**Courtroom 3B Procedures**

**Domestic Relations**

**jUDGE jUAN g. vILLASEÑOR**

**8th Judicial District**

**Larimer County**

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Rule 16.2 of the Colorado Rules of Civil Procedure governs all cases under Articles 10, 11, and 13 of Title 14 of the Colorado Revised Statutes. Colo. R. Civ. P. 16.2(a). The following procedures supplement case management of such cases or proceedings to ensure “the just, speedy, and inexpensive determination of every action” or proceeding. Colo. R. Civ. P. 1(a).

1. **Expedited Discovery Dispute Schedule**

The Court expects full compliance with the instructions contained herein. A “discovery dispute” means a disagreement encompassing any issues arising under Colo. R. Civ. P. 26, 30, 33, 34, 35, 36, 37, and 45.The Court is aware that in its assigned hearings few, if any, discovery disputes should remain outstanding. Other cases or proceedings may be assigned to the undersigned at a different stage. In any event, in any case or proceeding the parties shall follow the following procedures.

**The Court does not accept written disputed discovery motions.**

If a discovery dispute is not resolved, the moving party must complete the discovery dispute chart in the form attached hereto as Appendix A, with the most persuasive authority included. The moving party must send the chart, the disputed discovery at issue, the disputed responses to opposing counsel, and the parties’ conferral correspondence or emails to the Court’s Clerk at Jessica.Wichman@judicial.state.co.us. The parties are further directed to contact the Court’s Clerk at (970) 494-3610 if they wish to set a hearing on the dispute. **The parties shall submit the required materials no later than two days before the discovery dispute hearing and at least seven days before trial**.

The Court expects counsel to confer in a meaningful way in writing, and by telephone or in person to try to resolve any discovery dispute. An exchange of emails is not sufficient. If counsel cannot resolve the dispute, the Court will address all discovery disputes with a discovery hearing. The parties are directed to contact the Court’s Clerk at the number above if they wish to set a discovery hearing. **The parties may appear by telephone.**

With respect to written discovery, the Court frowns on “boilerplate” objections that fail to provide clear and precise explanations of the legal and factual justifications for the objections as well as a specific description of any information which may be available but is not being provided because of the objection. If a responding party claims to not understand a discovery request or the meaning of any term in a request, then that party shall within one business day seek clarification of the meaning from counsel who served the discovery. Failure to do so results in waiver of any objection based on the purported lack of understanding. Any response which does not provide the information or requested material but promises to do so in the future will be treated the same as no response unless the responding party provides a specific reason for not producing the information and a specific date when it will produce it.

1. **Motions Practice**

In general, Colo. R. Civ. P. 16.2(c)(4) governs motion practice in a domestic-relations action or proceeding. To ensure appropriate and active case management and the just, speedy, and inexpensive determination of all matters assigned to this Court, Colo. R. Civ. P. 16.2(b), the following deadlines shall apply to motions that this Court will determine. Regarding determination of motions under Colo. R. Civ. P. 121, § 1-15, the Court interprets the duty to confer as requiring moving parties to give non-moving parties at least one business day to respond before the moving party files the motion. The Court will deny without prejudice any motions filed that do not comport with this conferral requirement.

* 1. **Motions *In Limine***

Motions *in limine* are discouraged if the Court needs to hear evidence at trial to resolve them. If a party files a motion *in limine*, it is due **no later than seven days** before the trial.

* 1. **Procedures for Rule 702 (*Shreck* Motions)**

All Colo. R. Civ. P. 702 or *Shreck* motions must be filed **no later than seven days** before trial. Generally, the Court must perform its “gatekeeping” role of determining whether an expert’s testimony rests on reliable foundation. But in domestic-relations cases, because the Court is the finder of fact, that requirement is “relaxed.” *See, e.g.*, *David E. Watson, P.C. v. United States*, 668 F.3d 1008, 1015 (8th Cir. 2012) (quoting *United States v. Brown*, 415 F.3d 1257, 1269 (11th Cir. 2005)) (“When the district court sits as the finder of fact, ‘[t]here is less need for the gatekeeper to keep the gate when the gatekeeper is keeping the gate only for himself.’”) The Court generally takes a dim view of Colo. R. Evid. 702 challenges to an expert’s qualifications. A party objecting to the admissibility of opinion testimony by an expert witness shall file a written motion (a “*Shreck* motion”) seeking its exclusion. (The failure of an opponent to file such a motion, however, does not relieve the proponent of its burden to show that the proffered testimony is admissible at trial.)

