

COURTROOM 3B CIVIL PROCEDURES

**JUDGE JUAN G. VILLASEÑOR
8TH JUDICIAL DISTRICT
LARIMER COUNTY**

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I. CASE MANAGEMENT

A. Procedures for Colo. R. Civ. P. 16 Case Management

The Court expects full compliance with the instructions contained herein. Once all parties have been served and have either appeared or defaulted, the Court will declare the case to be at issue.

Counsel and any parties who are self-represented must meaningfully confer as contemplated by Colo. R. Civ. P. 16(b)(3) within 14 days. The Responsible Attorney must contact the Court's Division Clerk, Jessica Wichman, at (970) 494-3610 within 14 days from the date of the "At Issue" order to schedule the case management conference. The Court holds Case Management Conferences Tuesdays and Thursdays at 9:00 a.m. If you have any questions please contact the Court's Division Clerk, Jessica Wichman, at the above number.

The Responsible Attorney must schedule the case management conference to take place between 35 and 49 days from the date of the "At Issue" order. Both Colo. R. Civ. P. 16(d) and this Court require the conference to be **in person**. Absent a motion and good cause shown, the Court will not waive this requirement.

A proposed Case Management Order is due no later than 42 days from the date of the "At Issue" order or at least 7 days prior to the Conference. Please use JDF 622.

Use actual calendar dates for deadlines as the Court will not generally set trial at the Conference.

Regarding ¶ 6, the Parties **must** address: 1) the importance of the issues at stake; 2) the amount in controversy; 3) the parties' relative access to relevant information; 4) the parties' resources; 5) the importance of the discovery in resolving the issues; and 6) whether the burden or expense of the proposed discovery outweighs the benefit. *See* Colo. R. Civ. P. 16(b)(6), and 26(b)(1).

Regarding ¶ 7, the Parties **must** address: 1) that settlement was discussed; 2) the prospects

for settlements; and 3) list a proposed deadline for mediation or other alternative dispute resolution.

For most case types, the Court does not set a trial date until after alternative dispute resolution has been completed. The Parties may request that ADR be waived or that the case be set for trial prior to ADR because of the specific needs of their case; however, good cause must be shown for the request.

Regarding paragraph #14 of JDF 622: **The Court does not accept written disputed discovery motions.** The Parties must comply with the Court's Discovery Dispute Procedures set forth in Section I.C, *infra*.

At any time during the pendency of the case, any party may request additional case management conferences including brief telephonic conferences if needed.

The Court orders discovery to commence immediately from the date of the “At Issue” order.

Please note the 2015 Comment to Colo. R. Civ. P. 12: “The practice of pleading every affirmative defense listed in Rule 8(c), irrespective of a factual basis for the defense, is improper under [Colo. R. Civ. P.] 11(a)....” To the extent that Colo. R. Civ. P. 12 was not followed in this case, any affirmative defenses must be re-pled with a factual basis.

Regarding motions practice, parties must comply with the requirements set forth in Colo. R. Civ. P. 121, § 1-15, together with the requirements set forth in Section III of this document.

If the parties settle the case after trial has been set, the Court will not vacate the trial until the parties have filed a stipulation to dismiss the case with prejudice. Parties must seek a Court order to modify any deadline or order. A stipulation is not binding on the Court.

B. Procedures for Colo. R. Civ. P. 16.1 Case Management

Colo. R. Civ. P. 16.1, and those portions of Colo. R. Civ. P. 16 made applicable by Colo. R. Civ. P. 16.1, govern this case except as modified herein. The Court expects full compliance with its

“At Issue” Order and any other orders subsequently entered in this case. Failure to fully and timely comply with such orders, or to adequately explain said failure in writing by the date required for compliance, may result in the issuance of a show cause order without further notice. The order will require the personal appearances of attorneys of record and pro se parties at the show cause hearing.

1. At Issue Date.

Once all parties have been served and either have appeared or defaulted, the Court will declare this case to be at issue pursuant to Colo. R. Civ. P.16(b)(1) and 16.1(f).

2. Mandatory Conference.

Counsel and any parties who are pro se must confer as required by Colo. R. Civ. P. 16(b)(3). If that conference has not already occurred it must be completed no later than 14 days from the date of the “At Issue” Order.

3. Trial Setting.

This Court does not set cases for trial within 42 days after the case is at issue. Colo. R. Civ. P. 16.1(g) permits the Court to “otherwise order” as to trial setting procedures. The reason this judicial district does not set trials this early in the case is to ultimately allow better access to the courts for those cases likely to require a trial and to most efficiently utilize limited judicial resources. Accordingly, do not notice the case in for trial setting within 42 days from the at issue date. Absent extraordinary circumstances, the Court will set the case for trial only after completion of non-expert discovery and alternative dispute resolution (“ADR”). In your certificate of compliance or stipulated modified case management order, indicate as realistically and accurately as possible when the parties believe the case should be tried. Additionally, provide the plan for mediation/ADR and a proposed deadline for mediation/ADR.

