Supplement shall be tendered to the Courtroom Deputy Clerk in the same time and manner as provided for by D.C.COLO.LCrR 11.1(e).

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)(D) 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.

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

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 4 to 5 months 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 21 days prior to the Final Hearing on Supervised Release.

b. All motions and statements regarding any matter to be taken up at the Final Hearing, including any objections to the Report, 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.

J. Superseding Indictments

After filing a superseding indictment, the Government shall file a separate notice of such, attaching as an exhibit a redlined comparison between the superseding indictment and the previous indictment.

K. Motions to Suppress

In any motion to suppress, the moving party must state whether an evidentiary hearing is requested and, if so, provide a brief explanation as to why the movant believes such a hearing is necessary. In any response to a motion to suppress, the non-moving party must also explain whether or not it believes an evidentiary hearing is required, and why.