

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLORADO

LOCAL RULES OF PRACTICE

PROPOSED REVISIONS FOR THE 2018-2019 COMBINED LOCAL RULES CYCLE

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SECTION I - CIVIL RULES

[Proposed Revision]

[Corresponds with same proposed revision of D.C.COLO.LCrR 47.1]:

D.C.COLO.LCivR 7.2

PUBLIC ACCESS TO DOCUMENTS AND PROCEEDINGS

- (a) **Policy.** Unless restricted by statute, rule of civil procedure, or court order, the public shall have access to all documents filed with the court and all court proceedings.
- (b) **Levels of Restriction.** There are three levels of restriction. Level 1 limits access to the parties and the court. Level 2 limits access to the filing party and the court. Level 3 limits access to the court.
- (c) **Motion to Restrict.** A motion to restrict public access shall be open to public inspection and shall:
- (1) identify the document or the proceeding for which restriction is sought;
 - (2) address the interest to be protected and why such interest outweighs the presumption of public access (stipulations between the parties or stipulated protective orders with regard to discovery, alone, are insufficient to justify restriction);
 - (3) identify a clearly defined and serious injury that would result if access is not restricted;
 - (4) explain why no alternative to restriction is practicable or why only restriction will adequately protect the interest in question (e.g., redaction, summarization, restricted access to exhibits or portions of exhibits); and
 - (5) identify the level of restriction sought.
- (d) **Public Notice of Motion to Restrict; Objection.** Notice of the filing of such motion shall be posted on the court's website on the court business day following the filing of the motion. Any person may file an objection to the motion to restrict no later than three court business days after posting. Absent exigent

circumstances, no ruling on a motion to restrict shall be made until the time for objection has passed. The absence of objection alone shall not result in the granting of the motion.

- (e) **Filing Restricted Documents.** A document subject to a motion to restrict shall be filed as a restricted document and shall be subject to restriction until the motion is determined by the court. If a document is filed as a restricted document without an accompanying motion to restrict, it shall retain ~~a Level 1 restriction~~ the restriction selected by the filer for 14 days. If no motion to restrict is filed within such time period, the restriction shall expire and the document shall be open to public inspection.

[Final Version]:

D.C.COLO.LCivR 7.2

PUBLIC ACCESS TO DOCUMENTS AND PROCEEDINGS

- (a) **Policy.** Unless restricted by statute, rule of civil procedure, or court order, the public shall have access to all documents filed with the court and all court proceedings.
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 - (3) identify a clearly defined and serious injury that would result if access is not restricted;
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- (d) **Public Notice of Motion to Restrict; Objection.** Notice of the filing of such motion shall be posted on the court's website on the court business day following the filing of the motion. Any person may file an objection to the motion to restrict no later than three court business days after posting. Absent exigent circumstances, no ruling on a motion to restrict shall be made until the time for objection has passed. The absence of objection alone shall not result in the granting of the motion.
- (e) **Filing Restricted Documents.** A document subject to a motion to restrict shall be filed as a restricted document and shall be subject to restriction until the motion is determined by the court. If a document is filed as a restricted document without an accompanying motion to restrict, it shall retain the restriction selected by the filer for 14 days. If no motion to restrict is filed within such time period, the restriction shall expire and the document shall be open to public inspection.
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[Proposed Revision]:

D.C.COLO.LCivR 72.1

GENERAL AUTHORITY AND DUTIES OF A MAGISTRATE JUDGE

- (a) General Authority.** Except as restricted by these rules, a magistrate judge may exercise all powers and duties authorized by federal statutes, regulations, and the Federal Rules of Civil Procedure.
- (b) Duties.** A magistrate judge may:

 - (1) issue administrative inspection warrants;
 - (2) issue civil seizure warrants under 21 U.S.C. § 881 and 18 U.S.C. §§ 981-983;
 - (3) issue search and seizure warrants for levy under the Internal Revenue Code;
 - (4) act on post judgment matters arising under Fed. R. Civ. P. 69, including the authority to:

 - (A) issue writs;
 - (B) issue orders directing funds to be paid into or disbursed from the registry of the court;
 - (C) hold hearings and make recommendations to the district judge on substantive issues including the liability of a party under a writ of garnishment or execution; and
 - (D) perform duties specified in chapter 176 of Title 28 United States Code, as assigned by the court under the Federal Debt Collection Procedures Act, 28 U.S.C. § 3008;
 - (5) make determinations and enter appropriate orders under 28 U.S.C. § 1915, except to enter an order denying a request to proceed in forma pauperis;
 - (6) perform duties set forth in D.C.COLO.LCivR 8.1;

- (7) exercise contempt authority as authorized by law;
- (8) issue administrative subpoenas as authorized by law; ~~and~~
- (9) appoint masters under Fed. R. Civ. P. 53-; and
- (10) transfer cases on direct assignment under D.C.COLO.LCivR 40.1(d)(4).

(c) Other Duties. On reference or order by a district judge, a magistrate judge may:

- (1) conduct pretrial conferences, post-trial proceedings, early neutral evaluations, settlement conferences, other alternative dispute resolution proceedings, and other nondispositive pretrial proceedings;
- (2) act on petitions to perpetuate testimony under Fed. R. Civ. P. 27;
- (3) hold hearings and make recommendations on dispositive matters; and
- (4) make determinations and enter orders or recommendations on discovery disputes in cases pending in other federal courts or courts of another country.

[Final Version]:

D.C.COLO.LCivR 72.1

GENERAL AUTHORITY AND DUTIES OF A MAGISTRATE JUDGE

- (a) General Authority.** Except as restricted by these rules, a magistrate judge may exercise all powers and duties authorized by federal statutes, regulations, and the Federal Rules of Civil Procedure.
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 - (1) issue administrative inspection warrants;
 - (2) issue civil seizure warrants under 21 U.S.C. § 881 and 18 U.S.C. §§ 981-983;
 - (3) issue search and seizure warrants for levy under the Internal Revenue Code;

- (4) act on post judgment matters arising under Fed. R. Civ. P. 69, including the authority to:
 - (A) issue writs;
 - (B) issue orders directing funds to be paid into or disbursed from the registry of the court;
 - (C) hold hearings and make recommendations to the district judge on substantive issues including the liability of a party under a writ of garnishment or execution; and
 - (D) perform duties specified in chapter 176 of Title 28 United States Code, as assigned by the court under the Federal Debt Collection Procedures Act, 28 U.S.C. § 3008;
- (5) make determinations and enter appropriate orders under 28 U.S.C. § 1915, except to enter an order denying a request to proceed in forma pauperis;
- (6) perform duties set forth in D.C.COLO.LCivR 8.1;
- (7) exercise contempt authority as authorized by law;
- (8) issue administrative subpoenas as authorized by law;
- (9) appoint masters under Fed. R. Civ. P. 53; and
- (10) transfer cases on direct assignment under D.C.COLO.LCivR 40.1(d)(4).

