



# "Irregular Form" by Sol LeWitt

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- **Alfred A. Arraj U.S. Courthouse, Denver, CO**

*Photo courtesy of the U.S. General Services Administration*

- **This piece is located on the exterior of the building, along the Champa Street side of the courthouse. "Irregular Form" is an expansive wall drawing comprised of irregular slabs of gray slate on a black granite background. The artwork's immense scale and striking contour exert a commanding presence in its urban environment. Captured within a sturdy, grid-like framework that references the rational, geometric ordering of the entire building, the unwieldy appendages of the gray form are firmly anchored to the supporting architecture. This playful tension between organic and geometric elements is a hallmark of LeWitt's innovative wall drawing technique.**
- **Date: 2003 / Material: Stone / Dimensions: 36' x 70'**

- **Federal District Court Local Rules Update and Common (and Not So Common, But Serious) Pitfalls the Court and Clerk's Office See**
- **First, always remain vigilant about the Local Rules, and annual revisions!**

# Where to Find the U.S. District Court's Local Rules ....

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## Local Rules of Practice

### U.S. DISTRICT COURT LOCAL RULES REVISIONS EFFECTIVE DECEMBER 1, 2017

The United States District Court for the District of Colorado reviewed and approved revisions to its Local Rules which become effective December 1, 2017. The links below provide access to the revised rules that will go in effect December 1, the redline version of those rules, and the current rules effective until Dec.1, 2017.

The Advisory Committee on the Local Rules of Practice and Procedure in 2017 continued its review of public suggestions and comments for improvements to the local rules. In the 2017 rules cycle the Committee efforts included refinements to the initial review process for unrepresented parties and prisoners; the making of further adjustments to the limited representation procedure made available for all parties in 2016; an assortment of new administrative provisions that will contribute to more efficient case administration; and several amendments to attorney practice rules.

- [Download Local Rules Effective December 1, 2017](#)
- [Download Local Rules Effective December 1, 2017 \(Redline/Strikeout Version\)](#)
- [Summary of Local and Federal Rule Revisions effective Dec. 1, 2017](#)

All members of the bar and the public are advised that the Advisory Committee will conduct a community forum at the

# Where to Find the U.S. District Court's Local Rules ....

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The screenshot shows a web browser window with the URL [www.cod.uscourts.gov/CourtOperations/RulesProcedures/LocalRules/CivilLocalRules.aspx#scope](http://www.cod.uscourts.gov/CourtOperations/RulesProcedures/LocalRules/CivilLocalRules.aspx#scope). The page title is "Local Rules of Civil Procedure". The navigation menu includes: Home, About the District, Judicial Officers, Court Operations, Juror Information, Attorney Information, and Representing Yourself. The "Court Operations" menu is expanded, showing: Fee Schedule, FAQs, USDC Procurement, Calendars, Rules & Procedures, Motions to Seal, PACER, CMECF, Orders and Opinions, ADA Accommodations, and Media. The "Rules & Procedures" sub-menu is further expanded, showing: Local Rules, Pilot Projects, Judicial Practice Standards, Electronic Discovery Guidelines and Checklist, Filing Civil Suits, Interpreter Information, Forms, and Criminal Debt. The "Local Rules" sub-menu is expanded, showing: Civil Local Rules, Criminal Local Rules, Patent Local Rules, AP Rules, and Attorney Rules. The "Civil Local Rules" sub-menu is expanded, showing: I. Scope, Purpose, and Construction - Civil, II. Commencement of Action, Service of Process, PI, III. Pleadings and Motions, IV. Parties, V. Depositions and Discovery, VI. Trials, VII. Judgment, VIII. Provisional and Final Remedies, IX. Special Proceedings, X. District Court and Clerk, and XI. General Provisions. The main content area displays the "Civil Local Rules for the District of Colorado" page, with a table of contents listing 11 sections: 1. SCOPE, PURPOSE, AND CONSTRUCTION, 2. COMMENCEMENT OF ACTION, SERVICE OF PROCESS, PARTIES, 3. PLEADINGS AND MOTIONS, 4. PARTIES, 5. DEPOSITIONS AND DISCOVERY, 6. TRIALS, 7. JUDGMENT, 8. PROVISIONAL AND FINAL REMEDIES, 9. SPECIAL PROCEEDINGS, 10. DISTRICT COURT AND CLERK, and 11. GENERAL PROVISIONS. The first section, "I. SCOPE, PURPOSE, AND CONSTRUCTION", is expanded to show "D.C.COLO.LCivR 1.1 SCOPE OF THE LOCAL CIVIL RULES" and its four subsections: (a) Title and Citation, (b) Effective Date, (c) Scope, and (d) Numbering and Indexing.

