

*The administration of justice is the firmest pillar of government.*  
– George Washington

**CIVIL PRACTICE STANDARDS**

**JUDGE CHRISTINE M. ARGUELLO  
UNITED STATES DISTRICT COURT DISTRICT OF COLORADO**

Alfred A. Arraj United States Courthouse  
Courtroom: A602  
Chambers: A638 (Sixth Floor)  
901 19th Street  
Denver, CO 80294

Telephone: 303-335-2174

Fax: 303-335-2317

Email: [Arguello\\_Chambers@cod.uscourts.gov](mailto:Arguello_Chambers@cod.uscourts.gov)

Website: <http://www.cod.uscourts.gov>

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Burton Exhibit 1026 Burton v. Smith Sport Optics
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**PRACTICE STANDARDS  
CIVIL ACTIONS  
Judge Christine M. Arguello, United States District Judge**

**SCOPE, PURPOSE, AND CONSTRUCTION**

**CMA Civ. Practice Standard 1.1 – Purpose, Scope, and Construction**

- (a) **Purpose.** Consistent with Fed. R. Civ. P. 1, these Practice Standards are intended to secure the just, speedy, and inexpensive determination of every civil action.
- (b) **Scope, Title, and Citation.** These rules are the Civil Practice Standards of Judge Christine M. Arguello and apply to all civil actions assigned to her. These rules should be cited as CMA Civ. Practice Standard, Subdivision, Paragraph, Subparagraph, Item (e.g., “CMA Civ. Practice Standard 7.1E(b)(2)(A)”).
- (c) **Access to Practice Standards.** Copies of these Practice Standards and other forms referenced herein are available through the District of Colorado’s homepage at <http://www.cod.uscourts.gov> and/or from the Clerk of Court in Room A105.
- (d) **Additional Applicable Rules.** In addition to these Practice Standards, those appearing in the District Court must know and follow:
- (1) The Federal Rules of Civil Procedure;
  - (2) The Federal Rules of Evidence;
  - (3) The Local Rules of Practice of the United States District Court for the District of Colorado (“Local Rules of Practice”); and
  - (4) The United States District Court for the District of Colorado Electronic Case Filing Procedures.
- (e) **Construction.** These Practice Standards supplement, but do not supersede, the Local Rules of Practice and the Electronic Case Filing Procedures. If there is a direct conflict between these Practice Standards and the requirements of the Electronic Case Filing Procedures, the Electronic Case Filing Procedures control. If these Practice Standards and the Electronic Case Filing Procedures contain different, but not directly inconsistent, requirements, parties should comply with both sets of procedures to the extent possible.

**CMA Civ. Practice Standard 1.2 – Scheduling and Communications with Court**

- (a) **Scheduling.** Do NOT call or come to Chambers to schedule a hearing or trial.

To schedule a hearing or trial, after conferring with opposing counsel, one party should

send an email containing the following information to Chambers ([Arguello\\_Chambers@cod.uscourts.gov](mailto:Arguello_Chambers@cod.uscourts.gov)), with a copy to opposing counsel:

- (1) The case number and case name;
- (2) The anticipated/estimated length of the hearing or trial; and
- (3) Mutually acceptable proposed hearing dates, or trial dates within approximately three to four months of the final pretrial conference.

(b) **No Legal Advice or Status Updates.** If after fully and carefully reading these Practice Standards and the Local Rules of Practice, you still have a question about procedure, email Chambers at [Arguello\\_Chambers@cod.uscourts.gov](mailto:Arguello_Chambers@cod.uscourts.gov). Chambers staff cannot give legal advice or grant oral requests over the telephone, so please do not contact Chambers about substantive matters. Please **DO NOT** call or email Chambers to ask about the status of a motion or order.

(c) **No Ex Parte Communications.** With the exception of scheduling matters and questions concerning the Practice Standards, as set forth in paragraphs (a) and (b) above, unless specifically authorized, neither counsel nor *pro se* litigants may communicate about a case by email or letter to the Court. All communications must be made in the form of a motion, brief, notice, or status report, served on all opposing counsel and *pro se* parties, and filed as required by the Electronic Case Filing Procedures.

(d) **Courtesy Copies and Proposed Orders.** A courtesy copy for Chambers is not required. When directed (by a Local Rule, these Practice Standards, or Judge Arguello) to submit a document directly to Chambers (e.g., proposed jury instructions, *voir dire* questions, etc.), parties should submit documents as an editable email attachment in Microsoft Word format, to [Arguello\\_Chambers@cod.uscourts.gov](mailto:Arguello_Chambers@cod.uscourts.gov). PDF is not acceptable. The subject line of the email message should identify the case name, number, and the title of the document attached. Documents submitted directly to Chambers in this manner (with the exception of proposed orders accompanying motions) should NOT be filed via CM-ECF.

(e) **CM-ECF Assistance.** For information about filing documents electronically, please contact the ECF Help Desk at 303-335-2026.

(f) **Courtroom Assistance.** For information regarding the courtroom, including telephonic connection, courtroom equipment, and technology, please send an email to [Arguello\\_Chambers@cod.uscourts.gov](mailto:Arguello_Chambers@cod.uscourts.gov).

(g) **Court Transcription Assistance.** If you need to order a transcript, please contact Judge Arguello's Court Reporter, Darlene Martinez, at [Darlene\\_Martinez@cod.uscourts.gov](mailto:Darlene_Martinez@cod.uscourts.gov). Please specify the case number and date(s) of the requested transcription. See also CMA Civ. Practice Standard 43.1A(c).

## PLEADINGS, MOTIONS, AND OBJECTIONS

## **CMA Civ. Practice Standard 6.1 – Continuance or Extension of Time**

(a) **Continuances of Hearings and Trials.** Motions to continue hearings and trials (including motions to vacate or reset) are governed by D.C.COLO.LCivR 6.1 and 7.1; these Practice Standards; *Rogers v. Andrus Transp. Serv.*, 502 F.3d 1147, 1151 (10th Cir. 2007); and *United States v. West*, 828 F.2d 1468, 1469–70 (10th Cir. 1987).

**“Stipulations” for continuances are not accepted by the Court.** Instead, a request for a continuance should be filed as a separate motion, which must be supported by good cause and filed **as early as practicable** based on the underlying reason for the requested continuance.

### **(b) Motions for Extension of Time:**

- (1) With the exception of certain stipulated extensions to respond to discovery, a pleading, or an amended pleading, **“stipulations” for extensions of time are not accepted by the Court.** Instead, a request for an extension of time should be filed as a separate motion. Motions for extensions of time are governed by Fed. R. Civ. P. 6; D.C.COLO.LCivR 6.1 and 7.1A; and these Practice Standards. Motions will be denied if they do not comply with these rules or if they fail to demonstrate good cause.
- (2) Motions for extensions of time, even if such extensions are unopposed, may be denied if the extension adversely affects the scheduling of the case or other cases.
- (3) Any motion for extension of time shall be filed **as early as practicable** based on the underlying reason for the requested extension. Generally speaking, motions for extension of time should be filed at the latest before noon at least one business day before the date the filing would otherwise be due. **Motions for extension of time submitted on the date the underlying filing is due are subject to summary denial at the discretion of the Court.**

## **CMA Civ. Practice Standard 7.1A – Motions – General Information**

(a) **Procedure, Format, and Length.** All requests for the Court to take any action, make any type of ruling, or provide any type of relief must be contained in a written motion. The moving party shall not file a separate motion and brief. With the exception of motions brought under Fed. R. Civ. P. 56, 65, or Fed. R. Evid. 702, all motions shall be determined in the time and manner prescribed by D.C.COLO.LCivR 7.1(d), and subject to the page limitations and formatting requirements of CMA Civ. Practice Standard 10.1. A motion to strike another party’s motion should not be filed when an opposing response could adequately address the issues presented by that party’s motion.

