

PRACTICAL TIPS FOR PRETRIAL DISCOVERY AND PROCEDURE IN FEDERAL COURT

Civil Practice

**Faculty of Federal Advocates
Colorado Springs Colorado**

**February 16, 2011
12:00 - 1:15 p.m.
First Bank Building
2 N. Cascade
Colorado Springs, Colorado**

By

**Michael J. Watanabe
Lead United States Magistrate Judge
District of Colorado**

**United States District Court Web Site:
www.cod.uscourts.gov**

GENERAL CONSIDERATIONS

- A. Make sure you have a copy of the Local Rules of Practice (D.C.COLO.LCivR).
- B. Make sure you have a copy of the Instructions for Preparation of Scheduling Order.
- C. Make sure you have a copy of the Instructions for Preparation and Submission of Final Pretrial Order.
- D. Make sure you have a copy of the Trial Procedure Memorandum as to the Article III District Judge assigned to your case.
- E. Make sure you have a copy of the Federal Rules of Civil Procedure.
- F. Make sure you have a copy of the Federal Rules of Evidence.
- G. Make sure you have a copy of Electronic Case Filing Procedures for the District of Colorado (Civil Cases).
- H. Make sure your documents which you submit are **double-spaced** with **12 point Font** as required under D.C.COLO.LCivR 10.1 E and 10.1 D.

- I. Make sure you know which Article III District Judge and which Magistrate Judge have been drawn on your case. See D.C.COLO.LCivR 40.1.

ORDER OF REFERENCE- 28 U.S.C. § 636(b)(1)(A) and Fed. R. Civ. P. 16, 72(a) and 83

- A. Read it carefully so that you know the scope of duties and responsibilities of the Magistrate Judge.
- B. General Order of Reference vs. Limited or Special Order of Reference.
- C. Setting of Scheduling Conference **normally within 30-60 days from Order of Reference** to the Magistrate Judge.
- D. An Article III District Judge may decide **not** to refer any portion of a case to a Magistrate Judge **except for** settlement purposes only **or** for some other limited purpose.
- E. Senior District Judges Matsch and Kane are generally doing their own Rule 16 Scheduling Orders but are, in most cases, referring their cases to a Magistrate Judge for settlement purposes only. Always check the Order of Reference and it will outline the scope of work that is being referred to the Magistrate Judge.

SCHEDULING CONFERENCE AND SCHEDULING ORDERS- Fed. R. Civ. P 16(b) and D.C.COLO.LCivR 16.2

- A. Order of Reference and setting of Scheduling Conference. The court will generally **not** continue a Scheduling Conference on the grounds that a Defendant has not yet filed an Answer.
- B. Fed. R. Civ. P. 26(f) meeting **shall be held at least twenty-one days before** the Scheduling Conference.
- C. Exchange Fed. R. Civ. P. 26(a)(1) disclosures at the Rule 26(f) meeting or within fourteen (14) days after the Fed. R. Civ. P. 26(f) meeting. **DO NOT FILE ANY RULE 26(A)(1) DISCLOSURE STATEMENTS WITH THE COURT.**
- D. **Five (5) days before** Scheduling Conference, you should e-file with the Court your proposed Scheduling Order in PDF format signed by all counsel of record or pro se litigants. Also e-mail to the assigned magistrate judge's chambers, the proposed Scheduling Order in WordPerfect or Word format. You can find all of the Magistrate and District Judges chambers' email addresses in Section V.L.2.C. of the Electronic Case Filing Procedures for the District of Colorado (Civil Cases).
- E. **Must file your written consent within ten (10) days after the discovery cutoff date** if you are consenting to having a Magistrate Judge under 28 U.S.C. § 636 (c)(1) and D.C.COLO.LCivR 72.2 D.

