Civil Access Pilot Project

Applicable to Business and Medical Negligence Actions in District Court

October 2010

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Preamble—These Pilot Project Rules ("PPR") are meant to apply the Principles set forth in the *Final Report on the Joint Project of the American College of Trial Lawyers Task Force on Discovery and Civil Justice and the Institute for the Advancement of the American Legal System*. These Rules govern all pretrial process in all actions that are part of the pilot project. They will be applied only to business and medical negligence actions, as defined in Appendix A. Inclusion in the pilot project will be determined based on the contents of the complaint at the commencement of the action. The PPR are not meant to be a complete set of rules. The Colorado Rules of Civil Procedure ("CRCP") will govern except to the extent that there is an inconsistency, in which case the PPR will take precedence.

Pilot Project Rule 1—Scope

1.1. These Rules shall be construed and administered to secure the just, timely, efficient, and cost-effective determination of all actions. Continuances and extensions are strongly disfavored.

1.2. At all times, the court and the parties shall address the action in ways designed to assure that the process and the costs are proportionate to the needs of the case. The proportionality factors include, for example and without limitation: amount in controversy, and complexity and importance of the issues at stake in the litigation. This proportionality rule is fully applicable to all discovery, including the discovery of electronically stored information.

> Committee Comment to PPR 1
> It is the purpose of these PPR to replace the broad discovery currently allowed by CRCP 26 with proportionate discovery as set forth in these rules. Under PPR 9, all facts are not necessarily subject to discovery. The proportionality factors that are provided in existing rules and restated in the PPR will thus shape the process for the case, in order to achieve the goals stated in PPR 1.
>
> Motions for extensions are strongly disfavored. The court is encouraged to address these motions immediately, without waiting for a response, and deny them absent extraordinary circumstances. Parties may not stipulate to extensions.

Pilot Project Rule 2—Pleadings—Form and Content

2.1. While notice pleading remains the standard, the party that bears the burden of proof with respect to any claim or affirmative defense should plead all material facts that are known to that party that support that claim or affirmative defense and each remedy sought, including any known monetary damages. A material fact is one that is essential to the claim or defense and without which it could not be supported.

2.2. Any statement of fact that is not denied with specificity in any responsive pleading is deemed admitted. General denials of any statement of fact are not permitted and a denial that is based on the lack of knowledge or information shall be so pleaded.

Committee Comment to PPR 2

PPR 2 expects that the pleading party will plead all material facts *known* to that party that support a claim or affirmative defense. PPR 2 is not intended to impose higher requirements for stating a claim, resuscitate the technicalities associated with common-law pleading, foreclose access to the courts, create additional procedural burdens, or require subsequent, serial amendments to the pleadings of claims and defenses. Rather, the intent of PPR 2 is to utilize the pleadings to identify and narrow the disputed issues at the earliest stages of litigation and thereby focus the discovery. Adherence to the PPR, with their emphasis on early, complete disclosures and frequent case management conferences, should continually inform the parties and the court of the issues, claims and defenses in the case, and obviate the need for ongoing amendments to the pleadings. The court will retain discretion on questions of whether to require any party to supplement their pleadings.

The material facts pleaded should provide the "who, what, when, where, and how" of each element of a claim or defense. The pleading requirements apply equally to affirmative defenses. Several examples are set forth in Appendix B.

If a pleading party cannot through due diligence obtain facts necessary to support one or more elements of the claim, the party may plead such facts on information and belief, again with as much detail as possible. However, this provision should not be used in a manner that evades the intent of the rule.

The requirement that parties plead each remedy sought is not intended to preclude alternative remedies at the outset. The damages required to be plead are only those damages that can be quantified at the time of filing the action.

Pilot Project Rule 3—Pleadings and Initial Disclosures

3.1. No later than 15 days after service of a pleading making a claim for relief, the pleading party shall file with the court a statement listing all persons with information related to the claims and a brief description of the information each such individual is believed to possess, whether the information is supportive or harmful. The statement shall also include a certification that the party has available for inspection and copying all reasonably available documents and things related to the claims, along with a description by category and subject area of the documents and things being disclosed, whether they are supportive or harmful.

3.2. The due date for responsive pleadings shall be 15 days following the filing of the statement required by PPR 3.1.

3.3. No later than 15 days after service of a pleading defending against a claim for relief, the pleading party shall file with the court a statement listing all persons with information related to the claims for relief and the defenses asserted and a brief description of the information each such individual is believed to possess, whether the information is supportive or harmful. The statement shall also include a certification that the party has available for inspection and copying all reasonably available documents and things related to the claims and defenses, along with a description by category and subject area of the documents and things being disclosed, whether they are supportive or harmful.