(b) **Unopposed Motions.** An unopposed motion shall be designated as such, per D.C.COLO.LCivR 7.1(c).

(c) **Submission of Proposed Orders.** All non-dispositive motions should include a proposed order, filed as an attachment via CM-ECF. Unless requested by Judge Arguello, proposed orders need not be sent via email to Chambers.

(d) **Responses, Replies, and Objections.**

- (1) **Deadlines.** See D.C.COLO.LCivR 7.1(d) and D.C.COLO.LCivR 56.1(a) for applicable time limits for filing responsive and reply briefs. Fed. R. Civ. P. 6 controls the computation of time. For extensions of time for filing such briefs, see CMA Civ. Practice Standard 6.1(b).
- (2) **Content.** A response, reply, or objection shall identify, by title and CM-ECF docket number, the pleading to which it responds.
- (3) **Notice of New Authority.** A notice of supplemental authority may be filed if new relevant authority was decided after briefing on a motion has closed. The notice shall be limited to the case title, citation, date of decision, and a single-sentence reference to the issue to which the movant believes the new decision pertains. No comment on the significance of the decision may be made, and no responsive comment will be permitted.
- (4) **No Surreplies or Supplemental Briefs.** No surreply or supplemental briefs shall be filed without permission of the Court.

(e) **Untimely or Noncompliant Motions, Objections, Responses, or Replies.**

- (1) A noncompliant motion, response, reply, or objection is a filing that does not conform in form and substance to the procedural, formatting, or technical requirements of applicable statutes, regulations, the Federal Rules of Civil Procedure, local rules, or these Practice Standards.
- (2) Untimely or noncompliant motions, responses, replies, or objections may be denied in whole or part without prejudice, or their determination may be delayed relative to compliant motions.
- (3) Motions without a certification required by D.C.COLO.LCivR 7.1(a) will be denied without prejudice *sua sponte*.

(f) **Motions Hearings.** The Court generally rules on motions without oral argument or evidentiary hearing. However, if the parties believe an oral argument or a hearing is necessary and would assist the Court, a specific request for such hearing shall be made promptly by **separate motion**. Additionally, at least three (3) business days prior to such hearing, counsel shall advise the Court regarding which issues are still in dispute and which issues have been resolved.

- (1) **Witnesses.** No later than three (3) business days before the hearing, the parties must submit to Chambers via email, with a copy to opposing counsel, a list of its proposed witnesses and an estimate of the length of

time of each witness's testimony. Proposed witness lists should NOT be filed using CM/ECF, but should be emailed as an attachment directly to Chambers at [Arguello\\_Chambers@cod.uscourts.gov](mailto:Arguello_Chambers@cod.uscourts.gov).

(2) **Exhibits.** No later than three (3) business days before the hearing, the parties must submit to Chambers via email a list of its proposed exhibits. With regard to the marking of exhibits and the use of exhibit binders for motions hearings, the parties must follow the procedures used for trials, which is set forth below in CMA Civ. Practice Standard 43.1B.

(3) **Oral Argument by Attorney of Record With Less Than Eight Years of Experience.** An oral argument or an evidentiary hearing on a motion is scheduled at the Court's discretion. Preference in scheduling oral argument on a contested motion will be given in those instances in which at least one party certifies to the Court that said oral argument will be handled by an attorney of record in the case who has eight years or less of legal experience.

(g) **Forthwith Hearings on Motions.** A "forthwith hearing" is a hearing that cannot be handled in the normal course due to the need for immediate judicial intervention (for example, motions for temporary restraining orders, preliminary injunctions, and other requests for expedited ruling). A request for forthwith hearing must be made by a **separate motion** stating (1) the reason(s) warranting immediate action and (2) whether notice was provided to all parties or why such notice could not be provided. A courtesy email or call to Judge Arguello's Chambers advising that such a motion is being filed is appreciated and will help facilitate prompt consideration.

Unless otherwise required by statute or rule of procedure, after reviewing the request for forthwith hearing, the Court may order that the matter be heard as soon as possible on a forthwith basis, require that notice and opportunity to respond be given to any opposing party, or deny the request for forthwith hearing and require that the matter be set using normal setting procedures.

#### **CMA Civ. Practice Standard 7.1B – Motions *in Limine***

(a) **Not Discouraged.** Judge Arguello does NOT discourage motions *in limine*. The admissibility of evidence often depends upon the context in which the evidence is offered, so the Court may be unable to rule on the motion prior to trial. However, if the Court is forewarned about particular evidentiary disputes that are anticipated to arise during trial, the Court is able to make a more informed ruling on the evidentiary issue.

(b) **Conferral and One Motion Limit.** Prior to filing a motion *in limine*, counsel shall confer with one another in an attempt to resolve the contested evidentiary issues. If they are unable to come to a mutual resolution, counsel shall then determine which party will file the motion on the particular evidentiary issue and which party will file the response.

Each party shall be limited to **one** motion *in limine*, unless the Court grants leave for a

supplemental filing. The motion shall address all difficult or unusual evidentiary issues the party anticipates will arise at trial, **with each discrete evidentiary dispute separately numbered within the motion**. Each motion and response shall be limited to eight pages, unless there is a showing of **substantial** good cause and the Court grants leave to extend the page limits. All text in these filings will count against the page limits, except for the attorney or party signature blocks and the certificate of service. No reply brief in support of a motion *in limine* will be permitted.

(c) **Filing Deadlines.** In order to ensure that motions *in limine* are ripe for ruling at the Final Trial Preparation Conference, such motions must be filed **no later than twenty-one (21) days prior** to the Final Trial Preparation Conference. A response to a motion *in limine* must be filed no later than fourteen (14) days after the filing of the motion.

### **CMA Civ. Practice Standard 7.1C – Motions Pursuant to Fed. R. Evid. 702**

(a) **Duty to Confer.** The Court will not consider any motion challenging expert opinion/testimony under Fed. R. Evid. 702, unless counsel for the moving party, prior to filing the motion, has conferred or made reasonable, good-faith efforts to confer with opposing counsel in an effort to attempt to resolve the disputed matter(s). If the parties are able to resolve the dispute, the motion shall be entitled “Unopposed Motion for \_\_\_\_\_,” and the parties shall submit via email to Chambers the proposed order that the parties wish the Court to enter. If the parties are unable to resolve the dispute, the moving party shall state in the motion the specific efforts that were taken to comply with this duty to confer.

(b) **Content.** All Rule 702 motions shall:

- (1) Identify the expert witness and separately state each opinion/testimony the moving party seeks to exclude;
- (2) Follow each opinion with the specific foundational challenge made to the opinion/testimony;
- (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); and
- (4) Include the expert witness’s report as an exhibit.

(c) **Evidentiary Hearing.** If an evidentiary hearing is held, the time for the evidentiary hearing will be divided equally between the parties. Unless otherwise ordered, **the expert witness** whose testimony or opinion is proffered **shall be present at the hearing**.