- **UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO, *Amendments eff. Dec. 1, 2017***
- **CIVIL RULES**

**(b) Exceptions to Duty to Confer:**

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(4) a motion under D.C.COLO.LAttyR 5(a) **and (b)**.

*[Further expands the exception to include motions for withdrawals of appearance.]*

**(d) Motion, Response and Reply; Time for Serving and Filing; Length.**

Excluding motions filed under Fed. R. Civ. P. ~~56 or~~ 65

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*Summary judgment motions are no longer an exception to the requirement that a filer must state under what rule and authority a motion is filed. Rule revised to no longer conflict with D.C.COLO.LCivR 56.1 – Motion for Summary Judgment.*

## **D.C.COLO.LCivR 8.1 ~~UNREPRESENTED (PRO SE) PARTIES IN~~ FORMA PAUPERIS PARTY AND PRISONER PLEADINGS**

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- (a) **Review of ~~Unrepresented Party~~ In Forma Pauperis Party Pleadings.** A judicial officer designated by the Chief Judge shall review the pleadings of a ~~an~~ ~~unrepresented~~ party who is allowed to proceed without prepayment of filing fees to determine whether the pleadings should be dismissed summarily. A judicial officer may request additional facts or documentary evidence necessary to make this determination. *A party who seeks leave to proceed without prepayment of filing fees shall use the procedures, forms, and instructions available on the court's website or from the office of the clerk.*
- (b) **Review of Prisoner Pleadings.** A judicial officer designated by the Chief Judge shall review the pleadings of a prisoner (whether represented by counsel or not) to determine whether the pleadings should be dismissed summarily if the prisoner is
- (1) proceeding without prepayment of fees;
  - (2) challenging ~~prison~~ conditions of confinement;
  - (3) seeking redress from a governmental entity, officer, or employee; or
  - (4) asserting claims pertinent to his or her conviction or sentence, except in death penalty cases.

*These rule amendments authorize initial review by the Court's Pro Se division for all In Forma Pauperis filers, including those represented by counsel; provide more specific instructions to pro se parties regarding filing procedures; and expand the scope of cases for initial review for prisoners not just in "prisons" – i.e., jails and other types of confinement.*



## D.C.COLO.LCivR 15.1 AMENDED PLEADING

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- (b) **Amendment or Supplementation ~~By~~ Motion.** A party ~~other than an unrepresented prisoner~~ who files an opposed motion for leave to amend or supplement a pleading shall attach as an exhibit a copy of the proposed amended or supplemental pleading which strikes through (e.g., ~~strikes through~~) the text to be deleted and underlines (e.g., underlines) the text to be added. Unless otherwise ordered, the proposed amended or supplemental pleading shall not incorporate by reference any part of the preceding pleading, including exhibits. Unless otherwise ordered, if a motion for leave to amend or supplement a pleading is granted, the moving party shall file and serve the amended or supplemental pleading on all parties under Fed. R. Civ. P. 5 no later than 14 days after the filing of the order granting leave to amend or supplement.

***Textual markups for amendments of pleadings will now apply to unrepresented prisoners in Subdivision (b). They are still excused from documenting pleading amendments through text markups when amending as a matter of course or by consent [Subdivision (a)].***

***Rule is also enhanced to allow supplementation of pleadings, conforming this local rule to the federal rule equivalent (Fed. R. Civ. P. 15(d)).***

## ***D.C.COLO.LCivR 30.3 SANCTIONS FOR ABUSIVE DEPOSITION CONDUCT***

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- (a) Prohibited Conduct.** In addition to the conduct prohibited by Fed. R. Civ. P. 30(d)(3)(A), the following abusive deposition conduct is prohibited: (1) making an objection or a statement that has the effect of coaching the deponent or suggesting an answer; (2) interrupting examination by counsel except to determine whether to assert a privilege.
- (b) Appointment of Master.** A judicial officer may appoint a master under Fed. R. Civ. P. 53 to regulate deposition proceedings.
- (c) Location of Deposition.** If deposition abuse is anticipated, Aa judicial officer may order that a deposition be taken at a specific location ~~the courthouse or master's office so that, at the request of any party, deponent, or counsel, a dispute may be heard and decided immediately by a judicial officer or master.~~

***The rule now provides liberty to the court to specify any location for a supervised deposition.***

## D.C.COLO.LCivR 40.1 ASSIGNMENT OF CASES

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### (c) Direct Assignment to Magistrate Judges.