3.4. Parties shall make these disclosures in good faith and may not object to the adequacy of the disclosures until the initial case management conference pursuant to PPR 7.1, at which time they may raise those issues.

3.5. When a party withholds information by asserting that the information is privileged or subject to some other protection, the party shall make the assertion expressly and shall provide a privilege log that describes the nature of the documents, communications, or things not produced or disclosed in a manner which, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

3.6. Each party has an ongoing duty to supplement the initial disclosures promptly upon becoming aware of the supplemental information.

3.7. Compliance with these disclosure requirements is essential to the appropriate functioning of these Rules. Therefore, unless the court makes a specific determination that failure to disclose in a timely manner was justified under the circumstances or harmless, such failure shall result in one or more of the following:

(a) a denial of the right to use the information not disclosed for any purpose;

(b) a denial of the right to object to the admissibility of the evidence;

(c) a dismissal of all or part of any claim or defense;

(d) assessment of attorney fees and costs; and

(e) any other sanction the court deems appropriate.

Committee Comment to PPR 3

Rule 3 is intended to require the exchange of meaningful information at an early stage by all parties. Parties are expected to comply with the initial disclosure requirements in a timely manner, and the court is expected to enforce the requirements fully. The presumptive categories of documents and information to be disclosed for specific types of civil actions, such as breach of contract actions and medical negligence actions, are set forth in Appendix C.

Because these are pilot rules and not implemented statewide, there may be instances in which a plaintiff has filed and served a complaint, and/or a defendant has in turn provided an answer in compliance with the requirements of CRCP, prior to receiving notice that their case has been included in the pilot project. In such instances, the plaintiff shall be allowed to file and serve an amended complaint, in compliance with the requirements of PPR 2, and the defendant shall be allowed to file and serve an amended answer, with the benefit of the plaintiff's initial disclosures and in compliance with the requirements of PPR 2. These issues can be addressed at the initial case management conference.

Pilot Project Rule 4—Motion to Dismiss

4.1. Any motion to dismiss shall be filed within 15 days of service of a pleading making a claim for relief. The filing of such motion shall not impact any other requirements of these rules.

Committee Comment to PPR 4
It is the intent of Rule 4 that upon the filing of a motion to dismiss, the pleading and initial disclosure requirements of PPR 3, and the scheduling of the initial case management conference under PPR 7 shall continue unaffected. This is a substantial departure from the current process in Colorado state courts, which provides an automatic stay of all further action, including discovery, pending resolution of the motion to dismiss. Again, the intent of the Rules is to assure that the case moves in an efficient, even-handed way toward final resolution with all parties and the court being fully aware of the issues at as early a time as possible.

Pilot Project Rule 5—Single Judge

5.1. As soon as a complaint is filed, a judge will be assigned to the case for all purposes, and, absent unavoidable or extraordinary circumstances, that judge will remain assigned to the case until final resolution, including any post-trial proceedings. It is expected that the judge to whom the case is assigned will handle all pretrial matters and will try the case.

Committee Comment to PPR 5
The term "unavoidable circumstances" includes the judicial rotation systems followed in certain districts. It is expected that even in rotation districts, approximately 75 percent of all cases will be handled by the same judge through final resolution.

Pilot Project Rule 6—Preservation of Relevant Documents and Things

6.1. Promptly after a civil action is commenced, the parties shall meet and confer concerning reasonable preservation of all relevant documents and things, including any electronically stored information. In the absence of an agreement, any party may move for an order governing preservation of such documents and things. Because the parties require a prompt response, the

court shall make an order governing preservation of such documents and things as soon as possible.

Committee Comment to PPR 6
Unless directed otherwise by an order of the court, the cost of preserving, collecting and producing electronically stored information shall be borne by the producing party. The court shall consider shifting any or all costs associated with the preservation, collection and production of electronically stored information if the interests of justice and proportionality so require.

Pilot Project Rule 7—Case Management Conferences

7.1. Unless requested sooner by any party, the judge to whom the case has been assigned shall hold an initial case management conference no later than 45 days after all responsive pleadings are filed pursuant to PPR 3.2. Each party's lead trial counsel shall attend this conference. At least three days before the conference, the parties shall submit a joint report setting forth their agreement or their respective positions on matters set forth in the form contained in Appendix D.