1. Content.

Motions filed under Colo. R. Evid. 702 must comply with the following requirements:

(i) identify the expert witness and separately state each opinion/testimony the moving party seeks to exclude;

(ii) follow each opinion/testimony with the specific foundational challenge made to the opinion/testimony, e.g., relevancy, sufficiency of facts and data, methodology. Colo. R. Evid. 702 and 703; and

(iii) indicate whether an evidentiary hearing is requested, explain why such a hearing is necessary, and specify the time needed for the evidentiary hearing (assuming time is divided equally between the parties).

2. Hearing.

Upon filing a motion, the Court in its discretion may set a hearing to determine the admissibility of the challenged opinions under the Colorado Rules of Evidence. The expert witness whose testimony or opinion is offered shall be present at the hearing unless the Court states otherwise.

1. **pretrial conference**

***Unless the pretrial conference has occurred prior to the date of this order, or as otherwise Ordered by the Court -*** Pursuant to Colo. R. Civ. P. 16.2(h), the parties must file the joint trial management certificate (“JTMC”) no later than seven days before the pretrial conference which shall include: (a) a list of each party’s witnesses and exhibits; (b) all stipulations or agreements; (c) all disputed issues, and (d) citation to legal authority, including a brief summary thereof. Unless listed in the JTMC, issues, witnesses and exhibits will not be considered at the hearing, absent good cause. If a JTMC is not timely filed, the permanent orders hearing may be continued. The JTMC will constitute the parties’ opening statements, unless the Court orders otherwise. If property allocation is at issue, the JTMC must also include a separate Joint Spreadsheet as described below which constitutes additional stipulations of the parties and disputed issues, as to property allocation.

The parties shall provide to the Court an **editable joint excel spreadsheet** detailing, with particularity, (1) in the first column to the left, all assets and debts at issue; then with Petitioner’s columns next moving right on the page, followed by Respondent’s columns; (2) reference to the specific portion of the record supporting the value; (3) titled (e.g. Joint, Husband, Wife); (4) Net value; (5) the non-marital value of the property; and (6) proposed disposition. The parties shall use the Court-provided editable excel spreadsheet available at <https://www.courts.state.co.us/Courts/District/Local_Resources.cfm?District_ID=8>. The parties are free to add or delete categories in the spreadsheet as appropriate.

If an asset or debt is not included in the parties’ spreadsheets, the Court may not consider it and/or the permanent order hearing may be continued. The entire line concerning the Spreadsheet must **highlight in red font** any listed item which is in dispute.

The representations made in the JTMC are binding on the parties.

The parties’ signature on the JTMC is considered a request under Colo. R. Civ. P. 16.2(i)(1) and Colo. Rev. Stat. § 13-22-301 *et seq.* to engage in a settlement conference before the permanent orders hearing with a judge of the Court (not necessarily the undersigned).

***Each issue raised by a party should have a citation to legal authority in support of the parties’ position.***

1. **Permanent orders/EVIDENTIARY hearing**
2. Telephone testimony will generally be allowed upon motion, especially if noted in the JTMC.
3. Reports of experts including reports of a CFI or a PRE are admissible. A party may subpoena the Expert for cross-examination purposes, with expanded re-direct examination allowed. Expert’s Reports must be filed with the Court by the pretrial conference.
4. Children will not be allowed in the courtroom, called as witnesses, or interviewed in camera except under extraordinary circumstances, and then only upon Motion made prior to the pretrial conference and noted in the JTMC. Child statements to a CFI/PRE are generally admissible under Colo. R. Evid. Rule 703.
5. The parties must update Colo. R. Civ. P. 16.2 disclosures, which are more than sixty (60) days old, no later than the pretrial conference, or if the conference is was held before the date of this order, then such updates are due no more than 4 business days prior to the permanent orders hearing.
6. The parties must provide audio-visual equipment, if necessary.
7. **Witnesses & Exhibits**