- F. Most Civil Cases should be able to complete **all discovery within six (6) months. When filing your proposed Scheduling Order try to set cutoff dates within this time frame.**
- G. All of the Article III District Judges allow the Magistrate Judges to set and/or extend a cutoff date for Dispositive Motions.
- H. Generally speaking Senior District Judges Matsch and Kane and District Judge Krieger will conduct their own Final Pretrial Conference. All of the other Article III District Judges will normally have the Magistrate Judge conduct the Final Pretrial Conference. In preparing the proposed Final Pretrial Order make sure that you check the practice standards for the trial judge (i.e. District Judge or Magistrate Judge on Consent) assigned to the case. Some of the judges require additional information to be placed into the stock Final Pretrial Order form. **The practice standards for all judicial officers can be found on the court's web site.**
- I. Set the Final Pretrial Conference date in all cases **except** Judge Miller's cases **at sixty (60) days after** the Dispositive Motion deadline. In Judge Miller's cases, the Final Pretrial Conference will be set in **120 days after** the dispositive motions deadline.
- J. Be prepared to inform the Magistrate Judge what discovery, if any, is needed before you can meaningfully discuss settlement of the case. The Magistrate Judge will normally set a settlement conference date at the Scheduling Conference. Many of the Magistrate Judges are requesting initial confidential settlement statements prior to the Scheduling Conference. In some situations, an initial settlement conference may be conducted following the Scheduling Conference if time permits.
- K. At the Scheduling Conference, the Magistrate Judge can obtain a trial date and trial preparation date in those cases assigned to Senior District Judge Babcock and District Judge Blackburn. The Magistrate Judge needs to know the length of the trial, whether the trial will be to a jury or court, and the dispositive motion deadline. This information should be included in the Scheduling Order. The other Article III District Judges **do not** give trial or trial preparation dates at the Scheduling Conference but wait until after the Final Pretrial Conference.
- L. **Do not forget** to bring your **personal calendars** with you to the Scheduling Conference. The court will be setting future court dates with you at the Scheduling Conference. It is advisable that when you come to court for any hearing or trial that you bring your calendar with you.
- N. **Do not forget** to bring your **valid photo identification** with you to court. If you do not have your valid photo identification on your person, you will be denied access to this courthouse. Cell phones with photo capability or other recording devices will not be allowed in the courthouse except if any attorney has been registered with our court to allow such attorney to bring his cell phone into the courtroom. Do not bring any object that may be considered a deadly weapon. "Deadly Weapon" means any of the following

which in the manner it is used or intended to be used is capable of producing death or serious bodily injury: A firearm, whether loaded or unloaded; a knife; a bludgeon; or any other weapon, device, instrument, material, or substance, whether animate or inanimate.

FINAL PRETRIAL CONFERENCE

- A. Make sure you follow the Instructions for Preparation and Submission of Final Pretrial Order for all Article III District Judges' cases or Magistrate Judges' cases on Consent. **Do not** forget to double-space your proposed Final Pretrial Order. See D.C.COLO.CivR 10.1 E. See also D.C.COLO.LCivR 10.1 for Format of Papers Presented for Filing.
- B. Make sure you check the practice standards for the trial judge (i.e. District Judge or Magistrate Judge on Consent) assigned to your case.
- C. Narrow the claims for relief, will call witnesses, may call witnesses, and disputed facts.
- D. At the Final Pretrial Conference, expect to either set a further Settlement Conference with the Magistrate Judge or to inform the Magistrate Judge whether you are seeking outside ADR. As to cases where Senior District Judges Matsch and Kane or District Judge Krieger is assigned as the trial judge, expect to inform such judge the status of settlement discussions and whether you will be seeking a settlement conference with a Magistrate Judge or whether you will be seeking private ADR.

MOTION PRACTICE

- A. **Discovery Motions** before the Magistrate Judge.
 - 1. Magistrate Judges try to take care of these motions promptly. Most discovery motions are ruled upon without a hearing.

See D.C.COLO.LCivR 7.1 C which states in part . . . **“Nothing in this rule precludes a judicial officer from ruling on a motion at any time after it is filed.”**
 - 2. Some motions require a court hearing. Normally, the Magistrate Judges try to set such motions without delay if their dockets permit.
- B. **Dispositive Motions** before the Magistrate Judge for Report and Recommendation-Check Order of Reference or Limited or Special Order of Reference.
- C. Dispositive Motions before the Magistrate Judge pursuant to D.C.COLO.LCivR 72.3 and 28 U.S.C. § 636(c)(1).
For Motions pending over six (6) months.
- D. Review Duty to Confer **before** filing the motion. See D.C.COLO.LCivR 7.1 A.

- E. Oral Argument is at the discretion of the Magistrate Judge or Article III Judge. See D.C. COLO.LCivR 7.1 G.
- F. When e-filing a motion, electronically file such motion and proposed order in PDF format. Also email the **proposed order only** and **not** the motion to the assigned Magistrate Judge and District Judge Chambers email address in WordPerfect or Word Format. You can find all of the Magistrate and District Judges chambers' email addresses in Section V.L.2.C. of the Electronic Case Filing Procedures for the District of Colorado (Civil Cases).

Explanation the NEF process. NEF means Notice of Electronic Filing.

- G. ALL PRO SE LITIGANTS must file an original of any document with the court.
- H. Pro Se Litigants are NOT permitted to e-file unless given permission by the court. See Section I.B.7 and III.B of the Electronic Case Filing Procedures for the District of Colorado (Civil Cases). Explanation on how documents from Pro Se Litigants are processed by our Clerk's Office.