7.2. As soon as possible after the initial case management conference, the judge to whom the case is assigned shall issue an initial case management order with respect to each of the matters set forth in the form contained in Appendix D. Discovery and pretrial motions permitted by the case management order shall be permitted or excluded based on the proportionality factors in PPR 1.2. The court should consider, but is not bound by, the assessments made by the parties. Modifications to the initial case management order may be made only upon a showing of good cause.

7.3. At the request of any party for good cause shown, the judge, in the case management order, will set an expert testimony conference. No later than three days before that conference, the parties shall submit a proposed expert testimony order setting forth their agreement or their respective positions on the subject areas that require expert testimony at trial. As soon as practicable after the expert testimony conference, the judge shall issue an expert testimony order identifying the areas of expert testimony upon which expert witnesses may be utilized.

Committee Comment to PPR 7.3
The date for production of expert reports shall be set in the case management order. Any issues or disputes regarding expert reports or expert testimony, including the limitations provided in PPR 10, will be addressed at that time, if known. If additional issues or disputes concerning expert reports or expert testimony arise during fact discovery, those issues or disputes will be discussed and resolved in a conference with the judge or at the expert testimony conference, if scheduled. The expert testimony conference is anticipated in medical negligence actions to facilitate simultaneous production of expert reports.

Pilot Project Rule 8—Ongoing Active Case Management

8.1. The court shall provide active case management from filing to resolution on all pending issues.

8.2. A party may request additional conferences with the court. The parties are encouraged to contact the court by telephone, or as otherwise directed by the court, to arrange for prompt telephonic conferences for clarification, modification or supplementation of any of the court's outstanding orders, or for resolving disputes regarding any pretrial matter.

8.3. The court may hold additional status conferences on its own motion.

8.4. A conference may be held in person or by telephone or videoconference, at the court's discretion.

8.5. The trial date shall be set in the initial case management order, or at the earliest practicable time thereafter, and shall not be changed absent extraordinary circumstances.

Pilot Project Rule 9—Discovery

9.1. Discovery shall be limited in accordance with the initial case management order and expert testimony order, if applicable. No other discovery will be permitted absent further court order based on a showing of good cause and proportionality.

9.2. Discovery shall be limited to matters that would enable a party to prove or disprove a claim or defense or to impeach a witness and shall comport with the factors of proportionality in PPR 1.2.

Pilot Project Rule 10—Expert Discovery

10.1(a) In accordance with the case management order and expert testimony order, if applicable, each retained expert and any party or representative of a party who is testifying in part as an expert, shall furnish a report signed by the expert and with each paragraph initialed by the expert, setting forth his or her opinions, and the reasons for them. Each expert witness report shall, at a minimum, contain:

1. a specific statement of the opinions by the expert and the facts and other information which form the basis for each opinion;

2. a listing of all of the material relied upon by the expert;

3. references to literature which may be used during the witness testimony;

4. any then-existing exhibit prepared by or specifically for the expert for use at trial;

5. witness' curriculum vitae including a list of publications over the last 10 years;

6. a list of all trial or deposition testimony given by the witness in the last four years;

7. an accounting of all time spent on the case; and

8. a fee schedule.

The form of the expert report is set forth in Appendix E.

(b) The substance of each expert's direct testimony shall be fully addressed in the expert's report.

(c) The parties shall obtain and voluntarily produce to all other counsel the files of their retained expert witnesses at the time the witness is disclosed and again within 28 days of trial. See Appendix E for a complete list of what the expert's "file" shall include.

(d) There shall be no depositions or other discovery of experts.

10.2. Except in extraordinary cases, only one expert witness per side may be permitted to submit a report and testify in any given specialty and/or with respect to any given issue.

Committee Comment to PPR 10.1 and 10.2
It is anticipated that any special issues relating to the disclosure of experts shall be addressed at the initial case management conference and at subsequent conferences as necessary. Because this rule limits the number of experts to be endorsed, if any retained expert becomes unavailable to testify at trial, the court, upon good cause shown, should liberally grant a request for substitution by an equivalent expert. Any substituted expert remains subject to all requirements of PPR 10.