- (1) All full time magistrate judges shall be included in the assignment of civil actions under Subdivision (a), subject to the other provisions of this rule.
- (2) The following civil actions shall not be assigned directly to a magistrate judge:
  - (a) A civil action in which a motion for injunctive relief is filed;
  - (b) A civil action brought under 28 U.S.C. § 2255 if the sentencing judge is still in regular active service or is rendering substantial assistance as a senior judge;
  - (c) A civil action or proceeding brought under or related to Title 11, United States Code; **and**
  - (d) A civil action in which an order of referral has been filed; and
  - (e) Any other civil action excluded from direct assignment by a majority of the district judges.

***This amendment adds another exception to direct assignment of a full time magistrate judge, to now also include cases where an order of referral to a magistrate judge -- of an issue, case management process or motion -- has already been entered by a district court judge.***

**See also the USDC Forms page for the Consent Forms:**

**<http://www.cod.uscourts.gov/CourtOperations/RulesProcedures/Forms.aspx>**

# LOCAL CRIMINAL RULE CHANGES – Only One Revised Rule

## D.C.COLO.LCrR 47.1

### **PUBLIC ACCESS TO CASES, DOCUMENTS, AND PROCEEDINGS [Restricted Documents Rule]**

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(b) **Levels of Restriction.** Unless otherwise ordered, ~~T~~ there are four levels of restriction. Level 1 limits access to the parties and the court. Level 2 limits access to the filing party, the affected defendant(s), the government, and the court. Level 3 limits access to the filing party and the court. Level 4 limits access to the court.

*Subdivision (b) of the rule adds judicial authorization to 1) broaden levels of restriction or 2) be more specific regarding access to particular documents. For example, Level 3 permits access only to a filing party and the Court; counsel for the U.S. Government, however, may need to disclose a sealed document to an individual defendant's counsel to comply with discovery obligations, or vice versa. With court approval, a level of restriction can be modified to limit access to individuals or parties beyond the strict confines of the rule.*

(f) **Documents Subject to Presumptive Restriction.** The following documents shall be filed subject to the specified presumptive restriction levels without the order of a judicial officer:

(1) **Documents that shall be filed with Level 2 restriction (access limited to the filing party, the affected defendant(s), the government, and the court):**

(D) Information provided by ~~by an owner of cash bail~~ a person or entity posting bond.

*Subparagraph (D) is further clarified to presumptively restrict personal information of the poster of any bond or bail document, not just cash bail – for example, an owner of real property pledged as collateral.*

(2) **Documents that shall be filed with Level 3 restriction (access limited to the filing party and the court):**

(B) ~~Applications, motions,~~ Documents and orders under the Criminal Justice Act. Unless otherwise ordered, this restriction shall expire on the entry of final judgment.

*Subparagraph (B) of (f)(2) Documents that shall be filed with Level 3 restriction (access limited to the filing party and the court) broadens language about possible restricted CJA filings; since applications for claims for compensation are submitted through the federal judiciary's E-Voucher program, applications are no longer filed in a case, but the need for various motions and documents still arises; the word "documents" is substituted to encompass all potential circumstances.*

**LOCAL PATENT RULES [No  
*Changes*]**

**AP (Administrative Agency Appeal)  
RULES [No *Changes*]**

- **ATTORNEY RULES**
- ***Amendments eff. Dec. 1, 2017***

## ***D.C.COLO.LAttyR 5 Entry And Withdrawal of Appearance and Maintenance Of Contact Information***

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**(b) Withdrawal of Appearance.** An attorney who has filed an Entry of Appearance or an Entry of Appearance to Provide Limited Representation or has appeared otherwise in a case may seek to withdraw on motion showing good cause. Withdrawal shall be effective only on court order entered after service of the motion to withdraw on all counsel of record, any unrepresented party, and the client of the withdrawing attorney. A motion to withdraw must state the reasons for withdrawal, unless the statement would violate the rules of professional conduct. **Motions to withdraw based on the completion of the limited representation shall include a certification by counsel that the service specified in the Entry of Appearance to Provide Limited Representation is complete.**

***The new text in Subdivision (b), requiring withdrawing counsel to provide a certification to the court of completion of the limited, discrete task or service – in instances where withdrawal is sought for that reason, rather than attorney-client relationship differences – provides readily verifiable documentation to the court that the limited representation task is completed.***