4. Certificate of Compliance.

The certificate of compliance required by Colo. R. Civ. P. 16.1(h) must be timely filed within

49 days of the at issue date declared above. The certificate must state compliance with all requirements of Colo. R. Civ. P. 16.1(f). Compliance with Colo. R. Civ. P. 16.1(g) is obviously not possible based on the provisions of paragraph 3 above. The Court expects the certificate to be complete and accurate setting forth **specific calendar date deadlines** so that the Court can determine the status of the case. This includes [Rule 16.1-\(k\)\(2\)](#) and (3) deadlines.

5. Case Management Conference.

The Court is very willing to conduct a case management conference as contemplated by Colo. R. Civ. P. 16.1(j) either by personal appearance or by telephone. Initial Case Management Conferences will generally be set for a Tuesday or Thursday at 9:00 a.m. The parties are directed to contact the Court's Division Clerk, Jessica Wichman, at (970) 494-3610 if they wish to set a case management conference. If counsel and/or parties anticipate that the case management conference will require more than 15 minutes, please inform the clerk so that it may be set appropriately.

Further, please include information regarding any parties in interest who have limited English proficiency so that advanced arrangements for interpretation can be made for court proceedings. Please include the party's primary spoken language, including the origin of the language (i.e., region of the world) in order to better identify the dialect of language.

6. Discovery.

The Court permits limited discovery under Colo. R. Civ. P. 16.1(k), to the extent allowed by Colo. R. Civ. P. 26(b)(1). Because discovery is limited, it is particularly important that parties honor the requirements and spirit of full disclosure. The Parties must comply with the Court's Discovery Dispute Procedures set forth in Section I.C, *infra*.

7. Motions.

Regarding motions practice, parties must comply with the requirements set forth in Colo. R. Civ. P. 121, § 1-15, together with the requirements set forth in Section III of this document.

C. Discovery Dispute Procedures

The Court does not accept written disputed discovery motions. A “discovery dispute” means a disagreement encompassing any issues arising under Colo. R. Civ. P. [16](#), [16.1](#), 26, 30, [31](#), 33, 34, 35, 36, 37, and 45.

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 following items to the Court’s Clerk at Jessica.Wichman@judicial.state.co.us: the dispute chart, the disputed discovery at issue, the disputed responses of opposing counsel, and the parties’ substantive conferral correspondence about the dispute (or a summary of such correspondence if not in writing). The parties are further directed to contact the Court’s Clerk at the number above if they wish to set a hearing on the dispute. **The parties must submit the required materials at least seven days before the hearing.**

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 an **in-person** discovery hearing, the parties may seek leave of the Court to appear by telephone. The parties are directed to contact the Court’s Clerk at the number above if they wish to set a discovery hearing.

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 must within 14 days 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.

Parties must resolve disputes regarding subpoenas in the same manner as set forth above for written discovery.

With respect to depositions, the Court will not intervene in an ongoing deposition via telephone to resolve disputes; rather, counsel must resolve such disputes in the same manner described above for discovery disputes. Counsel are expected to adhere strictly to Colo. R. Civ. P. 30(d)(1) and (3) and must refrain from “speaking objections,” excessive objections designed to disrupt the flow of questioning, advising a witness to answer “if you know” or “if you remember” or “not to speculate,” asking for clarification of a question, or conferring with a witness while questions are pending or documents are being reviewed unless authorized under Colo. R. Civ. P. 30(d). Depositions for persons other than retained experts are limited to one day for six hours, unless otherwise provided by the Court. Colo. R. Civ. P. 30(d)(2)(A).

II. DUTY TO CONFER

Colo. R. Civ. P. 121 § 1-15(8) states that “[m]oving counsel shall confer with opposing counsel before filing a motion.” The Court now provides the parties with its interpretation of this rule, so that the parties have a clearer understanding of their duties in the event they file motions with the Court.

Rule 121 § 1-15(8) requires the parties to identify and attempt to resolve emerging issues before engaging in motions practice. In the Court’s view, the duty to confer, made applicable by the Colorado Rules of Civil Procedure, this Courtroom 3B Procedures document, or other order, requires counsel to confer in good faith either by telephone, in person, email, or in writing with any party who might potentially oppose the relief requested. One email or call, for example, is

insufficient to comply with the rule. The Court expects the parties to have made (or at least attempted) follow-ups in their conferral. (E.g., a voicemail followed by a telephone call or voicemail).