10.3. In addition to Rules 10.1 and 10.2, the following provisions will apply in medical negligence actions:

(a) Any dispute regarding the limitations set forth in Rule 10.2 will be discussed and resolved at the expert testimony conference and in the expert testimony order. If there are multiple parties on any side, this discussion will include sharing experts among multiple parties. There shall be a presumptive limit of one expert per side in a given specialty unless the parties are able to demonstrate a lack of commonality. Any side that obtains opinions of health care professionals beyond what is related to the professional's evaluation, diagnosis, care and treatment will be required to count that expert as a retained expert witness.

(b) Should a defendant be endorsed to testify on the issue of his or her own standard of care then the plaintiff shall be entitled to have an additional retained expert witness on the standard of care with regard to that particular defendant.

(c) The expert witness reports will be produced simultaneously in accordance with the case management order. Rebuttal reports may be produced up to 40 days after the opposing party's disclosure of expert witness reports.

Committee Comment to PPR 10.3
This comment pertains to medical negligence actions only. It is the intent of this Rule that a party cannot circumvent the rule on limitation of retained experts by providing additional information, beyond the information collected by a health care provider as part of the evaluation, diagnosis, care or treatment of the patient, in order to obtain expert opinions that the health care provider would not have had without the additional information.

If a health care provider has been given records, reports, imaging, slides or other diagnostic information by a party, the provider should be deemed a retained expert. However, that person may still be deposed as a treating health care provider. The deposition shall be limited to opinions based upon or related to his/her evaluation, diagnosis, care or treatment and may include opinions on liability and/or causation if based on the information he/she obtained as part of his/her evaluation, diagnosis, care or treatment of the patient. A health care provider who has been given additional records, reports, imaging, slides or other diagnostic information by a party and has formulated opinions based upon those materials must comply with the reporting requirements of PPR 10.1.

Nothing in these rules shall be construed to limit questions that can be posed to any defendant health care provider during deposition. In addition, this rule recognizes the right to request that opposing parties bring to deposition any information related to the issues in the case.

Nothing in these rules shall be construed to limit cross examination of treating health care providers, either in trial or in deposition.

Pilot Project Rule 11—Costs and Sanctions

11.1. In addition to the actions set forth in PPR 3.7, for any failure to provide, or for unnecessary delay in providing, required disclosures or discovery, the court may impose sanctions as appropriate.

APPENDIX A:
Actions for Inclusion in the Colorado Pilot Project

Business Actions. The court should handle the following types of actions under the Pilot Project Rules for business actions, whether the relief requested is legal or equitable. Pilot project business actions are not limited to "business v. business," but also include disputes between businesses and individuals.

(a) Breach of contract actions;

(b) Business torts (e.g., unfair competition, fiduciary duty, fraud, misrepresentation), or statutory and/or common law violations where the breach or violation is alleged to arise out of business dealings (e.g., sales of assets or securities; corporate restructuring; partnership, shareholder, joint venture, and other business agreements);

(c) Disputes involving transactions governed by the Uniform Commercial Code, excluding those concerning individual cooperative or condominium units;

(d) Disputes involving commercial real property, excluding actions solely for the payment of rent, Colorado Rule of Civil Procedure 120 proceedings and uncontested receivership proceedings;

(e) Owner/investor derivative actions brought on behalf of business organizations;

(f) Commercial class actions;

(g) Disputes involving business transactions with commercial banks and other financial institutions, excluding actions solely for the collection of debt;

(h) Disputes involving the internal affairs of business organizations;

(i) Disputes involving commercial insurance coverage, including directors and officers, errors and omissions, business interruption, and environmental;

(j) Actions involving dissolution of corporations, partnerships, limited liability companies, limited liability partnerships and joint ventures;

(k) Disputes involving securities laws;

(l) Disputes involving antitrust laws; and

(m) Disputes involving intellectual property, including state trademark laws.

As used herein, the term "business organizations" includes all forms of entities recognized by Colorado law, and applies to single owner or member entities, for profit and nonprofit entities, unincorporated associations, and sole proprietorships.

Medical Negligence Actions. The court shall handle all actions alleging a breach of the standard of care by a health care provider and which are covered under the Colorado Health Care Availability Act (C.R.S. §§13-64-101 to 503) as part of the pilot project.

APPENDIX B:
Examples of Pleading Material Facts under PPR 2

Claim for Breach of Contract—The pleader should provide a description of the nature of the contract, identify the relevant signatories and date of signature, and for each contract provision alleged to be breached, identify the provision and describe how it was allegedly breached.