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- (1) conduct pretrial conferences, post-trial proceedings, early neutral evaluations, settlement conferences, other alternative dispute resolution proceedings, and other nondispositive pretrial proceedings;
- (2) act on petitions to perpetuate testimony under Fed. R. Civ. P. 27;
- (3) hold hearings and make recommendations on dispositive matters; and
- (4) make determinations and enter orders or recommendations on discovery disputes in cases pending in other federal courts or courts of another country.

[Proposed Revision]

[Corresponds with proposed revision of D.C.COLO.LCrR 57.5]:

D.C.COLO.LCivR 83.3

ACCOMMODATION UNDER AMERICANS WITH DISABILITIES ACT

Unless otherwise ordered, No later than ~~seven-30~~ days before a hearing or trial, counsel or an unrepresented party shall notify the court of an accommodation required under the Americans with Disabilities Act.

[Final Version]:

D.C.COLO.LCivR 83.3

ACCOMMODATION UNDER AMERICANS WITH DISABILITIES ACT

Unless otherwise ordered, no later than 30 days before a hearing or trial, counsel or an unrepresented party shall notify the court of an accommodation required under the Americans with Disabilities Act.

[Proposed Revision]:

**D.C.COLO.LCivR 84.1
BANKRUPTCY MATTERS**

- (a) **Automatic Referral.** A case or proceeding brought under or related to Title 11, United States Code, shall be referred automatically to the bankruptcy judges of this district under 28 U.S.C. § 157. All pleadings and documents in those cases shall be filed directly in the bankruptcy court, and the bankruptcy judges of this district shall exercise jurisdiction under 28 U.S.C. § 157(b).
- (b) **Final Order in a Core Matter.**
- (1) In a proceeding referred under this rule and determined to be a core matter, if a bankruptcy or district judge determines that entry of a final order or judgment by a bankruptcy judge would be inconsistent with Article III of the United States Constitution, the bankruptcy judge, unless otherwise ordered by the district judge, shall hear the proceeding and submit proposed findings of fact and conclusions of law to the district judge.
- ~~(2) A final order or judgment of the bankruptcy judge may be treated by the district judge as proposed findings of fact and conclusions of law when the district judge concludes that the bankruptcy judge could not have entered a final order or judgment consistent with Article III.~~
- (c) **Suspension or Abstention.** Nothing in this rule precludes the bankruptcy judge from suspending or abstaining from proceedings as appropriate under 11 U.S.C. § 305, 28 U.S.C. § 1334(c), or other applicable law.
- (d) **Withdrawal of Reference.** The automatic referral in Subdivision (a) may be withdrawn by the assigned district judge.
- (1) **Motion.** A motion for withdrawal of reference shall be filed with the clerk of the bankruptcy court under Bankruptcy Rule 5011 and Local Bankruptcy Rule 5011-1.
- (2) **Response.** No later than 14 days after service of the motion, a party may file in the bankruptcy court a response and a designation of any additional portion of the record necessary for determination of the motion.

- (3) **Supplementation of Record.** The record may be supplemented by order of the bankruptcy judge.
 - (4) **Referral to District Court.** The bankruptcy judge shall refer the motion to the district court.
 - (5) **Assignment.** The motion shall be assigned to a district judge under D.C.COLO.LCivR 40.1.
- (e) **Non-core Matter.** When a bankruptcy judge hears a proceeding under 28 U.S.C. § 157(c)(1) that is not a “core proceeding” as defined by 28 U.S.C. § 157(b)(2), the bankruptcy judge shall submit the proposed findings of fact and conclusions of law to the district judge assigned under D.C.COLO.LCivR 40.1. Copies of those recommendations shall be mailed by the bankruptcy judge to all parties, who shall have 14 days after the date of mailing of the recommendations (or such further time not to exceed 30 days as the bankruptcy judge may order) to file written objections. Objections lacking specificity as to factual findings or legal conclusions the objecting party claims to have been erroneously made and objections not timely filed may be summarily overruled. If no objection is filed, or if the parties consent in writing, the recommendations of the bankruptcy judge may be accepted by the district judge, and appropriate orders may be entered without further notice. The procedure for determining objections shall be as set forth in 28 U.S.C. § 157(c)(1).
- (f) **Filings.** The clerk of the bankruptcy court shall receive all pleadings in bankruptcy cases and related proceedings. Bankruptcy pleadings and documents shall be filed with the bankruptcy court under the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules for the District of Colorado. Any bankruptcy pleadings and documents filed with the clerk of the district court shall be transferred to the bankruptcy court.
- (g) **Postjudgment Matters.** The bankruptcy judges shall exercise jurisdiction over all postjudgment execution matters arising from a judgment or order entered by bankruptcy judges.

[Final Version]:

**D.C.COLO.LCivR 84.1
BANKRUPTCY MATTERS**

- (a) **Automatic Referral.** A case or proceeding brought under or related to Title 11, United States Code, shall be referred automatically to the bankruptcy judges of this district under 28 U.S.C. § 157. All pleadings and documents in those cases shall be filed directly in the bankruptcy court, and the bankruptcy judges of this district shall exercise jurisdiction under 28 U.S.C. § 157(b).
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 - (2) **Response.** No later than 14 days after service of the motion, a party may file in the bankruptcy court a response and a designation of any additional portion of the record necessary for determination of the motion.
 - (3) **Supplementation of Record.** The record may be supplemented by order of the bankruptcy judge.
 - (4) **Referral to District Court.** The bankruptcy judge shall refer the motion to the district court.
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SECTION II - CRIMINAL RULES

[Proposed Revision]:

D.C.COLO.LCrR 12.2
MOTION, RESPONSE, AND REPLY

A motion shall not be included in a response or reply to the original motion. A motion shall be filed as a separate document.

[Final Version]:

D.C.COLO.LCrR 12.2
MOTION, RESPONSE, AND REPLY

A motion shall not be included in a response or reply to the original motion. A motion shall be filed as a separate document.

[Proposed Revision]:

**D.C.COLO.LCrR 32.1
SENTENCING DOCUMENTS**

(a) Sentencing Statements.

- (1) No later than 30 days after a verdict of guilty is returned by a jury or the court, the attorney for the government shall file a sentencing statement that analyzes the sentencing factors to be considered at sentencing.
- (2) No later than 14 days after the government files its sentencing statement, a defendant may file a sentencing statement that analyzes the sentencing factors to be considered at sentencing.