In further interpreting the first sentence of Rule 121 § 1-15(8) above, the Court reads the word “shall” as creating a mandatory requirement.¹ Accordingly, before filing a motion, the Court expects the moving party to confer with any potentially opposing party, as detailed above. “If no conference has occurred, the reason why shall be stated.” *Id.* The Court expects the reason for the non-conferral to be explained in substantive detail, and to fall within the realm of an unusual occurrence. On one end of the spectrum, it will not be acceptable for the moving party to make one phone call, leave a voicemail requesting conferral, and then submit a corresponding motion shortly thereafter. On the other hand, the Court will not require a moving party to be hamstrung by an opposing party after numerous attempts to confer, who left messages, but nevertheless received no return communication in a timely fashion. The Court evaluates whether parties have satisfied the duty to confer on a case-by-case basis.

The Court also reads Rule 121 § 1-15(8) as applying to *pro se* parties in the same manner as it applies to any attorney entering an appearance before the Court.

¹ Finds District Court Judge Frederick Gannett’s interpretation of the conferral requirement persuasive and attributes the following discussion to him.

III. MOTIONS PRACTICE

Regarding determination of motions pursuant to 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 two business days 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.

A. 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 35 days before the trial. Colo. R. Civ. P. 16(c) (For motions to exclude expert witness testimony, *see* Section II.D., *infra*. Rule 702 Motions must be filed no later than 70 days before the trial. Colo. R. Civ. P. 16(c)).

A party who files exhibits in support of, or in opposition to, a motion *in limine* must comply with the exhibit requirements under § III.D(2) below.

B. Motions to Amend or Supplement Pleadings

A party who files an opposed motion for leave to amend or supplement a pleading must attach as an exhibit a copy of the proposed amended or supplemental pleading which strikes through (e.g., ~~strikes through~~) the text to be deleted and underlines (e.g., underlines) the text to be added. The proposed amended or supplemental pleading must not incorporate by reference any part of the preceding pleading, including exhibits. If a motion for leave to amend or supplement a pleading is granted, the moving party must file and serve the amended or supplemental pleading on all parties under Colo. R. Civ. P. 5 no later than 14 days after the filing of the order granting leave to amend or supplement.

A party who files exhibits in support of, or in opposition to, a motion to amend must comply with the exhibit requirements under § III.D(2) below.

**C. Procedures for Motions to dismiss
pursuant to Colo. R. Civ. P. 12(b).**

Motions to dismiss under Colo. R. Civ. P. 12(b) are discouraged if the defect may be resolved by the filing of an amended pleading. Counsel are expected to confer prior to filing such motions to determine whether such defect may be cured by amendment, and should exercise best efforts to stipulate to appropriate amendments. **If the motion is nonetheless filed, the movant must include a statement describing efforts to comply with the above expectation.** The requirement to confer must not apply in cases where the nonmovant is proceeding *pro se*.

1. Single Motion Permitted.

These procedures contemplate the filing of a single motion to dismiss per side. A party must **not** file multiple motions to dismiss without leave of the Court, which will be given only in exceptional circumstances. All motions to dismiss must state in the caption or in the opening paragraph under which rule or subsection the motion is filed. Motions must be limited to 15 double-spaced pages. The case caption, signature block, certificate of service, and attachments won't count toward the page limit. Motions that exceed the page limitation will be stricken with leave to refile.

A party who files exhibits in support of, or in opposition to, a motion to dismiss under Colo. R. Civ. P. 12 must comply with the exhibit requirements under § III.D(2) below.

2. Colo. R. Civ. P. 12(b)(1)-(4).

Motions brought pursuant to Colo. R. Civ. P. 12(b)(1)–(4) must identify: (a) the grounds for dismissal; (b) which party has the burden of proof; (c) the material facts; and (d) whether materials outside the pleadings should be considered.

3. Colo. R. Civ. P. 12(b)(5).

With respect to motions brought pursuant to Colo. R. Civ. P. 12(b)(5):

(i) For each claim for relief that the movant seeks to have dismissed, the movant must identify which party has the burden of proof and identify each element that must be alleged, but was not.

(ii) The respondent should utilize the same format for each challenged claim. If the respondent disputes that a particular element must be alleged, the element should be identified as “disputed” and substantiated with accompanying legal argument. If the respondent contends that a proper and sufficient factual allegation has been made in the complaint, the respondent should specifically identify the page and paragraph containing the required factual allegation.