(d) **Filing Deadlines.** Motions under Fed. R. Evid. 702 often require additional time for the Court to fully analyze and may require evidentiary hearings. Thus, parties should file such motions **as early as is practicable** and, in all cases, **not later than seventy**



**(70) days (ten weeks) prior** to the Final Trial Preparation Conference. Deadlines for responses and replies to Rule 702 motions are governed by D.C.COLO.LCivR 7.1(d). Rule 702 motions requiring an evidentiary hearing may be referred to the assigned Magistrate Judge for hearing and decision.

**CMA Civ. Practice Standard 7.1D – Motions to Dismiss Pursuant to Fed. R. Civ. P. 12(b)**

**(a) Procedure.** Motions brought pursuant to Fed. R. Civ. P. 12(b) are discouraged if the defect is correctable by the filing of an amended pleading. Counsel should confer prior to the filing of the motion to determine whether the deficiency can be corrected by amendment (e.g., failure to plead fraud with specificity), and should exercise their best efforts to stipulate to appropriate amendments. **If such a motion is nonetheless filed, the movant shall include a conspicuous statement describing the specific efforts undertaken to comply with this Practice Standard.** Counsel are on notice that failure to comply with this Practice Standard may subject them to an award of attorney fees and costs assessed personally against them. The requirement to confer shall not apply in cases where the non-movant is proceeding *pro se*.

**(b) Single Motion.** All requests for relief under any part of Fed. R. Civ. P. 12(b) must be brought in a single motion. All motions to dismiss shall state in the caption or in the opening paragraph under which rule or subsection thereof such motion is filed.

**(c) 12(b)(1)–(5) Motions.** Motions brought pursuant to Fed. R. Civ. P. 12(b)(1)–(5) shall identify the grounds for dismissal, which party has the burden of proof, the material facts, and whether materials outside the pleadings should be considered.

**(d) 12(b)(6) Motions.** With respect to motions brought pursuant to Fed. R. Civ. P. 12(b)(6):

- (1)** For each claim for relief that the movant seeks to have dismissed, the movant shall clearly enumerate each element that movant contends must be alleged, but was not.
- (2)** 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.

**(e) Matters Outside the Pleadings.** Rule 12(b) motions should not be stated in the alternative as a Rule 56 motion for summary judgment. If matters outside the pleadings are submitted in support of or opposition to a Rule 12(b) motion, both parties should address whether the 12(b) motion should be converted to a summary judgment motion.

**CMA Civ. Practice Standard 7.1E – Motions for Summary Judgment Pursuant to**

## **Fed. R. Civ. P. 56**

(a) **Single Motion.** These procedures contemplate the filing of a single motion for summary judgment by a party. A party may NOT file multiple motions for summary judgment without obtaining the Court's permission, which will be given only in exceptional circumstances.

(b) **Format.** Per CMA Civ. Practice Standard 7.1A(a), the moving party shall not file a separate motion and brief. Additionally, the following format should be used:

- (1) For each claim for relief or defense as to which judgment is requested, the motion shall:
  - (A) Identify which party has the burden of proof;
  - (B) Identify each element that must be proved;
  - (C) For each identified element, identify, in separately numbered paragraphs (one fact per paragraph), the material, undisputed, or admitted facts that prove that element and the pinpoint location in the filed record appendix; 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 appendix where appropriate).
- (2) The response should utilize the same format for each claim/defense:
  - (A) If the respondent disputes the movant's statement of the burden of proof on necessary elements, it shall identify the element as disputed.
  - (B) If the movant has the burden of proof, the respondent shall 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.

(c) **Motions for Partial Summary Judgment Not Favored.** Motions on some, but not all, claims are not favored unless, if granted, (1) the resulting judgment can be certified in accordance with Rule 54(b); or (2) the scope of evidence to be presented at trial will be **significantly** reduced.

**(d) Exhibits Submitted in Appendices.** All exhibits in support of a summary judgment motion shall be submitted in one appendix with the pages numbered consecutively and shall be referenced in the motion, response, and reply by page number and name, e.g., (Movant's Appx., p. 30 - Smith Affidavit). If the respondent needs to include additional exhibits not already contained in movant's appendix, the respondent shall submit a respondent's appendix, with the pages numbered consecutively. Respondent's appendix shall be referenced by page number and name, e.g., (Respondent's Appx., p. 10 - Jones Affidavit).

- (1) Restricted Exhibit(s).** If either party believes that any of the exhibits in support of or in opposition to a party's motion for summary judgment should be filed under restriction, the party shall file a placeholder exhibit (if the entire exhibit is restricted) or a redacted exhibit (if only portions of the exhibit is restricted) in its appendix, noting that the restricted exhibit will be filed under restriction. The party must also file a motion to restrict public access pursuant to D.C.COLO.LCivR 7.2(c), explaining the need for the restriction and attaching the actual restricted exhibit(s).

#### **CMA Civ. Practice Standard 7.1F – Motions for Default Judgment**

**(a) Requirements.** In addition to the requirements in D.C.COLO.LCivR 55.1(a), a motion for default judgment under Fed. R. Civ. P. 55(b) shall indicate whether a hearing on the motion is required, i.e., whether or not damages are liquidated or in a sum certain. If pre-judgment interest will be requested, the motion for default judgment must also include a sum certain of pre-judgment interest owed at the time of filing as well as a *per diem* rate for each day thereafter. A motion for default judgment shall also include copies of the following documents:

- (1)** The summons and return of service or a waiver of service, showing valid service on the particular defendant in accordance with Fed. R. Civ. P. 4;
- (2)** If the action is on a promissory note, the original note shall be presented to the Court so that it may make a notation of the judgment on the face of the note; if the note is to be withdrawn, a photocopy shall be substituted;
- (3)** A proposed form of judgment (do not include "proposed" in the title) that recites the language requested to be included in the body of the judgment. See D.C.COLO.LCivR 55.1(b).

**(b) Costs and Attorneys' Fees.**

- (1) Costs.** If costs will be requested, a motion requesting such costs shall be filed separately for consideration by the Clerk's Office.
- (2) Attorneys' Fees.** If attorneys' fees will be requested, a separate motion requesting such fees shall be filed with an affidavit indicating that the defendant agreed to pay attorneys' fees or citation to statutory authority establishing that such fees are recoverable; an assertion that such fees

have been actually incurred in the prosecution of the action; and sufficient evidence that time reported and the fees sought are reasonable under the circumstances and applicable law.

### **CMA Civ. Practice Standard 7.1G – Motions for Temporary Restraining Orders**

(a) **Conferral.** To minimize delays, the Court strongly encourages counsel to confer, in advance, with the opposing party's counsel (or, if not yet represented, with the party itself).

(b) **Ex Parte Motions.** As a general rule, *ex parte* motions for issuance of temporary restraining orders will be granted only upon strict compliance with Fed. R. Civ. P. 65(b) and (c). In appropriate circumstances, the Court may issue an order to show cause, directing the person to be enjoined to appear at a hearing to show cause why the temporary restraining order should not be issued; deny the motion; or set a hearing, requiring the movant to serve the order and all underlying papers on the respondent in accordance with Fed. R. Civ. P. 4 within the time specified in the order. A continuance of the scheduled return date on the order to show cause ordinarily will not be granted absent stipulation by the parties.