(b) Objections to Presentence Report. Objections to a presentence report shall not be included in or combined with a motion for a departure or variance.

(c) Motions for Departure or Variance. A motion for departure or variance shall be filed no later than 14 days before sentencing. A response may be filed no later than seven days before sentencing. A motion for departure or variance shall not be included in a sentencing statement or other sentencing-related document. A motion for departure or variance shall be filed as a separate motion.

(d) Restricted Access. Unless otherwise ordered, a motion for a departure or variance shall not be filed as a restricted document.

(e) Sentencing-Related Documents. Unless otherwise ordered, correspondence or other documents related to sentencing, including letters, reports, certificates, awards, photographs, or other documents pertaining to the defendant, shall be provided to the probation office no later than 10 days before sentencing and shall be filed no later than seven days before sentencing by a probation officer and are entitled to Level 2 restriction under D.C.COLO.LCrR 47.1(f)(1)(A).

(f) Disclosure of Probation Reports.

- (1) Records and reports, including presentence reports and supervised release violation reports, maintained by the Probation Office are confidential and not available for public inspection.

- (2) The Chief Probation Officer may authorize inspection, disclosure, and production of records and reports to other federal courts, federal correctional or law enforcement agencies, treatment providers, or state authorities who have a legal, investigative, or custodial interest.
- (3) A person or entity other than defined in Paragraph (2) who seeks access to confidential records or reports maintained by the Probation Office shall file a written request with the Chief Probation Officer that conforms to the requirements [HERE](#). After consulting with the relevant judicial officer, the Chief Probation Officer may grant the request in whole or in part.

[Final Version]:

**D.C.COLO.LCrR 32.1
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(a) Sentencing Statements.

- (1) No later than 30 days after a verdict of guilty is returned by a jury or the court, the attorney for the government shall file a sentencing statement that analyzes the sentencing factors to be considered at sentencing.
- (2) No later than 14 days after the government files its sentencing statement, a defendant may file a sentencing statement that analyzes the sentencing factors to be considered at sentencing.

(b) Objections to Presentence Report. Objections to a presentence report shall not be included in or combined with a motion for a departure or variance.

(c) Motions for Departure or Variance. A motion for departure or variance shall be filed no later than 14 days before sentencing. A response may be filed no later than seven days before sentencing. A motion for departure or variance shall not be included in a sentencing statement or other sentencing-related document. A motion for departure or variance shall be filed as a separate motion.

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(e) Sentencing-Related Documents. Unless otherwise ordered, correspondence or other documents related to sentencing, including letters, reports, certificates, awards, photographs, or other documents pertaining to the defendant, shall be provided to the probation office no later than 10 days before sentencing and shall

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-

[Proposed Revision]

[Corresponds with proposed revision of D.C.COLO.LCivR 7.2]:

D.C.COLO.LCrR 47.1

PUBLIC ACCESS TO CASES, DOCUMENTS, AND PROCEEDINGS

- (a) **Policy.** Unless restricted by statute, rule of criminal procedure, or order, the public shall have access to all cases and documents filed with the court and all court proceedings.
- (b) **Levels of Restriction.** Unless otherwise ordered, there are four levels of restriction. Level 1 limits access to the parties and the court. Level 2 limits access to the filing party, the affected defendant(s), the government, and the court. Level 3 limits access to the filing party and the court. Level 4 limits access to the court.
- (c) **Motion to Restrict.** Unless otherwise ordered, a motion to restrict public access shall be open to public inspection. The motion shall identify the case, the document, or the proceeding for which restriction is sought. The motion shall be accompanied by a brief that is filed as a restricted document. The brief shall:
 - (1) identify the case, document, or the proceeding for which restriction is sought;
 - (2) address the interest to be protected and why such interest outweighs the presumption of public access (stipulations between the parties or stipulated protective orders with regard to discovery, alone, are insufficient to justify restriction);
 - (3) identify a clearly defined and serious injury that would result if access is not restricted;
 - (4) explain why no alternative to restriction is practicable or why only restriction will adequately protect the interest in question (e.g., redaction, summarization, restricted access to exhibits or portions of exhibits); and
 - (5) identify the level of restriction sought.
- (d) **Public Notice of Motions to Restrict; Objections.** Notice of the filing of such motion shall be posted on the court's website on the court business day following the filing of the motion. Any person may file an objection to the motion to restrict no later than three court business days after posting. Absent exigent circumstances, no ruling on a motion to restrict shall be made until the time for

objection has passed. The absence of objection alone shall not result in the granting of the motion.

- (e) **Filing Restricted Documents.** A document subject to a motion to restrict shall be filed as a restricted document, and shall be subject to restriction until the motion is determined by the court. If a document is filed as a restricted document without an accompanying motion to restrict, it shall retain ~~a Level 1 restriction~~ the restriction selected by the filer for 14 days. If no motion to restrict is filed within such time period, the access restriction shall expire and the document shall be open to public inspection.

- (f) **Documents Subject to Presumptive Restriction.** The following documents shall be filed subject to the specified presumptive restriction levels without the order of a judicial officer:
 - (1) **Documents that shall be filed with Level 2 restriction (access limited to the filing party, the affected defendant(s), the government, and the court):**
 - (A) Presentence reports and addenda and related documents, including correspondence or other documents related to sentencing, including letters, reports, certificates, awards, photographs, or other documents pertaining to the defendant.
 - (B) Probation or supervised release violation reports.
 - (C) Statements of reasons in judgments in criminal cases.
 - (D) Information provided by a person or entity posting bond.

 - (2) **Documents that shall be filed with Level 3 restriction (access limited to the filing party and the court):**
 - (A) Unexecuted bond revocation orders and supporting documents. Unless otherwise ordered, this restriction shall expire on the execution of the order.
 - (B) Documents and orders under the Criminal Justice Act. Unless otherwise ordered, this restriction shall expire on the entry of final judgment.
 - (C) Indictments. Unless otherwise ordered, this restriction shall expire on the earlier of the arrest or initial appearance of the first or only defendant.

(3) Documents that shall be filed with Level 4 restriction (access limited to the court):

- (A) Pretrial services reports (bail reports).
- (B) Petitions for summonses or arrest warrants based upon petitions for revocation of probation or supervised release. Unless otherwise ordered, this restriction shall expire on the service of the summons or execution of the warrant.

(g) Cases Subject to Presumptive Restriction. A case (including the docket sheet, case number and caption) initiated by any of the following documents shall be filed under Level 4 restriction:

- (1) Unexecuted summonses and warrants of any kind and supporting documents. Unless otherwise ordered, this restriction shall expire on the execution of the summonses or warrants.
- (2) Pen register and trap/trace orders and supporting documents. This restriction shall remain in effect unless otherwise ordered.
- (3) Orders and supporting documents under 18 U.S.C. § 2703(d). Unless otherwise ordered, this restriction shall expire after 90 days.
- (4) Title III and clone pager orders and supporting documents. This restriction shall remain in effect unless otherwise ordered.
- (5) Grand Jury material and other documents with restricted access pursuant to statute. This restriction shall remain in effect unless otherwise ordered.