D. Procedures for Motions for Summary Judgment, Responses, and Replies.

1. Single Motion Permitted, Page Limits, and Exhibits.

These procedures contemplate the filing of a single motion for summary judgment by a party. A party must **not** file multiple motions for summary judgment without leave of the Court, which will be given only in exceptional circumstances. The sections of a motion/response/reply discussed below that address *facts* won’t count toward the page limit in Colo. R. Civ. P. 121 § 1-15(1)(a). The case caption, signature block, certificate of service, and attachments won’t count toward the page limit either. Motions that exceed the page limitation will be stricken with leave to refile.

2. Exhibits.

Exhibits attached to a motion for summary judgment, a response in opposition, or in reply must follow the following format. Defendant must label his/her/its exhibits by letters: A, B, C...Z, AA, BB, etc. Plaintiff must designate his/her/its exhibits by numbers: 1, 2, 3, 4, etc.

When filing any exhibits in support of, or opposition to, a motion, the party must label the exhibit and include its title so that the description appears in the register of actions. For example: “Ex. A, John Smith Decl.” “Ex. 3, Sales Contract.” “Ex. F, Plaintiff Depo.” It is extremely

important that the parties comply with this requirement, which ensures that the Court may promptly identify an exhibit referred to in the pleading.

3. Motion Format.

Facts Section. The moving party must use the following format: the movant must create a section of the motion titled “Statement of Undisputed Material Facts,” and must set forth in simple, declarative sentences, separately numbered and paragraphed, each material fact which the movant believes is not in dispute and which supports movant's claim that movant is entitled to judgment as a matter of law. To the greatest extent possible, the movant must avoid adding unnecessary adjectives or adverbs to his or her material facts. In general, the Court finds such descriptors vague and unhelpful to adjudicate summary-judgment motions.

Each separately numbered and paragraphed fact must be accompanied by a specific reference to material in the record which establishes that fact. General references to pleadings, depositions, or documents are insufficient if the document is over one page in length. A “specific reference” means the title of the document (“Exhibit A, Pl. Depo.,” e.g.) and a specific paragraph or page and line number; or, if the document is attached to the motion, the paragraph or page and line number.

Legal Argument Section. For each claim for relief or defense as to which judgment is requested, the motion must: (a) identify which party has the burden of proof; (b) identify each element that must be proved; (c) for each identified element, identify the material, undisputed facts that prove that element and the pinpoint location in the filed record; or (d) if the respondent has the burden of proof, identify the elements which the movant contends the respondent cannot prove (with reference to the record).

4. Response Format.

Facts Section. Any party opposing the motion for summary judgment must create a section of the response titled “Response to Statement of Undisputed Material Facts,” and must respond by deeming the facts “undisputed,” “disputed,” or “undisputed for purposes of summary judgment.” Each response must be made in separate paragraphs numbered to correspond to movant’s paragraph numbering. A “disputed” response must address the fact as tendered by the movant, not a fact that the non-movant wishes had been tendered. Proper responses to a “disputed” fact should be limited to an argument that (1) the particular parts of materials in the record don’t establish the absence or presence of a genuine dispute; or (2) the movant can’t produce admissible evidence to support the fact. The response must be accompanied by a brief factual explanation to support the dispute.

If the non-movant fails to properly address the other party’s assertion of fact as required here, the Court generally will consider the fact undisputed for purposes of the motion. The Court also may, in its discretion, give that party an opportunity to properly support or address the fact.

If the party opposing the motion believes that there are additional disputed (or undisputed) facts which it has not adequately addressed in the submissions made in the facts section, the party must create a separate section of the response titled “Statement of Additional Disputed (or Undisputed) Facts,” and must set forth in simple, declarative sentences, separately numbered and paragraphed, each additional, material undisputed/disputed fact which undercuts movant’s claim that it is entitled to judgment as a matter of law. Each separately numbered and paragraphed fact must be accompanied by a specific reference to material in the record which establishes the fact or at least demonstrates that it is disputed/undisputed.

Legal Argument Section. The response must utilize the same format for each claim/defense as set forth above: (a) if the respondent disputes the statement of the burden of proof

on necessary elements, it must identify the element as disputed and must provide supporting legal authority. (b) If the movant has the burden of proof, the respondent must identify all elements for which there are disputed material facts, as well as provide a brief explanation of the reason(s) for the dispute and specific references to supportive evidence in the record appendix. Stipulation to facts not reasonably in dispute is highly encouraged. (c) If the respondent has the burden of proof, for each element identified by the movant as lacking proof, the respondent should identify the facts and their location in the record that establish that element.

5. Reply Format.

Facts Section. At the beginning of the reply, the movant must list the facts that are undisputed and disputed by their respective paragraph number.