(c) **Initial Hearing.** The Court will contact counsel if an initial hearing is required. At the initial hearing, counsel for both sides should present evidence, pursuant to CMA Civ. Practice Standard 43.1B, as well as any legal argument. At the conclusion of this hearing, the Court will, if appropriate, set a preliminary injunction hearing.

(d) **Preliminary Injunction Hearing.** A preliminary injunction hearing will be an evidentiary hearing, and CMA Civ. Practice Standard 43.1B shall apply. Both parties must be prepared to present legal argument, as well as evidence in accordance with the Federal Rules of Evidence. See CMA Civ. Practice Standards 43.1A–43.1D.

### **CMA Civ. Practice Standard 10.1 – Format of Pleadings and Documents**

(a) **Caption.** Case captions shall comply with the form as set out in D.C.COLO.LCivR 1.2, found under the “Forms” link on the District Court’s homepage (<http://www.cod.uscourts.gov/>). Failure to use the correct form of caption may result on the pleading being summarily stricken.

(b) **Font and Format.** All papers filed with the Court shall be in **Arial 12-point font**, including footnotes, and conform to the other formatting requirements (margins, line spacing, etc.) of D.C.COLO.LCivR 10.1.

(c) **Citations.**

(1) **Generally:** Citations shall be made pursuant to the most current edition of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION.

(2) **Westlaw Citations for Unpublished or “Slip” Opinions:** Whenever practicable, a citation to an unpublished opinion should include its

Westlaw® citation. If the Westlaw® citation is not available, the party citing the case should attach a copy of the unpublished opinion as an exhibit to the pleading.

- (3) **Colorado Appellate Cases:** When citing to post-2011 decisions from the Colorado Court of Appeals or the Colorado Supreme Court, the Court encourages parties to use the public domain citation format instead of citing to the Pacific Reporter. For citation examples and further explanation from the Colorado Supreme Court regarding this citation format, see Chief Justice Directive 12-01, available at [http://www.courts.state.co.us/Courts/Supreme\\_Court/Directives/CJD%2012-01.pdf](http://www.courts.state.co.us/Courts/Supreme_Court/Directives/CJD%2012-01.pdf).
- (4) **Administrative Record Citations.** In cases involving an administrative record—e.g., social security and ERISA cases—the parties must use the following citation convention when citing to the administrative record: the docket number of the exhibit (e.g., Doc. # 11-4) and the page number from the Administrative Record (e.g., at 445–67) (together, Doc. # 11-4 at 445–67).

(d) **Page Limitations.**

- (1) Except for motions for summary judgment and social security appeals, **all motions, objections** (including objections to the recommendations or orders of United States Magistrate Judges), and **responses shall not exceed 15 pages. Reply briefs shall not exceed 10 pages.** These page limitations include the cover page, jurisdictional statement, statement of facts, procedural history, argument, authority, closing, and all other matters, except the signature block and certificate of service.
- (2) **Motions for summary judgment or partial summary judgment and response briefs shall not exceed 20 pages. Reply briefs shall not exceed 10 pages.** These page limitations include the motion, cover page, jurisdictional statement, statement of facts, procedural history, argument, closing, and all other matters, except the signature block and certificate of service.
- (3) **Social Security Appeals.** Unless otherwise ordered and excluding the cover page, jurisdictional statement, table of contents, statement of facts, and procedural history, opening and response briefs shall be no more than 20 pages, and reply briefs shall be no more than 10 pages.
- (4) Exceptions to the above page limitations will be granted only upon a showing of good cause. Permission to exceed the page limitation shall be sought by way of an appropriate motion filed well in advance of the deadline for filing the pleading and shall indicate the number of pages of the proposed document and the reason(s) why the additional pages are necessary.

## **CMA Civ. Practice Standard 16.6 – Settlement and Alternative Dispute Resolution**

- (a) **Settlement.** In addition to D.C.COLO.LCivR 16.6, the following applies:
- (1) **No Continuances.** Settlement discussions are encouraged at all phases of the litigation process. However, except upon good cause or the filing of papers sufficient to resolve the matter, hearings, trials, and pretrial deadlines will not be continued or vacated to facilitate settlement negotiations or alternative dispute resolution, or in anticipation of the filing of settlement documents. If counsel and/or any *pro se* party are unable to file the appropriate documents before the hearing or trial, counsel and/or any *pro se* party shall appear at the scheduled hearing or trial to memorialize the settlement on the record. Pursuant to D.C.COLO.LCivR 54.2, in order to avoid assessment of jury costs, the parties must notify the Court of a settlement before noon on the last business day before the scheduled trial date.
  - (2) **Notice of Settlement.** If a settlement is reached before a hearing or trial, please file a notice via CM-ECF that includes a time estimate for filing dismissal papers. To conserve judicial resources, a courtesy call or email to Chambers is also appreciated.
  - (3) **Partial Case Settlement/Dismissal.** If fewer than all claims or defenses are resolved by a settlement, a motion requesting approval of same shall specify which claims, defenses, and parties will be resolved by the settlement/dismissal and which will remain. The parties shall also advise the Court if a settlement renders moot any pending motion, or portion thereof. The proposed order shall set out a proposed revised caption, deleting parties whose claims have been resolved, to be used on all subsequent pleadings. If the parties request a written order of dismissal per Fed. R. Civ. P. 41(a)(1), an editable proposed order shall also be submitted to Chamber's email as set forth in CMA Civ. Practice Standard 1.2(d).
  - (4) **No Retention of Jurisdiction.** Absent extraordinary circumstances, the Court will not retain jurisdiction (including through open-ended administrative closure) over cases that have been settled. In almost all cases, the proper mechanism for enforcing a settlement is a new action. Any motion or stipulation for dismissal requesting that the Court retain jurisdiction after dismissal shall explain in detail the extraordinary circumstances necessitating such an approach.

## **DEPOSITIONS**

## **CMA Civ. Practice Standard 30.1 – Use of Depositions in Court Proceedings**

- (a) **Procedure.** Together with Fed. R. Civ. P. 32, this Practice Standard governs the use of both regular and video depositions in court proceedings.

**(b) Sealed Original and One Court Copy.** At the beginning of a hearing or trial, the offering party shall deliver to the Courtroom Deputy the sealed, original transcripts of all depositions the party intends to use, whether for impeachment or otherwise. The offering party shall also provide the Court with a binder containing copies of any deposition transcripts the party plans to use, with tabs identifying the depositions.

**(c) No Substantive Use If Testifying Witness.** Unless otherwise permitted for good cause shown, if any party will be calling a witness to testify in person at trial, testimony by that witness via deposition on behalf of any party for substantive (as opposed to impeachment) purposes will not be allowed.

**(d) Designations.** Any party intending to offer deposition testimony in lieu of a live witness at trial shall provide opposing counsel with his/her designations of deposition testimony **at least twenty-one (21) days before the Final Trial Preparation Conference**. Within seven (7) days of receipt of these designations, opposing counsel shall provide counter-designated deposition testimony. Plaintiff's designations shall be highlighted in yellow, Defendant's in blue, and any other party's in green. Within seven (7) days of the Final Trial Preparation Conference, the parties shall exchange objections to all designated testimony, and make a good-faith attempt to resolve such objections. Objections to testimony shall be highlighted in red. Two copies of the highlighted deposition transcript(s) shall be provided to Judge Arguello at the beginning of trial.

Deposition testimony will be presented in the same manner as live testimony, i.e., objections to properly designated deposition testimony will be made during trial in the same way objections to live testimony are made.

