

# UNITED STATES DISTRICT COURT

DISTRICT OF COLORADO  
ALFRED A. ARRAJ COURTHOUSE  
DENVER, COLORADO 80294

DANIEL B. SPARR  
Senior District Judge

## TRIAL PROCEDURE MEMORANDUM

This is a summary of the procedures which I will use for conferences and trials of civil and criminal cases. If you will take the time to familiarize yourself with this and follow the checklist and instructions, your case will be more efficiently presented.

### TRIAL PREPARATION CONFERENCE

The Court requires counsel to appear for a Trial Preparation Conference approximately one-two weeks prior to trial. Counsel should be prepared to submit proposed *voir dire* and jury instructions, trial schedules, trial briefs, Proposed Findings and Conclusions, exhibit lists, and witness lists at the time of the Trial Preparation Conference. Original and court copies of exhibits **do not** need to be brought to the Trial Preparation Conference, but must be available for inspection.

Civil cases may be continued and reset at the discretion of the Court in the event of a conflicting criminal trial or other scheduled matters. However, in the event of an anticipated continuance, the Court will attempt to notify counsel at the time of the Trial Preparation Conference so that counsel and witnesses may be accommodated.

#### 1. MOTIONS IN LIMINE.

Any Motions In Limine that the parties wish to be considered before trial must be filed with the Clerk's Office (original and two (2) copies in civil cases; original and one (1) copy in criminal cases), **sufficiently before** the Trial Preparation Conference so that the Court has sufficient time to review the motion(s) before the Conference.

#### 2. WITNESS LISTS.

You must provide the Courtroom Deputy with an original and four copies of the list of your witnesses, plus copies for each opposing counsel **at the Trial Preparation Conference**. One copy of the list will be provided to the Court Reporter to ensure that the witnesses' names are spelled correctly.

#### 3. EXHIBIT LISTS.

Please prepare an index of exhibits which you expect to offer, using the **attached form**. Provide an original and four copies of this index to the Court, as well as a copy for opposing counsel at the Trial Preparation Conference. There is no requirement that exhibits be offered in sequence. **Please stipulate to authenticity and admissibility of exhibits prior to trial, if possible**, and mark the appropriate boxes on the attached form.

#### 4. PROPOSED INSTRUCTIONS AND VERDICT FORMS.

- a. Stipulating to Jury Instructions **Counsel shall submit their stipulated proposed jury instructions at the Trial Preparation Conference**. Counsel shall make a good faith effort to stipulate to as many proposed jury instructions as possible. Argument will be heard only on instructions on which counsel have a legitimate disagreement.

- b. Numbering and Form of Instructions. The instructions submitted at the Trial Preparation Conference should be numbered, with a citation to authority (case law, CJI, or the like) appearing at the bottom. Any instructions which cannot be stipulated to **MUST** be numbered separately and indicate at the top Plaintiff's or Defendant's Proposed Instruction No. \_\_\_\_\_.
- c. Each set of instructions shall be submitted to the Court with an original plus one copy with citations, and on a computer disk compatible with Word Perfect 9. The disk shall include a copy of each instruction without citations.
- d. The Court has a prepared stock introductory instruction for use in every case. It includes many general cautionary instructions re: the jury's duties, the burden of proof, types of evidence, impeachment, etc. It is available from Chambers upon request. Please obtain a current copy so as to avoid submitting duplicate instructions. The Court will customize this instruction for the particular trial. Counsel should not change or re-type this instruction. A stock final instruction is also available.
- e. **The instructions submitted at the Trial Preparation Conference shall include the following:**
  - (1) A theory of the case instruction which contains the Plaintiff's claims and the Defendant's defenses. This instruction will be used in voir dire, so it is important that a stipulated instruction be submitted at the Trial Preparation Conference;
  - (2) Other instructions related to the claims and defenses to be presented at trial, including definitional instructions.

At the conclusion of the evidence, the Court will entertain arguments on instructions and will inform counsel which instructions will be used. The Court, with assistance of counsel, will prepare the final set of instructions for submission to the jury. Counsel will make summations following jury instruction conference. After summations, the Court will charge the jury and provide written instructions.

#### 5. PROPOSED VOIR DIRE.

Proposed *voir dire* questions should also be filed in chambers at the time of the Trial Preparation Conference. An original and two (2) copies shall be filed with the Court and copies shall be served on all opposing counsel. In the absence of special circumstances, all *voir dire* will be conducted by the Court. Prior to passing the jury for cause, counsel will have an additional opportunity to submit any questions occasioned by the Court's *voir dire*, but counsel will not be permitted to conduct any *voir dire*.

#### 6. PROPOSED TRIAL SCHEDULE.

**Counsel shall submit at the Trial Preparation Conference an original and four copies of their proposed trial schedule. It should set forth with specificity the names of witnesses to be called, anticipated length of testimony, and order of presentation of witnesses. At the Trial Preparation Conference, the Court will integrate its anticipated docket with the proposed schedules presented by all counsel. In this manner, it is the hope of the Court that the trial day may be smooth and uninterrupted. While counsel will not be strictly held to this schedule, it should include counsel's good faith estimates.**

7. PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW.

For a trial to the court, at the time of the Trial Preparation Conference, counsel shall submit to the Court an original and two copies, as well as a computer disk, of Proposed Findings of Fact and Conclusions of Law, based upon the evidence that will be presented at trial. To the extent possible, counsel shall also submit a proposal of evidence which appears undisputed.