The movant must create a section titled “Reply Concerning Undisputed Facts,” and must include any **factual** reply regarding the facts asserted in its motion to be undisputed, supported by specific references to material in the record. The reply will be made in separate paragraphs numbered according to the motion and the opposing party’s response.

The movant must create a section titled “Response Concerning Disputed Facts”, to respond to those facts claims to be in dispute), either admit that the fact is disputed or supply a brief factual explanation for its position that the fact is undisputed, accompanied by a specific reference to material in the record which establishes that the fact is undisputed. The movant’s response to undisputed fact must be done in paragraphs numbered to correspond with the opposing party’s paragraph numbering.

Legal Argument Section. The movant must respond to the legal arguments made by the respondent and must not raise new issues.

(11) Legal argument is not permitted in the factual sections of the motion/response/reply and should be reserved for the legal sections of the documents. If, for example, a party believes that

an established fact is immaterial, that argument must go in the legal argument section, and the fact should be admitted. If, on the other hand, a party believes that the reference to material in the record does not support the claimed fact, that fact may be disputed accompanied with a brief *factual* argument made under these procedures.

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

Generally, the Court must perform its “gatekeeping” function of determining whether an expert’s testimony rests on reliable foundation, is relevant, and is helpful *to the jury*. *People v. Shreck*, 22 P.3d 68, 77 (Colo. 2001). But in a trial to the Court, because the Court *is* the finder of fact, that requirement is “relaxed.” *See People v. Wilson*, 318 P.3d 538, 544 (Colo. App. 2013) (“Although the requirements found in [Colo. R. Evid.] 702 and *Shreck* apply to bench trials, the predominant concern—that ‘junk science’ will taint a jury—is not at issue when the finder of fact is a judge.”); *see also 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.”); *Deal v. Hamilton Cnty. Bd. of Educ.*, 392 F.3d 840, 852 (6th Cir. 2004) (“The ‘gatekeeper’ doctrine was designed to protect juries and is largely irrelevant in the context of a bench trial.”).

The Court also 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 must 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.)

Assuming the Court allows the expert to testify as to her opinions at trial, the Court generally won’t tell a jury that a witness is an expert (or an expert in a particular field) because doing

so risks misleading the jury with a seal of imprimatur that shouldn't be placed on such a witness. The Court finds persuasive the observations in the Advisory Committee Notes of Federal Rule of Evidence 702:

The use of the term 'expert' in the Rule does not, however, mean that a jury should actually be informed that a qualified witness is testifying as an 'expert.' Indeed, there is much to be said for a practice that prohibits the use of the term 'expert' by both the parties and the court at trial. Such a practice 'ensures that trial courts do not inadvertently put their stamp of authority' on a witness's opinion, and protects against the jury's being 'overwhelmed by the so-called "experts."'

Fed. R. Evid. 702, Advisory Comm. Notes (quoting Hon. Charles Richey, *Proposals to Eliminate the Prejudicial Effect of the Use of the Word "Expert" Under the Federal Rules of Evidence in Criminal and Civil Jury Trials*, 154 F.R.D. 537, 559 (1994)). See also *Forma Sci., Inc. v. BioSera, Inc.*, 960 P.2d 108, 117 (Colo. 1998) ("Although the federal rules of evidence, unlike the Colorado rules, are legislatively enacted, the comments following both sets of rules are equally authoritative.").

1. Content.

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

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

(2) 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

(3) 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)

(4) A party who files exhibits in support of, or in opposition to, a Rule 702 motion must comply with the exhibit requirements under § III.D(2) above.

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 must be present at the hearing unless the Court states otherwise.

F. Motions for Attorney's Fees

Movants bear the burden of proof to prove their entitlement to reasonable attorney's fees. *Remote Switch Sys., Inc. v. Delangis*, 126 P.3d 269, 275 (Colo. App. 2005). To the extent a party seeks attorney's fees under Colo. Rev. Stat. § 13-17-102, the movant must demonstrate how: (1) the action lacked substantial justification; (2) the action was interposed for delay or harassment; or (3) the proceeding was unnecessarily expanded by improper conduct. Colo. Rev. Stat. § 13-17-102(4)

The Movant must file in Excel or in Excel-readable format the ledger of time spent prosecuting or defending the action. The ledger must contain five columns: date, description, lawyer, time, amount. The "time" column must include the time in decimals (0.3, 1.5, e.g.).

A party who files exhibits in support of, or in opposition to, a motion for attorney's fees must comply with the exhibit requirements under § III.D(2) above.