**(e) Technical Requirements for Video Depositions.** To accommodate evidentiary objections to video deposition testimony, the proponent must have the technical ability to mute excluded responses and efficiently fast forward to the next segment of testimony.

**(f) Deposition Reader.** If evidence is to be presented through a written deposition transcript in a jury trial, the proponent shall supply a person to read from the deposition transcript.

**(g) Bench Trials.** For bench trials, depositions will not be read in open court. Instead, the Court will read them in Chambers in any requested sequence. At the beginning of the trial, the offering party shall provide the Courtroom Deputy with two copies of the relevant deposition transcript marked as an exhibit, marked as set forth in CMA Civ. Practice Standard 30.1(d).

## **HEARING AND TRIAL PROCEDURES**

### **CMA Civ. Practice Standard 43.1A – General Information**

**(a) Court Appearances.**

- (1) **Courtroom A602.** Unless otherwise directed, all matters to be heard by Judge Arguello will be heard in her Courtroom (A602). Matters to be heard by the Magistrate Judge will be in the courtroom assigned to that Magistrate Judge.
- (2) **Punctuality.** Court time is valuable to litigants, counsel, and court staff. Counsel **shall arrive 15 minutes before** any scheduled hearing and **30 minutes before** any trial and shall confer to confirm what issues are in dispute and what stipulations can be made. If a scheduled matter is called for hearing and a party or a party's counsel is not present, or if an attorney's tardiness delays the scheduled time of a proceeding, the Court may reset the matter for hearing, enter default, impose sanctions, give the tardy attorney the opportunity to perform needed public service through a *pro bono* assignment, or enter any other order.
- (3) **Personal Appearance.** Counsel—and, where specifically directed, the parties—shall appear personally at all hearings, unless leave to appear by telephone/VTC has been timely sought and expressly granted. Motions seeking leave to appear by telephone/VTC should be made at least three (3) business days before the scheduled hearing date. For non-evidentiary hearings, leave to appear by telephone/VTC will be liberally granted, providing that both sides are in full compliance with all prior orders and the case is making satisfactory progress. Leave to appear by telephone/VTC for evidentiary hearings will be granted only in exceptional circumstances.

(b) **Courtroom Organization and Protocol.**

- (1) **Courtroom Setup.** Plaintiff's table is closest to the jury box. There is one lectern in the courtroom at which all counsel and parties shall stand to make any statement or argument, with the exception of opening statement and closing argument. The lectern can be raised up and down, but it cannot be repositioned.
- (2) **Cell Phones.** All cell phones are to be **turned off** before entering the courtroom. If an attorney's cell phone rings during proceedings, the Court is likely to give counsel the opportunity to perform needed public service through a *pro bono* assignment.
- (3) **No Food or Drinks.** No soda, coffee, gum, or food is allowed in the courtroom. Water bottles are permitted. While the COVID-19 pandemic is ongoing, water and cups will not be provided by the Court.
- (4) **Delivery of Supplies.** The Court does not accept the delivery of supplies or other trial materials. Parties should coordinate among themselves for the delivery and receipt of any materials required for hearing or trial.
- (5) **New Issues or Filings.** Prior to the beginning of the hearing, please advise the Courtroom Deputy of any recent or anticipated filings or



issues.

- (6) **Courtroom Decorum.** All parties should observe the following courtroom decorum:
- (A) Stand when the Judge enters or leaves the courtroom, when addressing the Court, and when the jury enters or leaves the courtroom;
  - (B) Request permission to approach the bench (it will not normally be necessary for counsel to approach a witness on the stand, as the courtroom deputy, upon request of counsel, will hand a witness an exhibit);
  - (C) Address the Judge as “Your Honor”;
  - (D) Refer to all other persons by their surnames, prefaced by the individual’s title, e.g., Mr., Ms., Dr., Agent, Officer, etc., as appropriate; and
  - (E) Dress in business attire.
- (7) **Oaths.** The administration of an oath or affirmation is a solemn public ritual and an integral part of any judicial proceeding. Any public oath-taking requires the undivided attention of counsel as well as all others in the courtroom.
- (c) **Record of Proceedings.**
- (1) The official record of all trials and proceedings will be taken either by a real-time reporter or by electronic sound recording (audiotape). The real-time reporter assigned to Judge Arguello’s courtroom is Darlene Martinez, at [Darlene\\_Martinez@cod.uscourts.gov](mailto:Darlene_Martinez@cod.uscourts.gov). Prior to the beginning of any proceeding, please provide the Court Reporter with your business card. See CMA Civ. Practice Standard 1.2(g) for information regarding how to order transcripts.
  - (2) Requests for real-time, daily, or hourly copy must be made no later than the Final Trial Preparation Conference or three (3) business days before the hearing.
  - (3) **Glossary.** Not later than three (3) business days before commencement of a hearing, a bench trial, a jury trial, or any other proceeding, counsel and any *pro se* party shall provide the Court Reporter, Darlene Martinez, at [Darlene\\_Martinez@cod.uscourts.gov](mailto:Darlene_Martinez@cod.uscourts.gov), with a glossary of any difficult, unusual, scientific, technical, and/or medical jargon, words, names, terms, and/or phrases.
- (d) **Audio Visual Equipment.** If you require electronic equipment other than the

ELMO to display exhibits, please email chambers at [Arguello\\_Chambers@cod.uscourts.gov](mailto:Arguello_Chambers@cod.uscourts.gov) regarding what technology is available in the courtroom. Any equipment set-up shall be done outside the presence of the jury and shall not cause delay for the jury.

### **CMA Civ. Practice Standard 43.1B – Exhibits**

(a) **Conferral and Joint Exhibit List Required.** Counsel are required to meet and confer before an evidentiary hearing or the Final Trial Preparation Conference to exchange exhibits and to prepare a single, joint list of exhibits that they expect to offer. No exhibit is to be designated as “Plaintiff’s Exhibit” or “Defendant’s Exhibit.” The parties must stipulate to the authenticity and admissibility of as many exhibits as possible, marking the appropriate boxes on the Exhibit List form. Parties must pre-mark numerically all exhibits that will be used or identified for the record in a hearing or trial; the markings should also include the applicable case number.

(b) **Format of the Joint Exhibit List.** The Joint Exhibit List submitted by the parties must include all the information identified in the Civil Case Exhibit List found with Judge Arguello’s Practice Standards on the District Court website (<http://www.cod.uscourts.gov/JudicialOfficers.aspx>).

(c) **When and How to Submit the Joint Exhibit List:**

(1) **Motions hearings:** The Joint Exhibit List should not be filed via CM-ECF; instead, the list should be **emailed** to Chambers ([Arguello\\_Chambers@cod.uscourts.gov](mailto:Arguello_Chambers@cod.uscourts.gov)), at least three (3) business days before the hearing.

(2) **Trials:** The Joint Exhibit List shall be **emailed** to Chambers (not filed via CM-ECF), at least seven (7) days before the Final Trial Preparation Conference.

(d) **Stipulation Does Not Result in Automatic Admission.** A “stipulated” notation on an exhibit list does not automatically result in the admission of that exhibit at trial or hearing. Rather, each exhibit must be offered orally on the record. If parties have stipulated to the authenticity and admissibility of an exhibit, counsel merely needs to so inform the Court upon offering the exhibit by number.