[Final Version]:

**D.C.COLO.LCrR 47.1
PUBLIC ACCESS TO CASES, DOCUMENTS, AND PROCEEDINGS**

- (a) Policy.** Unless restricted by statute, rule of criminal procedure, or order, the public shall have access to all cases and documents filed with the court and all court proceedings.

- (b) **Levels of Restriction.** Unless otherwise ordered, there are four levels of restriction. Level 1 limits access to the parties and the court. Level 2 limits access to the filing party, the affected defendant(s), the government, and the court. Level 3 limits access to the filing party and the court. Level 4 limits access to the court.
- (c) **Motion to Restrict.** Unless otherwise ordered, a motion to restrict public access shall be open to public inspection. The motion shall identify the case, the document, or the proceeding for which restriction is sought. The motion shall be accompanied by a brief that is filed as a restricted document. The brief shall:
- (1) identify the case, document, or the proceeding for which restriction is sought;
 - (2) address the interest to be protected and why such interest outweighs the presumption of public access (stipulations between the parties or stipulated protective orders with regard to discovery, alone, are insufficient to justify restriction);
 - (3) identify a clearly defined and serious injury that would result if access is not restricted;
 - (4) explain why no alternative to restriction is practicable or why only restriction will adequately protect the interest in question (e.g., redaction, summarization, restricted access to exhibits or portions of exhibits); and
 - (5) identify the level of restriction sought.
- (d) **Public Notice of Motions to Restrict; Objections.** Notice of the filing of such motion shall be posted on the court's website on the court business day following the filing of the motion. Any person may file an objection to the motion to restrict no later than three court business days after posting. Absent exigent circumstances, no ruling on a motion to restrict shall be made until the time for objection has passed. The absence of objection alone shall not result in the granting of the motion.
- (e) **Filing Restricted Documents.** A document subject to a motion to restrict shall be filed as a restricted document, and shall be subject to restriction until the motion is determined by the court. If a document is filed as a restricted document without an accompanying motion to restrict, it shall retain the restriction selected by the filer for 14 days. If no motion to restrict is filed within such time period, the access restriction shall expire and the document shall be open to public inspection.

(f) **Documents Subject to Presumptive Restriction.** The following documents shall be filed subject to the specified presumptive restriction levels without the order of a judicial officer:

(1) **Documents that shall be filed with Level 2 restriction (access limited to the filing party, the affected defendant(s), the government, and the court):**

- (A) Presentence reports and addenda and related documents, including correspondence or other documents related to sentencing, including letters, reports, certificates, awards, photographs, or other documents pertaining to the defendant.
- (B) Probation or supervised release violation reports.
- (C) Statements of reasons in judgments in criminal cases.
- (D) Information provided by a person or entity posting bond.

(2) **Documents that shall be filed with Level 3 restriction (access limited to the filing party and the court):**

- (A) Unexecuted bond revocation orders and supporting documents. Unless otherwise ordered, this restriction shall expire on the execution of the order.
- (B) Documents and orders under the Criminal Justice Act. Unless otherwise ordered, this restriction shall expire on the entry of final judgment.
- (C) Indictments. Unless otherwise ordered, this restriction shall expire on the earlier of the arrest or initial appearance of the first or only defendant.

(3) **Documents that shall be filed with Level 4 restriction (access limited to the court):**

- (A) Pretrial services reports (bail reports).
- (B) Petitions for summonses or arrest warrants based upon petitions for revocation of probation or supervised release. Unless otherwise ordered, this restriction shall expire on the service of the summons or execution of the warrant.

(g) Cases Subject to Presumptive Restriction. A case (including the docket sheet, case number and caption) initiated by any of the following documents shall be filed under Level 4 restriction:

- (1) Unexecuted summonses and warrants of any kind and supporting documents. Unless otherwise ordered, this restriction shall expire on the execution of the summonses or warrants.
 - (2) Pen register and trap/trace orders and supporting documents. This restriction shall remain in effect unless otherwise ordered.
 - (3) Orders and supporting documents under 18 U.S.C. § 2703(d). Unless otherwise ordered, this restriction shall expire after 90 days.
 - (4) Title III and clone pager orders and supporting documents. This restriction shall remain in effect unless otherwise ordered.
 - (5) Grand Jury material and other documents with restricted access pursuant to statute. This restriction shall remain in effect unless otherwise ordered.
-

[Proposed Revision]:

**D.C.COLO.LCrR 50.1
ASSIGNMENT OF CASES**

- (a) **Assignment in General.** Except as provided in this rule, criminal cases shall be assigned to judicial officers by random draw. Work parity shall be maintained among active district judges, provided that a majority of active district judges may adjust the assignment of criminal cases to the Chief Judge as may be necessary for the performance of the duties of that office, and may, for good cause, approve special assignment or reassignment of criminal cases among the judicial officers of the court. All other reassignments of cases shall be subject to the approval of the Chief Judge.
- (b) **Random Draw by Computer.** The clerk shall maintain a computerized program to achieve work parity among judicial officers through random and public assignment of new criminal cases. A senior judge may decline assignment of criminal cases and, on notice to the Chief Judge, limit participation in the random draw by a stated percentage.
- (c) **Special Assignments.**
- (1) On filing a new criminal case **charging a felony offense and involving only one defendant**, the United States Attorney shall notify the clerk in writing when that defendant is **the only defendant** involved in a pending civil **action for forfeiture proceeding assigned to a district judge**. The **new** criminal case shall be assigned to the ~~judicial officer~~ **same district judge** to whom the civil case ~~was~~ **action is** assigned.
 - (2) ~~On filing a new criminal case, including a new case filed under 18 U.S.C. § 3605, or a criminal case transferred to the court under Fed. R. Crim. P. 20, the United States Attorney shall notify the clerk in writing when the defendant is currently serving, or has served, a sentence of probation or supervised release. The new criminal case shall be assigned to the judicial officer presiding in the criminal case in which the previous sentence of probation or supervised release was imposed. In the event the defendant has had multiple criminal cases before this court, the new criminal case shall be reassigned to the judicial officer who handled the oldest criminal case.~~ **On filing a new criminal case charging a felony offense and involving only one defendant, the United States Attorney shall**

notify the clerk in writing when that defendant is the only defendant in another pending criminal case in which a felony offense is charged. The new criminal case shall be assigned to the same district judge to whom the pending criminal case is assigned.