IV. TRIALS

A. Form of Trial Management Order

The Court expects full compliance with its trial management order and other requirements set forth in Colo. R. Civ. P. 16 and 26.

Counsel and any *pro se* parties are directed to meet in advance of the pretrial conference and jointly to develop the contents of the trial management order, which must be presented for the Court's approval **no later seven days before the pretrial conference**. The conference must be

attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

1. Claims & Defenses.

Summarize the claims and defenses of all parties, including the respective versions of the facts and legal theories. Do not copy the pleadings. Eliminate claims and defenses which are unnecessary, unsupported, or no longer asserted.

2. Stipulations.

Set forth all stipulations concerning facts, evidence, and the applicability of statutes, regulations, rules, ordinances, etc. which the Court must accept as undisputed. Number each fact, etc. separately. For jury trials, undisputed facts must be submitted as provided in Colo. R. Civ. P. 16(g). Counsel are expected to confer and should exercise best efforts to stipulate to as many facts as possible.

3. Pretrial Motions.

List any pending motions to be decided before trial, giving the filing date and the filing date of any briefs in support or opposition. Include any motions on which the Court expressly has postponed ruling until trial on the merits. If there are no pending motions, please state "None."

4. Trial Briefs.

Trial briefs are not required, absent a specific Court order. If requested by the parties, include a schedule for their filing. Trial briefs must not exceed 10 pages double-spaced, and must be filed no later than 14 days before the trial. The trial brief may not be used as a substitute for a motion.

5. Itemization of Damages or Other Relief Sought.

Each claiming party must set forth a detailed description of damages or other relief sought and a computation of any economic damages claimed.

6. Identification of Witnesses & Exhibits.

Each party must provide the following information:

a. Witnesses.

The parties must submit a joint witness list, including the following:

I. List the nonexpert witnesses to be called by each party. List separately:

- (1) witnesses who will be present at trial (see Colo. R. Civ. P. 16(f)(3)(VI)(A));
- (2) witnesses who may be present at trial if the need arises (see Colo. R. Civ. P. 16(f)(3)(VI)(A)); and
- (3) witnesses whose testimony is expected to be presented by means of a deposition and, if not taken steno graphically, a transcript of the pertinent portions of the deposition testimony.

Any witness listed as “will call” by a party must be available to testify at trial if called by *any* party, without the necessity of a subpoena.

II. List the expert witnesses to be called by each party including whether the opposing party accepts or challenges the qualifications of a witness to testify as an expert as to the opinions expressed.

List separately:

- (1) witnesses who will be present at trial (see Colo. R. Civ. P. 16(f)(3)(VI)(A));
- (2) witnesses who may be present at trial (see Colo. R. Civ. P. 16(f)(3)(VI)(A)); and
- (3) witnesses whose testimony is expected to be presented by means of a deposition and, if not taken steno graphically, a transcript of the pertinent portions of the deposition testimony.

With each witness’ name in either (6)(a)(I) or (II) above, the parties must set forth (1) the witness’ address and telephone number, (2) a short statement as to the nature and

purpose of the witness' testimony, (3) whether he or she is expected to testify in person or by deposition, and (4) anticipated length of testimony, including cross examination.

b. Exhibits.

The parties must submit a joint exhibit list in the table included herein. Exhibits must be identified by number. The table must list the exhibits to be offered by each party and identify those to be stipulated into evidence (*see* **Appendix B** for a sample table). This table should be specific enough so that other parties and the Court can understand, merely by referring to the list, each separate exhibit which will be offered. General references such as "all deposition exhibits "or" all documents produced during discovery" are unacceptable.

The parties are ordered to confer regarding the admissibility of their respective exhibits and to stipulate to as many exhibits as practicable. If any party objects to any exhibit offered, such objection must be noted on the table, along with the ground for such objection. (For example, Exhibit 1, Rule 402 and 802.) (*see* **Appendix B**). Parties must limit objections solely to those that go to the heart of the exhibit in question.

Unless the court orders otherwise, the exhibit disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party must serve and promptly file a list of objections, together with the grounds for them, that may be made to the admissibility of any exhibits. 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.

7. Trial Efficiencies.

Parties must confer on and must include their positions and reasons regarding the time requested for juror examination if there is disagreement. Parties must also state:

- a. whether trial is to the Court or a jury or both;
- b. estimated trial time; and

c. any other orders pertinent to the trial proceedings.

8. Discovery.

Discovery has been completed. [Or discovery will be completed ____.]

9. Special Issues.

List any unusual issues of law which the Court may wish to consider before trial. If none, please state, "None."