(e) **Exhibit Binders or Folders.**

(1) Unless otherwise indicated, exhibits must be submitted to the Clerk’s office on a flash drive no later than 12:00pm on the Thursday before the first day of the trial or relevant hearing. The exhibit flash drive should include all exhibits that the parties plan to use or introduce, including those that are stipulated, contested, and demonstrative. With the exception of composite exhibits, each exhibit shall consist of a single document and not a group of separate documents. The hearing or trial may be delayed or continued until exhibits are provided.

- (2) Unless otherwise indicated, on the first day of trial, the parties shall provide the Courtroom Deputy with:
- (A) Four copies of the Joint Exhibit and Witness Lists;
  - (B) One three-ring binder containing the original exhibits (for the Court). Jurors will not receive individual exhibit binders; instead, they view exhibits on the ELMO during the trial. During deliberations, jurors will use a thumb drive of admitted exhibits. The parties will prepare the thumb drive of admitted exhibits and provide the same to the courtroom deputy before deliberations begin. All exhibits must be in numerical sequence.
  - (C) An electronic version of the exhibits in proper sequence on disc or thumb drive for the Court Reporter.
- (3) **Original Copy in the Witness Box.** The Courtroom Deputy will place each party's original exhibit notebook(s) in the witness box. Thus, when asking a witness to look at an exhibit, counsel or a *pro se* party need simply say, "Please look at Exhibit No. in the notebook in front of you..."

(f) **Voluminous Evidence.**

- (1) Parties shall either (a) redact voluminous evidence to reflect only the relevant portions and portions necessary for context; or (b) consistent with the requirements of Fed. R. Evid. 1006, prepare and offer charts, summaries, or calculations to communicate the contents of voluminous evidence to the Court and jury.
- (2) Additionally, parties shall include any redacted evidence or Rule 1006 chart, summary, or calculation they intend to use at trial in the list of exhibits set forth in the Final Pretrial Order and in the exhibit copies exchanged following the Final Pretrial Conference. The underlying voluminous evidence on which such redacted, summary, chart, or calculation exhibit is based shall be identified in an appendix to the exhibit list and such underlying evidence shall be made available to the other parties at the time the parties exchange exhibits.

(g) **No Oversized Exhibits; ELMO & Electronic System Training.** All exhibits are to be displayed on the ELMO, which is approximately 8½" x 11". Over-sized exhibits or demonstratives are not as effective as using the ELMO and will not be permitted unless they are approved by the Court. Alternatively, exhibits may be presented through the Court's electronic system and screens via a laptop computer. Training in effective use of the ELMO system, and/or the Court's electronic system, prior to a hearing or trial is highly encouraged, and can be arranged by contacting Judge Arguello's chambers via email at [Arguello\\_Chambers@cod.uscourts.gov](mailto:Arguello_Chambers@cod.uscourts.gov).

### **CMA Civ. Practice Standard 43.1C – Witness Lists**

(a) **Format.** The Witness List submitted by the parties must include all the information identified in the Civil Case Witness List found with Judge Arguello's Practice Standards on the District Court's website:

<http://www.cod.uscourts.gov/JudicialOfficers.aspx>.

(b) **When and How to File.** Each party shall submit a list of its proposed witnesses at the time and in the manner set forth in the Court's orders or, if no time or manner has been specified, as set forth below:

- (1) **Motion hearings, including Rule 702 hearings:** Emailed directly to Chambers ([Arguello\\_Chambers@cod.uscourts.gov](mailto:Arguello_Chambers@cod.uscourts.gov)), NOT filed via CM-ECF, at least three (3) business days before the hearing.
- (2) **Final Trial Preparation Conference:** Emailed directly to Chambers ([Arguello\\_Chambers@cod.uscourts.gov](mailto:Arguello_Chambers@cod.uscourts.gov)), NOT filed via CM-ECF, at least seven (7) days before the Conference. Witnesses not listed in the Final Pretrial Order may not be included in the Final Witness List without prior leave of Court for substantial good cause shown.
- (3) **Trials:** On the morning of trial, the parties shall provide the Courtroom Deputy with **four paper copies** of their respective witness and exhibit lists, which shall include an estimate of the time anticipated for each witness's testimony.

(c) **Ensuring Witness Presence.** Counsel desiring a witness's physical presence at a trial or hearing shall ensure the presence of that witness either by written stipulation with the opposing party (if the witness is in the control of that party) or by subpoena (in all other circumstances).

(d) **Sequestration Orders.** Sequestration orders should be strictly observed. Expert witnesses may not sit in on trials in which sequestration orders have been entered except with express prior authorization. Witnesses should not be "prepped" or their testimony reviewed during breaks after they have been sworn in. Witnesses who have not yet testified at trial should not be provided transcripts of trial proceedings. However, they may be prepared by asking them questions based upon hypotheticals. Once excused, witnesses may sit in the courtroom, unless a party has a good faith belief that the witness will be called again for rebuttal purposes and makes an ongoing exclusion request with the Court.

### **CMA Civ. Practice Standard 43.1D – Testimony by Telephone or Video**

(a) **General Information.** Together with Fed. R. Civ. P. 43(a) for trials and 43(c) for motions, this Practice Standard governs requesting and taking testimony by telephone or video. For purposes of this Practice Standard, the phrase "remote testimony" includes live, one-way or two-way testimony by telephone or video. It does not apply to

deposition testimony preserved on video.

- (1) A party may request that remote testimony be presented at any trial or hearing. Except in extraordinary circumstances, such request should be made by written motion or stipulation filed at least twenty-one (21) days before the trial or hearing. The motion should include:
  - (A) The reason(s) such testimony should be taken remotely and what means will be used;
  - (B) A detailed description of all testimony which is proposed to be presented remotely; and
  - (C) Copies of all documents or reports which will be used or referred to in such testimony.
- (2) If remote testimony is approved, the proponent of the testimony shall be responsible for the cost of such testimony.

#### **CMA Civ. Practice Standard 43.1E – Setting the Case for Trial and Pre-Trial Preparations**

- (a) **Final Pretrial Conference.** A final pretrial conference will be held in all civil cases. Unless otherwise ordered by the Court, the assigned Magistrate Judge shall preside over the Final Pretrial Conference as prescribed by Fed. R. Civ. P. 16(d) and D.C.COLO.LCivR 16.3. The primary purpose of the Final Pretrial Conference is to complete and finalize the parties' proposed Final Pretrial Order.
- (b) **Final Pretrial Order.** The Proposed Final Pretrial Order shall be prepared in accordance with the Instructions for Preparation of Final Pretrial Order, available under the "Forms" link on the District Court's homepage (<http://www.cod.uscourts.gov/>). The Magistrate Judge may also issue a Trial Preparation Order with specific tasks to be completed before the Pretrial Conference.
- (c) **Trial Settings.**
  - (1) **Length of Trial and Status Conference.** If the parties believe that they will require more than five (5) days for trial, the Court will review the case to determine whether a status conference needs to be set, at which time the parties will present argument to the Court as to why a longer trial is necessary.
  - (2) **Scheduling Trial Dates. Do NOT call or come to Chambers to schedule a trial. Immediately** following the Final Pretrial Conference, counsel and *pro se* parties shall confer and one party shall request trial dates by emailing Judge Arguello's Chambers ([Arguello\\_Chambers@cod.uscourts.gov](mailto:Arguello_Chambers@cod.uscourts.gov)), with a copy to opposing counsel. The email should include the relevant case number and the anticipated length of trial, as well as mutually acceptable proposed trial

dates. Failure to comply with this Practice Standard may result in the Court unilaterally setting the trial date.