## ***D.C.COLO.LAttyR 6 Disciplinary Panel and Committee on Conduct***

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**(b) Committee on Conduct.** The court has established a standing Committee on Conduct (the Committee) consisting of 12 members of the bar of this court. Each member shall be appointed for three years and until a successor is appointed. No member of the Committee shall serve more than two consecutive terms. Additional members may be appointed by the court. Any member appointed to fill a vacancy shall serve the unexpired term of his or her predecessor. If a member serves beyond expiration of the appointed term, the additional time served shall be chargeable to the successor member. The court shall designate a chairperson and vice-chairperson of the Committee. The vice-chairperson shall act during the absence or disability of the chairperson. Members of the Committee shall serve without compensation, but when practicable their necessary expenses shall be paid by the clerk from the fund in which admission and annual registration fees paid by members of the bar are deposited. **To be eligible for appointment to the Committee, an attorney shall certify that the attorney satisfies the following:**

- (1) has been practicing law for at least 10 years, with no discipline imposed;**
- (2) is licensed to practice by the Colorado Supreme Court;**
- (3) has been a member of and in good standing with the bar of this court for at least 5 years, with no discipline imposed;**
- (4) has experience that makes the applicant especially qualified to investigate matters governed by the disciplinary rules of the court and the Colorado Rules of Professional Conduct.**

***Memorializes the selection criteria for Committee on Conduct membership, formerly decreed through general orders of the Court.***



# D.C.COLO.LAttyR 15

## Civil Pro Bono Representation

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### (a) Court Appointed Pro Bono Representation in Civil Actions.

The Civil Pro Bono Program provides for the selection and appointment of eligible, volunteer attorneys to represent without compensation eligible, unrepresented parties in civil actions to provide general or limited representation when requested by the court. The program is implemented through the Standing Committee on Pro Se Litigation (Standing Committee), the Civil Pro Bono Panel (Panel) and the Faculty of Federal Advocates (FFA).

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### (e) Pro Se Party Eligibility.

(1) The following unrepresented parties are eligible for appointment of pro bono counsel:

- (A) ~~after initial review of the complaint by the Pro Se division of the court,~~ an unrepresented non-prisoner ~~unrepresented party~~ who has been granted leave to proceed in forma pauperis (IFP) under 28 U.S.C. sec. 1915;
- (B) ~~after initial review of the complaint by the Pro Se division of the court,~~ an unrepresented prisoner; and
- (C) after demonstrating limited financial means, an unrepresented non-prisoner ~~unrepresented party~~ who has paid any filing fee in full.

(2) A defendant or party responding to a complaint, petition, or appeal who satisfies the criteria above shall be eligible for appointment of pro bono counsel.

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### (f) Appointment Procedure.

(1) Prerogatives of judicial officers.

- (A) A judicial officer to whom the civil action is assigned may on motion by an eligible, unrepresented party or on his or her own initiative enter an Appointment Order authorizing appointment of a member of the Panel to ~~represent the party~~ provide general or limited representation, ~~and~~ directing the clerk to select an attorney with relevant subject matter preference or expertise.

# **D.C.COLO.LAttyR 15**

## **Civil Pro Bono Representation (continued)**

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**The 2017 revisions to the Civil Pro Bono Representation rule:**

- **Update the Civil Pro Bono Panel Program to allow appointment of both limited and general representation pro bono counsel;**
- **Expand unrepresented parties' eligibility to include potential for appointment of counsel during the initial review process; and acknowledges that appointment of counsel for defendants/respondents is authorized; and**
- **Formalize the specific appointment procedure to include limited representation.**

# Practice Tips for New Lawyers – from Judges, through their Chambers Staff

*(These tips are not meant to scold, but to offer suggestions for “best practices.”)* *(Law Clerk/Chambers staff 2018 suggestions presented in redline.)*

***When the court has designed procedures to facilitate matters for counsel, don't be afraid to take advantage of those procedures – and don't overthink things!***