10. Settlement.

Include a certification by the undersigned counsel for the parties and any *pro se* party that:

- a. Counsel for the parties and any *pro se* party met (*in person*) (*by telephone*) on _____, 20____, to discuss in good faith the settlement of the case.
- b. The participants in the settlement conference, included counsel, party representatives, and any *pro se* party.
- c. The parties were promptly informed of all offers of settlement.
- d. Counsel for the parties and any *pro se* party (*do*) (*do not*) intend to hold future settlement conferences.
- e. It appears from the discussion by all counsel and any *pro se* party that there is [*select one*]:
 - (a good possibility of settlement.)
 - (some possibility of settlement.)
 - (little possibility of settlement.)
 - (no possibility of settlement.)

If the parties settle the case before trial, Court will not vacate the trial until the parties have filed a stipulation to dismiss the case with prejudice. Parties must seek a Court order to modify any deadline or order. A stipulation is not binding on the Court.

11. Effect of Trial Management Order.

Hereafter, this Trial Management Order will control the subsequent course of this action and the trial and may not be modified except by demonstration that the modification or divergence could not have been anticipated with reasonable diligence. The pleadings will be deemed merged herein. This Trial Management Order supersedes the Case Management Order to the extent there is overlap, unless otherwise indicated. In the event of ambiguity in any provision of this Trial Management Order, the Court must interpret the Order in the manner which best advances the interests of justice.

12. Other Matters.

a. *Exhibit Notebooks*

Exhibits must be bound, e.g., in three-ring notebooks or folders, and the notebook or folder labeled with the following information: (i) case caption, (ii) nature of proceeding, (iii) scheduled date and time, and (iv) “original” or “copy.” If exhibits are not bound and labeled properly, the hearing or trial may be delayed or continued until they are. If a party has fewer than five exhibits, such exhibits need not be bound.

Number of Sets of Exhibits – For hearings and trials, each party must bring separate sets of bound exhibits for (a) the court, (b) the courtroom clerk, (c) the witness stand, and (d) the jury (one notebook, or per juror, as agreed to by the parties).

b. *Motions in limine.*

See Section II.A., *supra*.

B. Jury Instructions and Verdict Forms

The Court expects the parties to prepare thorough, thoughtful, and clear jury instructions because the Court devotes significant time and effort to review and craft proposed jury instructions. Counsel for the parties must confer to develop jointly proposed jury instructions and verdict forms to which the parties agree. **No later than 21 days** prior to the commencement of trial, the parties

must submit the joint proposed jury instructions and verdict forms with the Court. The party responsible for filing those documents is set forth in Colo. R. Civ. P. 16(g).

Please review the Stock Civil Jury Instructions document (uploaded to the Court's website), which contains stock instructions that the Court will give before closing arguments and don't include those instructions as part of the party's jury-instruction submissions. The Court contemplates three categories of jury instructions:

- (1) Stipulated Instructions:** those instructions about which the parties agree after conferral. There should be no duplication of stipulated instructions (or verdict forms).
- (2) Disputed Instructions:** those instructions about which all parties agree that an instruction is necessary, but disagree about the content of that instruction. To the extent a party agrees with part of the content (a paragraph, a sentence, etc.), the party's objections to that disputed instruction must so specify (e.g., paragraph 2 is stipulated, or sentence 3 of paragraph 1 is stipulated).
- (3) Non-Stipulated Instructions:** those instructions requested by a party (or parties) to which any other party objects, but does not request a competing instruction.

Each instruction or verdict form must have at the bottom of the page a brief statement of the legal authority on which the proposed instruction or verdict form is based. Further, at the bottom of each instruction (immediately preceding the legal authority), the instruction must be identified as "Stipulated," "Disputed," or "Non- Stipulated." Disputed and Non-Stipulated instructions must also identify the party tendering the instruction (e.g., "Plaintiff's Disputed Instruction").

A party objecting to a proposed jury instruction or verdict form (disputed or non-stipulated) must file brief objections to such jury instructions **no later than 14 days** before the trial. The

objections must be in a three-column table, with column one containing the disputed jury instruction identifying number (CJI: Civ. 3:10, e.g.), column two the description of the instruction (intervening cause, e.g.), and column three the brief objection to that instruction (with legal authority).

As noted above, the importance of clear and plain-language jury instructions can't be overstated. In terms of style and grammar, the parties must follow the following guidelines:

- Use the active voice and avoid the passive voice. For example, “Ms. Jones has to prove her claim of negligence by a preponderance of the evidence” is clear and concise. But telling the jury that “the affirmative defense of consent is proven when two elements are established” obscures the party who must prove that defense and is vague.
- When referring to this Court in the body of the instructions, always capitalize the word “Court.”
- Refer to the parties by name: Ms. Gomez, Mr. Jones, or Acme, Inc. Don't use “the plaintiff” or “the defendant.”