Claim for Medical Negligence—The claimant should provide the facts related to each specific act of negligence and the nature of the claimed injury and damages. The defendant should state all facts related to the claims made as well as each defense asserted.

Affirmative Defense Alleging the Running of the Statute of Limitations—The pleader should state which claims are time-barred and, for each such claim, the applicable statute of limitations and specific time that has elapsed since the claim accrued.

Affirmative Defense Alleging Comparative Negligence in a Medical Negligence Action—The pleader should state the manner in which the claimant was negligent and how this conduct contributed to the claimed injury or damages.

APPENDIX C:
Presumptive Categories of Documents and Information to be Disclosed

Breach of Contract Actions
Initial disclosures in breach of contract actions shall include:

(a) the contract and any amendments;

(b) any notices under the contract, including notices of breach or noncompliance, any responses thereto, and all correspondence, notes and emails relating thereto;

(c) documents relating to performance or lack thereof, including all correspondence, notes and emails relating thereto;

(d) all documents, including drafts, correspondence, notes and emails pertaining to the interpretation of the contract at issue;

(e) documents relating to damages, including amount, causation and measure of damages;

(f) company organizational charts; and

(g) other documents the court determines.

(h) In claims for breach of contract in which the formation of the contract is at issue and/or where a party seeks rescission, plaintiffs and defendants are required to disclose drafts, correspondence, notes, letters of intent and memorandums of understanding regarding the contract formation and negotiations surrounding entering into the contract.

Medical Negligence Actions
Initial disclosures in medical negligence actions shall include:

(a) Plaintiff:

1. Medical records of the injury or condition at issue and any records as to the cause of the injury or condition at issue.

2. If a privilege is asserted to any record, the plaintiff shall submit a privilege log. The privilege log shall identify the record with sufficient specificity to allow determination of whether the assertion of the privilege is proper.

3. All subrogation and lien information regarding claimed medical expense.

4. Those portions of federal and state income tax returns related to any claimed lost earnings or lost earning capacity.

5. Diaries, calendars, blogs, notes, or similar materials prepared by plaintiff describing events or issues related to the claims. A privilege log shall be provided for any privilege claimed.

6. Other documents the court determines.

(b) Defendants:

1. An index of policies, procedures, protocols, guidelines or similar documents related to relevant areas of care, allowing plaintiff to identify the documents to be requested in discovery.

2. Identification of incident or occurrence reports with production of factual information pertinent to the patient prepared by a person with direct knowledge. If a privilege is asserted, a privilege log will be prepared describing the document, with specificity including date and author.

3. Other documents the court determines.

Committee Comment to Appendix C

These are presumptive disclosures. Any dispute regarding these initial disclosures shall be addressed at the first case management conference.

Appendix D:
Form for Initial Case Management Conference Joint Report of the Parties

District Court _____County, Colorado Court Address:	
Plaintiff(s): _____, v. Defendant(s): _____,	**COURT USE ONLY**
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom
INITIAL CASE MANAGEMENT CONFERENCE JOINT REPORT OF THE PARTIES	

Pursuant to Colorado Pilot Project Rule (PPR) 7.1, the parties should discuss each item below. If they agree, the agreement should be stated. If they cannot agree, each party should state its position. If an item does not apply, it should be identified as not applicable.

1. **Date for joinder of additional parties**: _____
2. **Amending or supplementing pleadings:** _____
3. **The timing of mediation or other alternative dispute resolution:** _____
4. **Dispositive motions:** _____

5. **The issues to be tried:** _____

6. **An assessment of the application to the case of the proportionality factors in PPR 1.2:** _____

7. **Production, continued preservation, and restoration of electronically stored information, including the form in which electronically stored information is to be produced and other issues relating to electronic information, including the costs:** _____

8. **Proposed discovery and limitations on discovery, consistent with the proportionality factors in PPR 1.2. Counsel will be required to represent to the Court at the conference that they have discussed the costs of the proposed discovery with their clients, or state to the court why they have not done so.**

    a. **adequacy of the initial disclosures:** _____

    b. **limitations on scope of discovery:** _____

    c. **limitations on the types of discovery**: _____

    d. **limitations on the number of written discovery requests:** _____

    e. **limitations on the number and length of depositions, and/or the total time of depositions allowed to each party:** _____

    f. **limitations on persons from whom discovery can be sought**: _____

    g. **limitations on the restoration of electronically stored information:** _____

    h. **cost shifting/co-pay rules, including the allocation of costs of the access to and production of electronically stored information:** _____