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- D.C.COLO.LCivR 6.1(a): If counsel stipulate and it falls within the rule, they should just file a stipulation - no motion or court order is needed.
- **Difference between a Stipulation and a Motion -- stipulation does not require action by the court:**
  - 1) Local Rule 6.1 allows parties to stipulate to extensions -- no court order required.**
  - 2) Rule 41 allows parties to stipulate to dismissal -- no court order required.**
- Similarly, D.C.COLO.LCivR 15.1: If a motion to amend is unopposed or is submitted “as a matter of course,” counsel can just file the amended complaint without filing a motion, but they still need to file the notice and attach a redline. We frequently see either a party file an unopposed motion OR file the amended complaint as a matter of course, but don't file the notice and redline.
- FRCP Rule 5(d) filing exclusions (serve, but don't file until needed in court proceedings, R 26(a) disclosures and listed discovery requests and responses).
- Notice of (deposition, trial, etc.) Settings -- don't file.
- **Don't underestimate the importance of the final pretrial order. This often seems *pro forma* but is not the place to take shortcuts. Make sure it enumerates all of your claims, defenses, and evidence, succinctly, and explicitly. Don't be vague or argumentative. Provide a document the Court can use as a checklist of everything you want the trial to cover, including every claim or defense on which you may want a jury instruction. Anything left out will likely be gone forever. Also, this document doesn't need to persuade anybody on the merits, so just be complete, not flowery.**

***Probably the most frequent suggestion offered from judges' staff – "READ THE JUDGES' PRACTICE STANDARDS!! Can't stress it enough!!"***

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- Judicial staff have pointed out that they actually have an order they now enter at the onset of every case that directs the parties to their practice standards; the order provides a hyperlink in the order where they can download the practice standards from the order.
- Here is an illustration of the need to carefully read and follow both the Local Rules and the specific judge's Practice Standards:

“Notwithstanding Local Rule 7.1(b), Judge Martinez requires a meet & confer before filing a 12(b)(6) motion, to confirm that the disputed issues cannot be fixed by amendment. (WJM Revised Practice Standards III.D.1.)”
- Skipping this will get often get your motion stricken, which can lead to considerable heartburn if your client then believes you have blown your Rule 12 deadline to respond.

## Motions Practice

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- Do not include a motion in a response or reply, or bury it anywhere else. It's prohibited in the local rules. Also, do not add a footnote that says "hey, if you're doing to dismiss, please allow me to amend."
- Follow and comply with the rules governing motions to amend ; again, compliance does not equate to requesting amendment in a footnote.
- Local Rule 7.2 requires more support to restrict a filing than just "these documents were designated under the protective order."
- When amending, remember to file a redline of your pleading, per Local Rule 15.1(a); and
- **With respect to motions to amend, judicial staff often see the motion accompanied by either the redline version or a clean copy of the proposed amended complaint, but not both. More often they see a redline version without a clean copy. It would be very helpful to have both so that staff don't have to order the plaintiff to file a clean copy of the amended complaint after granting the motion to amend.**
- **Consider whether your weakest arguments are worth the space they take away from your stronger arguments/weaken your credibility.**

## Motions Practice (continued)

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- Judicial staff often observe that practitioners cite cases that either do not support their argument or, in multiple instances, completely undermine the argument they are trying to make. Please keep in mind the importance of reading the entire case before citing it in a brief. As we all know, appellate opinions will often present one side's arguments and go on to reject it. Some specific examples include:
  - ▣ In opposing a summary judgment motion involving employment discrimination claims, a plaintiff cited the case of *Anderson v. Coors Brewing Co.*, 181 F.3d 1171, 1179 (10th Cir. 1999) for the following proposition: "A one and one-half month period between protected activity and adverse action may, by itself, establish causation."
  - ▣ Although a close temporal proximity may be relied on to establish causation and a *prima facie* case of retaliation, Plaintiff must still show, with admissible evidence, that Defendant's proffered reason for terminating him was pretextual. *Id.* In *Anderson*, the Tenth Circuit ultimately concluded that the district court had properly granted summary judgment in favor of the defendant employer. *Id.* at 1180. The *Anderson* court explained that even if close proximity was enough to establish a *prima facie* case, "it cannot overcome Defendant's proffered reason for terminating her." *Id.* Thus, the plaintiff ended up citing a case that was favorable for the defendant employer's position where pretext was the issue.
  - ▣ A similar issue arose with a case involving a time-barred battery claim. Plaintiff argued that extraordinary circumstances justified tolling the statute of limitations because his damages would be limited. But the following cases were cited: *Hanger v. Abbott*, 73 U.S. 532 (1867) (finding extraordinary circumstances tolling statute of limitations where courts were closed during Civil War); *Osbourne v. United States*, 164 F.2d 767 (2d Cir. 1947) (holding plaintiff's internment by Japan during World War II tolled limitations period on his claim arising immediately prior to his internment). Thus, the plaintiff cited cases that made it clear he was not even close to meeting the standard.