The Court will attempt to finalize the proposed instructions and provide them to the parties before the start of trial. If that's not possible, the Court will provide them during trial. At the charging conference, the Court will review the proposed final instructions and verdict forms and the parties will have an opportunity to request changes to the proposed instructions and verdict forms and to state their objections on the record.

C. Deposition Designations in Lieu of Testimony and Objections

To the extent the parties intend to designate any deposition testimony in lieu of live testimony, they must follow Colo. R. Civ. P. 32 together with the procedures contained within this subsection.

On or before 30 days from the date of the trial, counsel must exchange with each other their designation of anticipated deposition and videotape deposition testimony. (The parties must not file such initial designations.) Plaintiff's designations must be highlighted in yellow and Defendant's designations highlighted in blue. On or before 7 days following the exchange of designations, counsel must then make and exchange counter designations. On or before 7 days following the exchange of counter designations, counsel must exchange objections to all designated testimony and confer under Colo. R. Civ. P. 121 to make a good-faith attempt to resolve such objections. The conferral must occur via email and telephone, or in person.

If, after conferral, any objections to designated testimony remain, no later than seven days prior to trial, the parties must jointly file with the Court a single marked-up transcript of their respectively designated testimony, highlighted as set forth above. In addition, the parties must file their respective objections in a table that has four columns (see table below): (1) item number; (2) testimony (identified with specificity, i.e., by page(s) and line(s) of an accompanying transcript); (3) objection (by Rule or brief explanation); and (4) ruling.

Item	Testimony (by page and line numbers)	Objection (e.g., Rule 402, 403, 802, leading, etc.)	Ruling
1.			

If the parties' respective deposition designations are, in the aggregate, more than 100 pages, they must submit their designations to Chambers in hard copy form in a three-ring binder with the appropriate color highlighting, in addition to filing them with the Court.

The parties must solely file and provide to Chambers 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

to make an informed ruling. Objections may be resolved before trial to facilitate appropriate redactions, or during the morning of the first day of trial.

D. Proposed Findings of Fact and Conclusions of Law in Trials to the Court

In trials to the Court, the parties must file proposed findings of fact and conclusions of law **within 14 days** after the conclusion of the trial. Proposed findings must be supported by citation to an exhibit or a witness' testimony. There must be no page limitation for this submission.

V. MISCELLANEOUS

A. Font and Format of Papers

The Court prefers all papers filed with the Court to be in Garamond 12-point font and double-spaced, for text and headings. Parties must use 1” margins with a 0.5” indentation for the first line. Papers may be filed in other fonts as long as they’re in 12-point font and double-spaced with the above margins. 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.).

VI. APPENDICES

Appendix A

Sample Written Discovery Dispute Chart²

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 (Attach Rog Response.)	1. Overbroad and burdensome; <i>Leidbolt v. District Court</i> , 619 P.2d 768 (Colo. 1980)	Information sought is limited in scope. <i>Val Vu, Inc. v. Lacey</i> , 31 Colo. App. 55, 497 P.2d 723 (1972)
Plaintiff's RFP No. 8 (Attach Response to RFP.)	1. Attorney-client privilege; <i>National Farmers Union Property and Cas. Co. v. District Court For City and County of Denver</i> , 1986, 718 P.2d 1044 2. Not relevant; <i>Martinelli v. District Court In and For City and County of Denver</i> , 1980, 612 P.2d 1083; 3. Vague and ambiguous	Reasonably calculated to lead to discovery of admissible evidence. <i>Silva v. Basin Western, Inc.</i> , 2002, 47 P.3d 1184 Information sought is reasonably defined and scope is limited. <i>Curtis, Inc. v. District Court In and For City and County of Denver</i> , 1974, 526 P.2d 1335

² Acceptable abbreviations include "Rog" for Interrogatory, "RFP" for Request for Production; "RFA" for Request for Admission; "SDT" for Subpoena Duces Tecum.

Appendix B

Sample Joint Exhibit List

Case No: 00-cv-00001

Ex.	Description	Witness	Stipulated	Offered	Objection(s)	Admitted
1	Bill of sale of truck	Plaintiff	Yes	Def.	N/A	
2	Plaintiff's medical and billing records – Valley EMS	Valley EMS custodian of records	No	Pl.	Relevance, prejudice.	
3	Google Map Aerial Photograph of Incident Scene	Police officer	Yes		N/A	
4	Investigator's Traffic Accident Report (Diagram & Narrative)	Investigator Jones	No			
5	Defendant's statement	Defendant	No		Hearsay	