- (3) On filing a new criminal case charging a felony offense and involving only one defendant, the United States Attorney shall notify the clerk in writing when that defendant is currently on probation or supervised release. The new criminal case shall be assigned to the same district judge to whom the criminal case is assigned in which the same defendant is on probation or supervised release.
- (4) For a transfer under 18 U.S.C. § 3605, the probation department shall notify the clerk in writing when the defendant is involved in a pending criminal case or is serving a term of probation or supervised release ordered in this district. The transferred criminal case shall be assigned to the judicial officer to whom the pending criminal case is assigned or who presided over the case in which the defendant is serving a term of probation or supervised release.
- (5) For a transfer under Fed. R. Crim. P. 20, the United States Attorney shall notify the clerk in writing when the defendant is involved in another pending criminal case. The transferred criminal case shall be assigned to the judicial officer who is presiding over the pending criminal case.
- (6) A majority of the district judges may provide for the assignment of criminal cases which may be heard outside Denver, Colorado, in another location where court may be held under 28 U.S.C. § 85.

- (d) **Recusal.** Recusal of an active judicial officer shall be by written order stating the reasons.
- (e) **Adjustments.** On recusal the clerk shall adjust the computerized program to maintain work parity among active district judges.

[Final Version]:

**D.C.COLO.LCrR 50.1
ASSIGNMENT OF CASES**

- (a) **Assignment in General.** Except as provided in this rule, criminal cases shall be assigned to judicial officers by random draw. Work parity shall be maintained among active district judges, provided that a majority of active district judges may adjust the assignment of criminal cases to the Chief Judge as may be necessary for the performance of the duties of that office, and may, for good cause, approve special assignment or reassignment of criminal cases among the judicial officers of the court. All other reassignments of cases shall be subject to the approval of the Chief Judge.

- (b) **Random Draw by Computer.** The clerk shall maintain a computerized program to achieve work parity among judicial officers through random and public assignment of new criminal cases. A senior judge may decline assignment of criminal cases and, on notice to the Chief Judge, limit participation in the random draw by a stated percentage.

- (c) **Special Assignments.**
 - (1) On filing a new criminal case charging a felony offense and involving only one defendant, the United States Attorney shall notify the clerk in writing when that defendant is the only defendant involved in a pending civil action for forfeiture assigned to a district judge. The new criminal case shall be assigned to the same district judge to whom the civil action is assigned.

 - (2) On filing a new criminal case charging a felony offense and involving only one defendant, the United States Attorney shall notify the clerk in writing when that defendant is the only defendant in another pending criminal case in which a felony offense is charged. The new criminal case shall be assigned to the same district judge to whom the pending criminal case is assigned.

 - (3) On filing a new criminal case charging a felony offense and involving only one defendant, the United States Attorney shall notify the clerk in writing when that defendant is currently on probation or supervised release. The new criminal case shall be assigned to the same district judge to whom the criminal case is assigned in which the same defendant is on probation or supervised release.

- (4) For a transfer under 18 U.S.C. § 3605, the probation department shall notify the clerk in writing when the defendant is involved in a pending criminal case or is serving a term of probation or supervised release ordered in this district. The transferred criminal case shall be assigned to the judicial officer to whom the pending criminal case is assigned or who presided over the case in which the defendant is serving a term of probation or supervised release.
 - (5) For a transfer under Fed. R. Crim. P. 20, the United States Attorney shall notify the clerk in writing when the defendant is involved in another pending criminal case. The transferred criminal case shall be assigned to the judicial officer who is presiding over the pending criminal case.
 - (6) A majority of the district judges may provide for the assignment of criminal cases which may be heard outside Denver, Colorado, in another location where court may be held under 28 U.S.C. § 85.
- (d) **Recusal.** Recusal of an active judicial officer shall be by written order stating the reasons.
- (e) **Adjustments.** On recusal the clerk shall adjust the computerized program to maintain work parity among active district judges.
-

[Proposed Revision]:

D.C.COLO.LCrR 57.1

GENERAL AUTHORITY AND DUTIES OF A MAGISTRATE JUDGE

- (a) **General Authority.** Except as restricted by these rules, a magistrate judge may exercise all powers and duties authorized by federal statutes, regulations, and the Federal Rules of Criminal Procedure.
- (b) **Duties.** A magistrate judge may:
- (1) authorize the installation and use of a pen register or a trap and trace device under 18 U.S.C. §§ 3122-23, and direct the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device;
 - (2) issue search warrants;
 - (3) accept criminal complaints and issue or quash arrest warrants or summonses;
 - (4) accept waivers of indictment under Fed. R. Crim. P. 7(b);
 - (5) receive the return of indictments by the grand jury and issue arrest warrants or summonses when necessary for the defendants named in the indictments;
 - (6) restrict and grant access to an indictment;
 - (7) conduct preliminary proceedings incident to transfer cases under Fed. R. Crim. P. 20;
 - (8) exercise powers and duties necessary to extradite fugitives under 18 U.S.C. §§ 3181-96;
 - (9) conduct hearings and issue orders under the Bail Reform Act of 1984, 18 U.S.C. §§ 3141-56;
 - (10) forfeit bond when a defendant fails to appear in proceedings scheduled before the magistrate judge;

- (11) set bond for material witnesses;
- (12) conduct arraignments by taking and entering pleas and when necessary, make findings affecting speedy trial considerations under the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-74;
- (13) direct the United States Marshal to arrange for payment of expenses for basic transportation and subsistence for a defendant financially unable to bear the costs of travel to required court appearances;
- (14) issue subpoenas and writs of habeas corpus ad testificandum and prosequendum or other orders necessary to obtain the presence of parties, witnesses, or evidence;
- (15) conduct non-jury trials in cases involving petty offenses or misdemeanors;
- (16) conduct jury trials in cases involving misdemeanors under 18 U.S.C. § 3401(a);
- (17) direct the probation office to conduct presentence investigations in cases involving misdemeanors;
- (18) perform the functions specified in 18 U.S.C. §§ 4107, 4108, and 4109 regarding proceedings for verification of consent by offenders to transfer to or from the United States, including the appointment of counsel;
- (19) appoint counsel for a person subject to revocation of probation, parole, or supervised release; a person in custody as a material witness; a person seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 or 18 U.S.C. § 4245; or a person for whom the Sixth Amendment to the United States Constitution or federal law requires the appointment of counsel;
- (20) conduct preliminary hearings;
- (21) exercise contempt authority as authorized by law;
- (22) preside over cases involving petty offenses or misdemeanors brought against juvenile defendants as authorized by law;
- (23) act on post judgment matters as authorized by law;
- (24) order psychiatric or psychological examinations and reports under 18 U.S.C. §§ 3552(c), 4241(b), 4244(b), 4245(b) and/or 4246(b);

- (25) conduct hearings and make recommendations to district judges concerning competency of defendants to stand trial; and
- (26) conduct hearings and make recommendations to district judges on motions to suppress statements or evidence.