(d) **Final Trial Preparation Conference.** Judge Arguello will preside over the Final Trial Preparation Conference, which will be scheduled approximately two weeks before trial. Unless otherwise ordered, all Final Trial Preparation Conferences will be held via VTC. Counsel are directed to contact chambers via email at [Arguello\\_Chambers@cod.uscourts.gov](mailto:Arguello_Chambers@cod.uscourts.gov) at least three (3) days before the scheduled hearing for instructions on how to proceed via VTC. Counsel who will try the case and any *pro se* parties must attend this Conference. Failure of chief trial counsel or *pro se* parties to attend may result in sanctions, including, without limitation, vacating the trial date, striking claims or defenses, and/or awarding attorney fees. At the Final Trial Preparation Conference, counsel and/or any *pro se* party should bring to the Court's attention any problems or issues that need to be resolved or addressed before trial commences or that may arise during the course of the trial. The parties should anticipate discussing witnesses, exhibits, *voir dire*, jury instructions, verdict forms, allotted time for openings and closings, trial testimony via deposition, settlement, evidentiary issues, and/or outstanding motions.

(e) **Proposed Case-Specific Voir Dire Questions.** No later than one week before the Final Trial Preparation Conference, the parties shall submit their **case-specific** proposed *voir dire* questions to Chambers via email ([Arguello\\_Chambers@cod.uscourts.gov](mailto:Arguello_Chambers@cod.uscourts.gov)), with a copy to opposing counsel. Parties should NOT file their proposed *voir dire* questions on the CM-ECF system. Routine questions (e.g., whether the jurors know any of the parties, whether they have served on a jury, whether they have any legal training or experience), need not be submitted as these will be included as part of the Court's standard *voir dire*. All proposed *voir dire* questions must be written in a format that can be asked of the jury panel as a whole, i.e., the questions must be "yes or no" questions.

(f) **Trial Briefs.** Trial briefs are not required, absent specific court order. If filed, trial briefs shall not exceed ten pages and shall be filed no later than seven (7) days before trial. A trial brief may not be used as a substitute for a motion (e.g., a motion *in limine*).

#### **CMA Civ. Practice Standard 43.1F – Bench Trials**

(a) **Time.** Trials to the Court will begin promptly at 8:30 a.m.

(b) **Joint Exhibit List and Exhibit Notebook.** See CMA Civ. Practice Standards 43.1B(e)(2).

(c) **Witness Lists.** See CMA Civ. Practice Standards 43.1C(b)(3).

(d) **Elements Instructions.** The parties shall confer and submit stipulated elements instructions on the claims and affirmative defenses to be tried to the Court. If the parties are unable to reach a stipulation as to the elements, then the parties shall submit competing elements instructions with supporting legal authority, in accordance with CMA Civil Practice Standard 43.1H(f)–(h). The elements instructions are to be

submitted to the Court via email ([Arguello\\_Chambers@cod.uscourts.gov](mailto:Arguello_Chambers@cod.uscourts.gov)) no later than two weeks before the Final Trial Preparation Conference.

(e) **Preliminary Proposed Findings of Fact Conclusions of Law.** Unless otherwise ordered by the Court, the parties should not submit preliminary proposed findings of fact and conclusions of law.

(f) **Expert Witness Qualification.** For a trial to the Court, a proper résumé or curriculum vitae, marked and introduced as an exhibit, generally will suffice for the determination of an expert witness's qualification.

### **CMA Civ. Practice Standard 43.1G – Jury Trials**

(a) **Joint Exhibit List and Exhibit Notebook.** See CMA Civ. Practice Standards 43.1B(e)(2).

(b) **Witness Lists.** See CMA Civ. Practice Standards 43.1C(b)(3).

(c) **Condensed Trial Day.**

(1) **Jury Selected in Advance of Trial.** If the jury has been selected a week in advance of the trial, each trial day, including the first day, begins promptly at 8:00 a.m. A fifteen-minute recess is taken at approximately 10:00 a.m., and a half-hour lunch recess is taken at approximately 12:15 p.m. Jurors are excused for the day between 2:30 and 2:45 p.m.

(2) **Jury Selected First Day of Trial.** If the jury is selected the first day of trial, the **first** trial day begins at 8:30 a.m. with jury selection. An hour-long lunch break will be taken at approximately 12:00 p.m., and the jurors are excused between 4:30 and 5:00 p.m. However, all remaining trial days will conform to the condensed trial schedule as described in CMA Civ. Practice Standard 43.1G(c)(1).

(d) **Counsel to Arrive Early Each Day of Trial.** Counsel shall be present in the courtroom at least **30 minutes before** the trial day is scheduled to begin to address any issues that may arise before the start of the trial day. **It is counsel's responsibility to bring such issues to the Court's attention by alerting the Courtroom Deputy prior to the beginning of the trial day.** It is the Court's firm expectation that the Jury will be seated and trial will begin promptly at 8:00 a.m. each day.

(e) **Jury Selection Process.**

(1) The jury in civil cases will normally consist of ten jurors with no designated alternates.

(2) If a trial is estimated to take longer than five (5) days, unless otherwise specified by Judge Arguello, jury selection is conducted on the Monday before the scheduled trial, i.e., a week in advance. Otherwise, jury selection occurs the morning of the first day of trial.

- (3) Prior to the jurors being brought up to the Courtroom, the Clerk's office provides the Court with a list of juror names, chosen by computer in a randomly selected order. The prospective jurors on the list are seated in and in front of the jury box.
  - (4) *Voir dire* will be directed to the prospective jurors seated in the jury box. The Court will conduct the initial *voir dire* examination of the prospective jurors. Unless otherwise ordered by the Court, after a brief introduction of the parties and the lawyers, the Court will ask the parties to give their **opening statements to the entire jury venire**. The Court will then continue with its *voir dire*. Thereafter, each side shall be permitted *voir dire* examination not to exceed 15 minutes, unless otherwise ordered. Such *voir dire* examination shall be limited to non-argumentative questions submitted by the parties and follow-up questions based on previous answers.
  - (5) Any juror excused by the Court for hardship will be replaced by the next numerically identified prospective juror in the jury venire who has not already been seated in the jury box.
  - (6) After *voir dire* examination is completed, the Court will entertain any challenges for cause. Any juror excused for cause will be replaced by the next numerically identified prospective juror in the jury venire who has not already been seated in the jury box. The Court shall conduct *voir dire* examination of any replacement jurors.
  - (7) Pursuant to Fed. R. Civ. P. 47(b) and 28 U.S.C. § 1870, each side shall have three peremptory challenges, which shall be **exercised simultaneously** using a strike sheet. See *Pointer v. United States*, 151 U.S. 396 (1894); *United States v. Martinez-Salazar*, 528 U.S. 304 (2000).
  - (8) Challenges pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), are made after peremptory challenges are concluded and immediately prior to the jury being sworn.
- (f) **Note Taking by Jurors.** Jurors will be permitted to take notes during the trial. The jurors' notes will be destroyed after the jury is discharged.
- (g) **Questions by Jurors.** In specific cases, the Court may allow jurors to submit written questions to witnesses while the witness is on the stand. This issue will be addressed at the Final Trial Preparation Conference. The procedure the Court will follow is set forth in its Civil - Model Preliminary Jury Instructions, which can be found at <http://www.cod.uscourts.gov/JudicialOfficers.aspx>.
- (h) **Bench Conferences.** Bench conferences are strongly discouraged and will be minimized. Matters should be raised either before or after the trial day. See CMA Civ. Practice Standard 43.1G(b).