    i. **any other cost issues:** _____

9. Proposed dates for:

a. commencement of fact discovery: _____

b. completion of fact discovery: _____

c. disclosure of trial witnesses: _____

10. The amount of time required for the completion of all pretrial activities and the approximate length of trial: _____

11. Proposed date for trial: _____

12. Expert witnesses: _____

13. Proposed dates for:

a. expert testimony conference, only if needed: _____

b. production of expert reports: _____

c. production of rebuttal expert reports: _____

d. production of expert witness files: _____

14. Limitations on experts' fees to be taxed as costs: _____

15. Computation of damages and the nature and timing of discovery relating to damages: _____

16. Other appropriate matters: _____

DATED this ____ day of _____, 20____.

[signature block]

_____
[Attorney for Plaintiff]

[signature block]

_____
[Attorney for Defendant]

APPENDIX E:
Form for Disclosure of Expert Witness(es)

District Court _____County, Colorado Court Address:	
Plaintiff(s): _____, v. Defendant(s): _____,	**COURT USE ONLY**
Attorney or Party Without Attorney (Name and Address): Phone Number: E-mail: FAX Number: Atty. Reg. #:	Case Number: Division Courtroom
__[NAME OF PARTY]__ DISCLOSURE OF EXPERT WITNESS[ES]	

__[NAME OF PARTY]__, by counsel, pursuant to Colorado Rule of Civil Procedure ("CRCP") 26(a)(2), hereby discloses persons who may present evidence at trial pursuant to Colorado Rules of Evidence 702, 703, or 705:

I. WITNESS[ES] RETAINED OR EMPLOYEE[S] OF DISCLOSING PARTY.

The following person[s] have either (1) been retained or employed to provide expert testimony, or (2) are employees of the disclosing party whose duties regularly include giving expert testimony and for each such expert the following information is submitted:

A. NAME, PROFESSIONAL ADDRESS, AND TELEPHONE NUMBER OF EXPERT.

B. A REPORT WHICH SHALL CONTAIN THE FOLLOWING:

1. A Specific Statement Of The Opinions By The Expert And The Facts And Other Information Which Form The Basis For Each Opinion:

2. A Listing Of All Of The Material Relied Upon By The Expert:

3. References To Literature Which May Be Used During The Witness Testimony:

4. Any Existing Exhibit Prepared By Or Specifically For The Expert For Use At Trial:

5. Witness' Curriculum Vitae, Including A List Of Publications Over The Last 10 Years:

6. A List Of All Trial Or Deposition Testimony Given By The Witness In The Last Four Years:

Name of Case	**Court**	**Case Number**	**Retained By**	**Date**	**D/T**

7. Accounting Of All Time Spent On The Case:

8. A Fee Schedule:

9. A Certification That This Expert Has:

[ ] prepared or reviewed the report,
[ ] signed the report and,
[ ] initialed each paragraph of the report.

[Attach report hereto as an exhibit.]

C. CERTIFICATION THAT THE FILE FOR THE EXPERT HAS BEEN PRODUCED. The term "File" includes exhibits which the expert may use at trial, e-mails, notes, billing information, telephone notes, correspondence, articles, medical literature which the expert reviewed or relied upon as the basis of his opinion, sticky notes a/k/a Post-It Notes, all reports authored by the expert, billing information to include any computerized billing records, any type of time logs, and any notes regarding time spent, copies of any chronologies, outlines and notes

supplied by counsel or created by the expert, and any medical literature, text or articles supplied by counsel or which may be used at trial. Any medical records which have been reviewed need not be produced unless they contain written notations, highlighting or other markings made by the expert. These records shall be identified by list only unless the record is not one which has been made available to the parties. Any depositions which have been reviewed need not be produced unless they contain written notations, highlighting, or other markings made by the expert. These depositions shall be identified by list only.

II. WITNESS[ES] NOT RETAINED OR EMPLOYEE[S] OF DISCLOSING PARTY.

The following person[s] may be called to provide expert testimony but have neither (1) been retained to provide expert testimony, nor (2) are employees of the disclosing party whose duties regularly involve giving expert testimony:

A. NAME, PROFESSIONAL ADDRESS, AND TELEPHONE NUMBER OF WITNESS.

1. Qualifications:

2. Substance Of All Opinions To Be Expressed And The Basis And Reasons Therefor:

DATED this ____ day of _____, 20____.

[signature block]

_____

[Attorney for Disclosing Party]