[Final Version]:

D.C.COLO.LCrR 57.1

GENERAL AUTHORITY AND DUTIES OF A MAGISTRATE JUDGE

- (a) General Authority.** Except as restricted by these rules, a magistrate judge may exercise all powers and duties authorized by federal statutes, regulations, and the Federal Rules of Criminal Procedure.
- (b) Duties.** A magistrate judge may:
 - (1) authorize the installation and use of a pen register or a trap and trace device under 18 U.S.C. §§ 3122-23, and direct the furnishing of information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device;
 - (2) issue search warrants;
 - (3) accept criminal complaints and issue or quash arrest warrants or summonses;
 - (4) accept waivers of indictment under Fed. R. Crim. P. 7(b);
 - (5) receive the return of indictments by the grand jury and issue arrest warrants or summonses when necessary for the defendants named in the indictments;
 - (6) restrict and grant access to an indictment;
 - (7) conduct preliminary proceedings incident to transfer cases under Fed. R. Crim. P. 20;
 - (8) exercise powers and duties necessary to extradite fugitives under 18 U.S.C. §§ 3181-96;

- (9) conduct hearings and issue orders under the Bail Reform Act of 1984, 18 U.S.C. §§ 3141-56;
- (10) forfeit bond when a defendant fails to appear in proceedings scheduled before the magistrate judge;
- (11) set bond for material witnesses;
- (12) conduct arraignments by taking and entering pleas and when necessary, make findings affecting speedy trial considerations under the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-74;
- (13) direct the United States Marshal to arrange for payment of expenses for basic transportation and subsistence for a defendant financially unable to bear the costs of travel to required court appearances;
- (14) issue subpoenas and writs of habeas corpus ad testificandum and prosequendum or other orders necessary to obtain the presence of parties, witnesses, or evidence;
- (15) conduct non-jury trials in cases involving petty offenses or misdemeanors;
- (16) conduct jury trials in cases involving misdemeanors under 18 U.S.C. § 3401(a);
- (17) direct the probation office to conduct presentence investigations in cases involving misdemeanors;
- (18) perform the functions specified in 18 U.S.C. §§ 4107, 4108, and 4109 regarding proceedings for verification of consent by offenders to transfer to or from the United States, including the appointment of counsel;
- (19) appoint counsel for a person subject to revocation of probation, parole, or supervised release; a person in custody as a material witness; a person seeking relief under 28 U.S.C. §§ 2241, 2254, or 2255 or 18 U.S.C. § 4245; or a person for whom the Sixth Amendment to the United States Constitution or federal law requires the appointment of counsel;
- (20) conduct preliminary hearings;
- (21) exercise contempt authority as authorized by law;
- (22) preside over cases involving petty offenses or misdemeanors brought against juvenile defendants as authorized by law;

- (23) act on post judgment matters as authorized by law;
 - (24) order psychiatric or psychological examinations and reports under 18 U.S.C. §§ 3552(c), 4241(b), 4244(b), 4245(b) and/or 4246(b);
 - (25) conduct hearings and make recommendations to district judges concerning competency of defendants to stand trial; and
 - (26) conduct hearings and make recommendations to district judges on motions to suppress statements or evidence.
-

[Proposed Revision]
[Corresponds with proposed revision of D.C.COLO.LCivR 83.3]:

D.C.COLO.LCrR 57.5
ACCOMMODATIONS UNDER AMERICANS WITH DISABILITIES ACT

Unless otherwise ordered, No later than ~~seven~~30 days before a hearing or trial, counsel or an unrepresented party shall notify the court of an accommodation required under the Americans with Disabilities Act.

[Final Version]:

D.C.COLO.LCrR 57.5
ACCOMMODATION UNDER AMERICANS WITH DISABILITIES ACT

Unless otherwise ordered, no later than 30 days before a hearing or trial, counsel or an unrepresented party shall notify the court of an accommodation required under the Americans with Disabilities Act.

SECTION III – LOCAL PATENT RULES [No changes]

SECTION IV - AP RULES

[Proposed Revision]:

D.C.COLO.LAPR 10.3 AP DOCKET

Opening an AP Case. On proper commencement of an AP case under Subdivision (a), (b), or (c) of D.C.COLO.LAPR 10.2, the clerk shall open a case and assign a case number without random selection to a district judge under D.C.COLO.LCivR 40.1(e). ~~The case number shall bear the initials “AP” to identify the case as an appeal.~~

[Final Version]:

D.C.COLO.LAPR 10.3 AP DOCKET

Opening an AP Case. On proper commencement of an AP case under Subdivision (a), (b), or (c) of D.C.COLO.LAPR 10.2, the clerk shall open a case and assign a case number without random selection to a district judge under D.C.COLO.LCivR 40.1(e).

[Proposed Revision]:

**D.C.COLO.LAPR 16.1
AP CASE MANAGEMENT**

- (a) **Joint Case Management Plan.** A scheduling conference under D.C.COLO.LCivR 16.1 shall not be conducted. In all AP cases, except social security appeals and bankruptcy appeals, the parties will be directed to file a Joint Case Management Plan (JCMP). ~~The form of JCMP for social security appeals is [HERE](#).~~ The form of JCMP for review of agency action in other AP cases, including environmental cases, is [HERE](#).
- (b) **Briefing Schedule for Social Security Appeals.** The opening brief of the plaintiff shall be filed no later than 40 days after the Commissioner files the administrative record. The response brief of the Commissioner shall be filed no later than 30 days after the filing of the brief of the plaintiff. The plaintiff may file a reply brief no later than 15 days after the filing of the response brief of the Commissioner.
- (bc) **Motions for Summary Judgment.** Motions for summary judgment shall not be filed.
- (cd) **Termination of AP Case Designation.** On completion of pre-merits management, designation as an AP case shall terminate, and the case shall be assigned under D.C.COLO.LCivR 40.1. For good cause, designation as an AP case may be terminated before the completion of pre-merits management on motion of a party or sua sponte by the district judge designated for pre-merits management under D.C.COLO.LCivR 40.1(e).

[Note – If proposal is adopted, it will eliminate the Joint Case Management Plan for Social Security Cases currently available [HERE](#) on the website.]