(i) **Time Limits on Opening Statement/Closing Argument.** Unless otherwise ordered, the time limit for opening statements is 45 minutes per party and the time limit for closing arguments is also 45 minutes, inclusive of rebuttal. If counsel intends to do rebuttal, s/he must so advise the Court and reserve the time. Counsel are not allowed to tag-team on opening and/or closing, i.e., only one lawyer per side can do opening and only one lawyer per side can do closing (including rebuttal).

(j) **Speaking Objections Not Permitted.** Speaking objections are not allowed. Objections and responses thereto shall be made specifically and concisely (e.g., “Objection: relevance”), rather than in an argumentative or suggestive manner.

### **CMA Civ. Practice Standard 43.1H – Jury Instructions and Verdict Form**

(a) **Jury Instruction.** The jury will be instructed before closing arguments. Each juror will be given a copy of the written instructions for his/her use during deliberations.

(b) **The Importance of (Far-Too-Often-Neglected) Jury Instructions.** The parties’ preparation of thorough, thoughtful, and clear jury instructions simply cannot be overstated. The Court devotes substantial time to reviewing and refining proposed jury instructions, and expects no less effort from counsel. To this end, the Court requires preparation and submission of instructions several weeks in advance of trial, so counsel and the Court can devote the time necessary for this crucial task **before** other trial preparation demands become overwhelming.

(c) **Conferral and Timing/Method of Submission.** The parties shall meet and confer well in advance of the Final Trial Preparation Conference and stipulate to the verdict form and as many proposed jury instructions as possible, including the statement of the case. Only true conflict or uncertainty in binding substantive law should prevent agreement. The parties shall exchange their proposed jury instructions and verdict forms at least one week before meeting. It is Plaintiff’s counsel’s responsibility (but if Plaintiff is *pro se*, it shall be Defendant’s counsel’s responsibility) to schedule these meeting(s), as well as to submit stipulated jury instructions (and, if applicable, a stipulated verdict form) directly to Chambers via email ([Arguello\\_Chambers@cod.uscourts.gov](mailto:Arguello_Chambers@cod.uscourts.gov)), with copy to opposing counsel/party, **at least two weeks before the Final Trial Preparation Conference**. Similarly, competing and non-stipulated instructions (defined and described in greater detail below) should also be submitted to Chambers via email by the party proffering such instructions **at least two weeks before the Final Trial Preparation Conference**. Instructions shall NOT be filed via CM-ECF. The Court will consider only those jury instructions and verdict forms tendered using the procedures described below.

(d) **Standard Preliminary and Final Instructions.** The Parties are required to use the Court’s model, generic preliminary and final jury instructions that are pertinent to all civil cases. See Judge Arguello’s model preliminary and final instructions, available at <http://www.cod.uscourts.gov/JudicialOfficers.aspx>. If the parties wish to modify the Court’s Model Instructions, or if they believe additional preliminary or final instructions are necessary, they should attempt to stipulate to such instructions and shall follow the instructions set forth below.

(e) **Form Instructions; Plain Language.** The Court generally follows the most current editions of the form instructions provided in Federal Jury Practice and Instructions (for federal claims and introductory instructions) and the Colorado Jury Instructions – Civil (for state claims). However, it encourages counsel to carefully read and **tailor** any form instruction to the facts and circumstances of the particular case, as well as to edit such instructions to use plain language.

(f) **Categories of Jury Instructions.** The Court contemplates three categories of jury instructions, as described below. In order to assist the Court in distinguishing among the different instructions, at the bottom of each instruction (immediately preceding the legal authority), the instruction should be identified as “Stipulated,” “Competing,” or “Non-Stipulated,” and, in the case of competing or non-stipulated instructions, should also identify the party tendering the instruction (e.g., “Plaintiff’s Competing Instruction,” “Defendant’s Non-Stipulated Instruction.”) See CMA Civ. Practice Standard 43.1H(g)(1).

- (1) **“Stipulated Instructions”:** Stipulated instructions are those instructions about which the parties agree after conferral. There should be no duplication of stipulated instructions (or verdict forms); i.e., if the parties stipulate to a particular instruction or a verdict form, then that instruction or form should be submitted as stipulated only, and no similar instruction or form should appear in any party’s competing or non-stipulated instructions.
- (2) **“Competing Instructions”:** Competing instructions are those instructions about which all parties agree that an instruction is necessary, but disagree about the content of that instruction.
- (3) **“Non-Stipulated Instructions”:** Non-stipulated instructions are those instructions requested by a party (or parties) to which any other party objects, but does not request/tender a competing instruction.
- (4) Each proposed competing or non-stipulated instruction should contain, at the bottom of the instruction, one paragraph of argument from each side, including citations to **legal authority**, explaining why the instruction is tendered or opposed.

(g) **Format of Proposed Jury Instructions.**

- (1) Proposed instructions should NOT be numbered. Each proposed instruction should contain a title, which shall be centered in bold, all caps typeface on the top of the page corresponding to the instruction. For example:

**INSTRUCTION NO.  
DAMAGES**

[Instruction]

Plaintiff's Competing Instruction. Source: 3 Fed. Jury Prac. & Instr. §§ 170:60, 170:63. [Legal Argument.]

(2)

(3) If the parties edit a form or pattern instruction, the parties shall either redline/track such changes or specifically describe them at the bottom of the instruction.

(4) Proposed instructions should be submitted with "hard page breaks" (**not** the use of "hard returns") between each instruction.

(5) **Stylistic conventions.** When referring to this Court in the body of the instructions, always capitalize the word "Court." Additionally, do not use articles when referring to the parties, but do capitalize the parties' names or designation. Thus, the preferred format is: "Plaintiff Jones" or "Mr. Jones" or "XYZ Corp." rather than "the Plaintiff/Defendant." Please proofread submissions carefully.

(h) **Charging Conference.** Assuming the parties are cooperating in good faith, the Court will attempt to finalize the proposed instructions and provide them to the parties prior to the start of trial. The Court will examine the jury instructions again when it holds the charging conference before the case goes to the jury (generally, after Plaintiff rests). 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. The Court will also address unanticipated matters that arise during trial and that require changes to the jury instructions and/or verdict form at the charging conference or after the close of all evidence.

(i) **Verdict Forms.** As with jury instructions, the Court urges counsel to confer and to craft a verdict form that is understandable to lay persons. In all but the simplest cases, the Court prefers special interrogatory verdict forms, which provide a roadmap for the jury with specific questions keyed to each claim, as well as specific instructions about where to proceed in the verdict form, if, for example, a Plaintiff fails to prove an element of a claim. See Fed. R. Civ. P. 49(a) and Judge Arguello's Civil Jury Verdict Form, available at <http://www.cod.uscourts.gov/JudicialOfficers.aspx>. Verdict forms shall not be filed via CM-ECF; they should be submitted pursuant to the same deadlines and method provided in CMA Civ. Practice Standard 43.1H(c).

(j) **Final Instructions and Verdict Form.** Court staff will prepare a final, clean set of instructions and the verdict form for the jury.