**The parties shall confer by telephone, but preferably face-to-face, no later than 7 days before the JTMC is due** **to exchange and discuss witnesses and exhibits; except *pro se* parties subject to a no-contact order or who allege domestic violence, in which case the Court should be so advised at the pretrial conference.**

**The parties are ordered to confer regarding the admissibility of their respective exhibits and to stipulate to as many exhibits as practicable before the hearing.** If any party objects to any exhibit offered, the objecting party shall file an “objected exhibit list” indicating each objected exhibit along with the ground for such objection. (For example, Exhibit 1, Rule 402 and 802.) (*see* **Appendix B**). Parties shall limit objections solely to those that go to the heart of the exhibit in question. An objection not so made—except for one under Colo. R. Evid. 402 or 403—is waived unless excused by the court for good cause. Unless the court orders otherwise, the objected exhibit lists must be filed with the Court **no later than** **seven days** before trial.

If the admissibility of all exhibits are stipulated, the parties shall submit one (1) original exhibit notebook for the witnesses, with copies for each counsel and the Court. A single exhibit list will be provided by the Petitioner to the Court and counsel with all exhibits numbered.

If the admissibility of all exhibits are not stipulated, each party shall submit a separate notebook of original exhibits (with copies for counsel and the Court) and a separate exhibit list, noting which exhibits are stipulated. No exhibits will actually be admitted into evidence unless they are offered in evidence. These exhibits will be numbered/lettered and tabbed in the notebooks. Petitioner's exhibits will be numbered. Respondent's exhibits will be lettered.

At the conclusion of the hearing, each party shall file with the Court ONLY the admitted and tendered exhibits.

1. **Miscellaneous**
2. **Font and Format of Papers**

The Court expects all papers filed with the Court be in Garamond 12-point font and double-spaced, for text and headings. Parties shall use 1” margins with a 0.5” indentation for the first line. The parties are also required to use bluebook citation form (e.g., Colo. R. Civ. P. & Colo. Rev. Stat., NOT C.R.C.P. & C.R.S.).

1. **APPENDICES**

**Appendix A**

**Sample Written Discovery Dispute Chart[[1]](#footnote-1)**

**Submitted by (Plaintiff/Defendant)**

**Case No: 00-cv-00001**

|  |  |  |
| --- | --- | --- |
| **No./Type of Discovery Request** | **Disputed Response(s) or Objection(s)** | **Problem With Response** |
| Plaintiff’s Rog No. 2 | 1. Overbroad and burdensome; [*Leidholt v. District Court*, 619 P.2d 768 (Colo. 1980)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1980148053&pubNum=0000661&originatingDoc=I36b4e4bbc4cf11dab68c8a944ecb97eb&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) | Information sought is limited in scope. [*Val Vu, Inc. v. Lacey*, 31 Colo. App. 55, 497 P.2d 723 (1972)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1972124335&pubNum=0000661&originatingDoc=I36b4e4bbc4cf11dab68c8a944ecb97eb&refType=RP&originationContext=document&transitionType=DocumentItem&contextData=(sc.Search)) |
| Plaintiff’s RFP No. 8 | 1. Attorney-client privilege; *National Farmers Union Property and Cas. Co. v. District Court For City and County of Denver*, 1986, 718 P.2d 1044 2. Not relevant; *Martinelli v. District Court In and For City and County of Denver*, 1980, 612 P.2d 1083; 3. Vague and ambiguous | Reasonably calculated to lead to discovery of admissible evidence. *Silva v. Basin Western, Inc.*, 2002, 47 P.3d 1184 Information sought is reasonably defined and scope is limited. *Curtis, Inc. v. District Court In and For City and County of Denver*, 1974, 526 P.2d 1335 |

**Appendix B**

**Sample Exhibit List**

**Case No: 00-cv-00001**

|  |  |  |
| --- | --- | --- |
| **Ex.** | **Description** | **Obj.** |
| 1 | Bill of sale of truck | Relevance |
| 2 | Plaintiff’s medical and billing records – Valley Valley EMS | Relevance, prejudice. |
| 3 | Google Map Aerial Photograph of Incident Scene |  |
| 4 | Google Map Aerial photo of the world | Hearsay |

1. Acceptable abbreviations include “Rog” for Interrogatory, “RFP” for Request for Production; “RFA” for Request for Admission; “SDT” for Subpoena Duces Tecum. [↑](#footnote-ref-1)