[Final Version]:

**D.C.COLO.LAPR 16.1
AP CASE MANAGEMENT**

- (a) **Joint Case Management Plan.** A scheduling conference under D.C.COLO.LCivR 16.1 shall not be conducted. In all AP cases, except social security appeals and bankruptcy appeals, the parties will be directed to file a Joint Case Management Plan (JCMP). The form of JCMP for review of agency action in other AP cases, including environmental cases, is [HERE](#).
- (b) **Briefing Schedule for Social Security Appeals.** The opening brief of the plaintiff shall be filed no later than 40 days after the Commissioner files the administrative record. The response brief of the Commissioner shall be filed no later than 30 days after the filing of the brief of the plaintiff. The plaintiff may file a reply brief no later than 15 days after the filing of the response brief of the Commissioner.
- (c) **Motions for Summary Judgment.** Motions for summary judgment shall not be filed.
- (d) **Termination of AP Case Designation.** On completion of pre-merits management, designation as an AP case shall terminate, and the case shall be assigned under D.C.COLO.LCivR 40.1. For good cause, designation as an AP case may be terminated before the completion of pre-merits management on motion of a party or sua sponte by the district judge designated for pre-merits management under D.C.COLO.LCivR 40.1(e).

[Corresponding elimination of [Joint Case Management Plan for Social Security Cases](#) currently available [HERE](#) on the website.]

SECTION V – ATTORNEY RULES

[Proposed Revision]:

D.C.COLO.LAttyR 2 STANDARDS OF PROFESSIONAL CONDUCT

- (a) **Standards of Professional Conduct.** Except as provided by Subdivision (b) or order or rule of the United States Bankruptcy Court for the District of Colorado, the Colorado Rules of Professional Conduct (Colo. RPC) are adopted as standards of professional responsibility for the United States District Court and the United States Bankruptcy Court for the District of Colorado.
- (b) **Exceptions.** The following provisions of the Colorado Rules of Professional Conduct (Colo. RPC) are excluded from the standards of professional responsibility for the United States District Court and the United States Bankruptcy Court for the District of Colorado:
- (1) Colo. RPC 1.2(c) (limiting scope of representation), except that, if ordered, and subject to D.C.COLO.LAttyR 5(a) and (b), an attorney may provide limited representation to an unrepresented party or an unrepresented prisoner in a civil action; and
 - (2) Colo. RPC 1.2(d), Comment [14] (counseling and assisting client regarding Colorado Constitution art. XVIII, §§ 14 and 16 and related statutes, regulations, or orders, and other state or local provisions implementing them), except that a lawyer may advise a client regarding the validity, scope, and meaning of Colorado Constitution art. XVIII, §§ 14 and 16 and the statutes, regulations, orders, and other state or local provisions implementing them, and, in these circumstances, the lawyer shall also advise the client regarding related federal law and policy.
- (c) **Federal Pro Se Clinic.** An attorney may provide short-term limited legal services through the Federal Pro Se Clinic (“FPSC”) subject to the standards of conduct adopted by the FPSC.

[Final Version]:

**D.C.COLO.LAttyR 2
STANDARDS OF PROFESSIONAL CONDUCT**

- (a) **Standards of Professional Conduct.** Except as provided by Subdivision (b) or order or rule of the United States Bankruptcy Court for the District of Colorado, the Colorado Rules of Professional Conduct (Colo. RPC) are adopted as standards of professional responsibility for the United States District Court and the United States Bankruptcy Court for the District of Colorado.
- (b) **Exceptions.** The following provisions of the Colorado Rules of Professional Conduct (Colo. RPC) are excluded from the standards of professional responsibility for the United States District Court and the United States Bankruptcy Court for the District of Colorado:
- (1) Colo. RPC 1.2(c) (limiting scope of representation), except that, if ordered, and subject to D.C.COLO.LAttyR 5(a) and (b), an attorney may provide limited representation to an unrepresented party or an unrepresented prisoner in a civil action; and
 - (2) Colo. RPC 1.2(d), Comment [14] (counseling and assisting client regarding Colorado Constitution art. XVIII, §§ 14 and 16 and related statutes, regulations, or orders, and other state or local provisions implementing them), except that a lawyer may advise a client regarding the validity, scope, and meaning of Colorado Constitution art. XVIII, §§ 14 and 16 and the statutes, regulations, orders, and other state or local provisions implementing them, and, in these circumstances, the lawyer shall also advise the client regarding related federal law and policy.
- (c) **Federal Pro Se Clinic.** An attorney may provide short-term limited legal services through the Federal Pro Se Clinic (“FPSC”) subject to the standards of conduct adopted by the FPSC.
-

[Proposed Revision]:

**D.C.COLO.LAttyR 14
STUDENT PRACTICE**

(a) General Provisions.

- (1) With the approval of the presiding judicial officer, an eligible law student may appear, under the supervision of an attorney who is a member of the bar of this court in a civil action or non-felony criminal case on behalf of a party who has consented in writing.
- (2) Unless otherwise limited, once admitted under Subdivision (d), the student may appear in that civil action or criminal case and other related proceedings when accompanied by the supervising attorney and may prepare and sign pleadings and documents which also must be signed by the supervising attorney.
- (3) Under D.C.COLO.LAttyR 14(b)(1), (2), (3), (4) and (6) and (c)(1), (2) and (4), a law student may provide legal services through the Federal Pro Se Clinic under the guidance of a supervising attorney.

(b) Eligibility. To be eligible, the student shall:

- (1) be enrolled in a law school approved by the American Bar Association or, if graduated, be preparing to take a written bar examination or awaiting admission to the bar following that examination;
- (2) be enrolled in or have successfully completed a law school clinical program or an externship or internship;
- (3) have completed two full semesters of law school, including a course in evidence;
- (4) be certified by the dean of the law school (or the designee of the dean) as qualified to provide the legal representation authorized by this rule. The certification may be withdrawn by the certifier at any time by mailing notice to the court;
- (5) be introduced to the court by the supervising attorney;

- (6) not receive compensation of any kind from the client. This shall not affect the ability or right of an attorney or law school clinical program to seek attorney fees which may include compensation for student services; and
- (7) certify in writing that the student is familiar with the Federal Rules of Criminal or Civil Procedure (depending on the nature of the action or case), Federal Rules of Evidence, and local rules of practice of this court and website [HERE](#), including the judicial officers' procedures.

(c) Supervising Attorney. The attorney supervising a student shall:

- (1) be a member in good standing of the bar of this court;
- (2) maintain appropriate professional liability insurance for the supervising attorney and eligible students;
- (3) introduce the student to the court;
- (4) assume professional responsibility for the work of the student;
- (5) be present whenever the student appears;
- (6) sign all pleadings; and
- (7) sign and file a written agreement to supervise a student in accordance with this rule.

(d) Admission Procedure.