8. TRIAL BRIEFS.

Any Trial Briefs that the parties wish to present to the Court shall be filed at the time of the Trial Preparation Conference. Unless otherwise specified, trial briefs shall be limited to ten pages. Please provide an original and two copies.

CHECKLIST FOR TRIAL

1. On the first day of trial, counsel are expected to be present at 8:30 a.m. for a jury trial or a trial to the Court. At that time, counsel will go over Court procedures with the Courtroom Deputy Clerk. The Courtroom Deputy Clerk in this Court is Lucy West. Any questions regarding transcripts should be directed to Ms. Charlotte Hoard in the Clerk's Office at 303-335-2100. **Any request for Daily Copy should also be made to Ms. Charlotte Hoard at 303-335-2100 30 days in advance of trial.**

2. There are a number of steps you can take to facilitate record-taking in the courtroom:

- a. Give your business card to the Court Reporter before the proceeding begins.
- b. If any of your witnesses will present testimony containing unusual or technical vocabulary, prepare a list of such correctly spelled names and terms for the Court Reporter.
- c. Make certain that verbal responses are elicited from all witnesses or that some audible indication is made.

3. EXHIBITS.

- a. Exhibit labels may be obtained from the Clerk's Office in Room A105. Plaintiff's exhibits should be marked with the yellow labels, using Plaintiff's name and numbers. Defendant's exhibits should be marked with the blue labels, using Defendant's name and numbers.
- b. **Please affix labels to your exhibits before trial.** The civil or criminal action number **MUST** also be placed on each of the exhibit stickers.
- c. Exhibits should be bound in looseleaf notebooks, **ingertabbed**. Any multi-page exhibit should have all pages numbered for specific page reference.
- d. There should be one notebook of originals for examining the witness, one notebook of copies for the judge, and one notebook of copies for each opposing counsel. (For a trial to the court, provide one additional notebook set for the law clerk.)
- e. At the conclusion of the trial, all original exhibits will be returned to the parties for safekeeping.

4. WRITTEN CURRICULUM VITAE. A written curriculum vitae marked as an exhibit will usually suffice in lieu of testimony for the qualification of an expert witness. An original plus one copy should be provided for the Court, as well as copies for all opposing counsel.

5. DEPOSITIONS.

- a. Counsel are reminded that pursuant to Fed.R.Civ.P. 5(d), depositions, interrogatories, requests for admissions, and the answers and responses thereto are not filed with the Clerk's Office unless on special order of the Court. The original deposition transcripts should be in the possession of the party to whom they were delivered and must be brought to the trial.
- b. If you are planning to use deposition testimony, you should advise opposing counsel of your proposed offer by page and line reference to enable the preparation of objections and the offer of additional portions of the transcript.
- c. In jury trials, you are also requested to provide a person (who may be co-counsel) to read the answers. In court trials, the Court will advise counsel how it wishes to deal with depositions. The preferred practice is to provide the Court with a copy of the transcript with the Plaintiff's designations highlighted in yellow and the Defendant's designations highlighted in blue. **Depositions must be marked for identification whether or not they will be offered into evidence. Depositions will remain in the possession of the Courtroom Deputy Clerk until the end of the trial, when they are returned to the parties with the other exhibits.**

6. VIDEO AND SPECIAL EQUIPMENT. If you intend to use any special equipment, such as videos or overheads, please make your own arrangements and advise the Courtroom Deputy Clerk of the date the equipment needs to go through security.

7. ANTICIPATED TRIAL SCHEDULE. The Court's trial week begins with jury selection Monday morning, possibly continuing into the afternoon. Trials normally begin at 9:00 a.m. on Monday. As previously mentioned, at the Trial Preparation Conference, the Court will inform counsel of the additional matters on the Court's calendar during the course of trial. This will allow the parties to efficiently schedule around the other matters. Every effort is made to allow the trial to proceed uninterrupted by other cases between 8:30 or 9:00 a.m. and 4:00 p.m.

8. NO ALTERNATE JURORS. Pursuant to Rule 47 of the Fed. R. Civ. P. there will no longer be alternate jurors in civil cases. Alternates will generally be used in criminal trials, although they will not deliberate. Juries in both civil and criminal cases will consist of twelve jurors. This matter will be discussed at the Trial Preparation Conference.

9. MODIFICATIONS OF TRIAL PROCEDURES. These procedures serve as a framework for the effective administration of litigation in this Court. Compliance with them is mandatory. However, the Court will allow modification of these procedures on a case-by-case basis in the interest of justice to meet specific circumstances and needs of the parties. The Court thanks you for your cooperation. If you have any further questions, you may call the Court's law clerk, Eileen O'Connor-Barnes, at 303-844-4694. or the Courtroom Deputy Clerk, Lucy West, at 303-335-2099.