- (1) The student, dean (or designee), supervising attorney, and the client shall complete the Law Student Appearance form [HERE](#), which shall be filed with the clerk.
- (2) The appearance of the student is not authorized until approved by the presiding judicial officer, whose approval may be withdrawn for any reason without notice or hearing.

[Final Version]:

**D.C.COLO.LAttyR 14
STUDENT PRACTICE**

(a) General Provisions.

- (1) With the approval of the presiding judicial officer, an eligible law student may appear, under the supervision of an attorney who is a member of the bar of this court in a civil action or non-felony criminal case on behalf of a party who has consented in writing.
- (2) Unless otherwise limited, once admitted under Subdivision (d), the student may appear in that civil action or criminal case and other related proceedings when accompanied by the supervising attorney and may prepare and sign pleadings and documents which also must be signed by the supervising attorney.
- (3) Under D.C.COLO.LAttyR 14(b)(1), (2), (3), (4) and (6) and (c)(1), (2) and (4), a law student may provide legal services through the Federal Pro Se Clinic under the guidance of a supervising attorney.

(b) Eligibility. To be eligible, the student shall:

- (1) be enrolled in a law school approved by the American Bar Association or, if graduated, be preparing to take a written bar examination or awaiting admission to the bar following that examination;
- (2) be enrolled in or have successfully completed a law school clinical program or an externship or internship;
- (3) have completed two full semesters of law school, including a course in evidence;
- (4) be certified by the dean of the law school (or the designee of the dean) as qualified to provide the legal representation authorized by this rule. The certification may be withdrawn by the certifier at any time by mailing notice to the court;
- (5) be introduced to the court by the supervising attorney;

- (6) not receive compensation of any kind from the client. This shall not affect the ability or right of an attorney or law school clinical program to seek attorney fees which may include compensation for student services; and
- (7) certify in writing that the student is familiar with the Federal Rules of Criminal or Civil Procedure (depending on the nature of the action or case), Federal Rules of Evidence, and local rules of practice of this court and website [HERE](#), including the judicial officers' procedures.

(c) Supervising Attorney. The attorney supervising a student shall:

- (1) be a member in good standing of the bar of this court;
- (2) maintain appropriate professional liability insurance for the supervising attorney and eligible students;
- (3) introduce the student to the court;
- (4) assume professional responsibility for the work of the student;
- (5) be present whenever the student appears;
- (6) sign all pleadings; and
- (7) sign and file a written agreement to supervise a student in accordance with this rule.

(d) Admission Procedure.

- (1) The student, dean (or designee), supervising attorney, and the client shall complete the Law Student Appearance form [HERE](#), which shall be filed with the clerk.
- (2) The appearance of the student is not authorized until approved by the presiding judicial officer, whose approval may be withdrawn for any reason without notice or hearing.

DISTRICT OF COLORADO FORMS

Proposed ERISA Scheduling Order (for current order, see website Forms page [here](#))

[Proposed and Final Revision]:

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No.:

Plaintiff(s),

v.

Defendant(s).

CIVIL CASE SCHEDULING ORDER IN AN ERISA ACTION

The parties submit the following scheduling order this case under 29 U.S.C. § 1132(a)(1)(B) of the Employee Retirement Income Security Act of 1974 (“ERISA”).

1. Jurisdiction. The parties agree that ERISA governs this case. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. §§ 1132(e)(1) & 1132(f). Venue is proper before the Court pursuant to 28 U.S.C. § 1391(a) & (b) and 29 U.S.C. §1132(e)(2).

2. **Consent.** All parties have ___ have not ___ consented to the exercise of jurisdiction of a Magistrate Judge.

3. **Scheduling Conference.** The Scheduling Conference may be vacated provided the parties file at least seven (7) days in advance of the Conference a joint motion attaching their proposed ERISA Scheduling Order and requesting the Court vacate the Scheduling Conference.

4. **Standard of Review.** *Insert whichever one of the following statements is appropriate.*

- *The parties agree that the Court will decide the case under the _____ standard of review.*
- *The parties disagree over the applicable standard of review, but agree that they do not need discovery and they will brief the issues regarding the applicable standard of review in connection with the briefing of the merits.*
- *The parties disagree over the applicable standard of review, and believe that the Court should decide the applicable standard of review before the briefing of the merits. The parties propose the following briefing schedule for the determination of the standard of review:*

Plaintiff's Opening Brief on Standard of Review _____

Defendant's Response Brief on Standard of Review _____

Plaintiff's Reply Brief on Standard of Review _____

5. **Discovery.** Unless the parties have indicated in section 4 above that they do not need discovery, they may serve discovery requests consistent with the principles that the Tenth Circuit has established in *Murphy v. Deloitte & Touche Group Ins. Plan*, 619 F.3d 1151, 1162

(10th Cir. 2010) (arbitrary and capricious standard of review); *Jewell v. Life Ins. Co. of N. Am.*, 508 F.3d 1303 (10th Cir. 2010), *cert. denied*, 553 U.S. 1079 (2008) (*de novo* standard of review).

If the parties disagree over the permissibility of any discovery request, they will attempt to resolve the dispute by conferring pursuant to D.C.COLO.LCivR 7.1.A. If the parties cannot resolve their dispute, the parties then will bring the dispute before the Court for resolution. The deadline for submission of any motion regarding discovery is _____, 201___. This provision is not intended to alter any judicial officer's practice standards regarding the filing of discovery motions.

6. Settlement. The parties certify that, as required by Fed. R. Civ. P. 26(f), they have discussed the possibilities for a prompt settlement or resolution of the case by alternate dispute resolution. The Court directs the parties to file a status report concerning settlement five business days prior to the deadline for filing the opening brief on the merits.

- 7. Proposed Schedule.--**The parties propose the following schedule in this case:
- (a) _____, 20__ Defendant produces bates stamped administrative record to plaintiff.
 - (b) _____, 20__ Discovery cut off.
 - (c) _____, 20__ Deadline for motion to supplement the administrative record.
 - (d) _____, 20__ Defendant submits copy of the administrative record to the Court.
 - (e) _____, 20__ Plaintiff's opening brief on the merits.
 - (f) _____, 20__ Defendant's response brief on the merits.
 - (g) _____, 20__ Plaintiff's reply brief on the merits.
 - (h) _____, 20__ Joint Motion for Determination.

[Note: The parties should be prepared to have the case submitted to the Court no later than approximately one year after filing of the action.]

DATED this ___ day of _____, 20__.

BY THE COURT:

APPROVED.

[Plaintiff's Counsel]
[Address and Contact Information]

[Defendant's Counsel]
[Address and Contact Information]

ATTORNEYS FOR PLAINTIFF

ATTORNEYS FOR DEFENDANT