## ***Motions Practice (continued)***

### ***Motions for Summary Judgment***

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- **Judicial staff often see a lot of poorly-taken evidentiary objections in summary judgment briefing. Before making evidentiary objections at summary judgment, counsel are advised to review (at a minimum) the 2010 amendments to Rule 56 and the relevant and recent case law. See, e.g., *Brown v. Perez*, 835 F.3d 1223, 1232 (10th Cir. 2016); *Argo v. Blue Cross & Blue Shield of Kan., Inc.*, 452 F.3d 1193, 1199 (10th Cir. 2006); *Wright & Miller* § 2722 ; *Moore's* § 56.91. What matters under Rule 56(c) is not whether the documents filed with summary judgment briefs are admissible (or "unsworn," or technically imperfect, or unauthenticated, etc.), but only whether the content or substance can be presented in an admissible form at trial. Even very experienced lawyers may make technical but baseless objections based on older rules (which may still apply in state courts), so this is a place where a younger lawyer may be able to offer gentle corrections and save everybody some time.**



## ***Etiquette and Protocols***

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- Do not call a judge's chambers to ask when an order will be issued or when a motion will be ruled upon. The parties will be duly notified when the order is issued. There are ex parte concerns if one side has information about a court's actions and the other side does not.
- **Check Local rules, practice standards, and pacer before calling chambers.**
- On the other hand, contacting a court's chambers as a *reminder* of a pending motion may be wise: "At least in our chambers, it's ok to call and say, 'hey we've got a motion pending since a certain date' - to remind us it's pending. We already know, but we don't mind if you need to call so you can tell your client, hey we checked, but we don't know when the court will rule. But, please don't do this repeatedly in a case; once is enough."
- **When you (or your staff) call chambers and a female voice answers, please do not assume you're speaking with a non-lawyer. Many judges do not have judicial assistants, and the court has many female law clerks.**
- **This probably goes without saying, but it is not uncommon for judicial staff to receive calls from attorneys with questions that would be easily answered simply by looking at the docket (e.g. attorneys asking the date and time of an upcoming hearing).**

## *Duty to Confer*

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- Local Rule 7.1 pre-motion conferral requirements. Absent exigent circumstances, a single email is generally not considered to be sufficient.
- Request from a district judge: "Duty to confer means doing so by phone or in person, not by email. It applies to every motion except Rule 12(b)(6) and Rule 56 motions."
- Lack of a meaningful meet & confer/7.1(a) certification (e.g., "I e-mailed and didn't hear back within two hours, so I went ahead and filed...") will both get your motion stricken or denied, and also earn you a reputation in chambers as the kind of lawyer who wastes our time and who we presume is not cooperating with opposing counsel and thereby making everyone's life unnecessarily difficult.
- **It would also be helpful if the parties tried to remember to include the certificate of conferral in their motions, so that judicial staff don't have to issue an order directing the parties to address whether or not the motion is opposed. On a similar note, it is not uncommon for a judge to take the bench in a discovery matter, only to find that the parties have essentially already resolved the issues, and there are no disputes remaining (or that the disputes could have and would have been resolved, had the parties meaningfully conferred prior to the hearing).**

### *Notice and Service Issues*

- If your opposing party is pro se -- unless that person specifically shows up on the docket as a registered pro se E-Filer, they must be served by U.S. mail, and the Certificate of Service should reflect that. Or obtain their agreement in writing to be served by email, and then reflect that in the COS. Even if they don't agree to be served by email, sending a courtesy copy by email (if they provide one) is great.

## ***District Judge/Magistrate Judge Interaction***

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- If their case has both a district judge and a magistrate judge, even if your district judge enters a broad "all nondispositive motions and pretrial" type of reference, the judge typically also issues a "memorandum" to refer each motion that he/she wants the magistrate judge to decide. So if a party files for example a motion for extension of time, they should not be surprised if it takes a while for the district judge to issue the memorandum referring it to the magistrate judge.
- Western Slope cases: Consent Jurisdiction under D.C.COLO.LCivR 40.1(c) applies only to *full-time* magistrate judges, so it does not apply to the magistrate judges based in Grand Junction and Durango. A case may be specially referred under a district judge to a Western Slope magistrate judge, based on the locality of the party(ies) and witnesses, especially if it is the subject of a motion, or request at the scheduling conference, or by some other notification to the court, and special referrals most often result in the Western Slope magistrate judges assisting the court with pretrial matters.
- **The consent/non-consent to magistrate judge jurisdiction deadlines that are set are often not heeded by the parties. This requires judicial staff to push back scheduling conferences and other deadlines.**
- **The parties should follow district judges' procedures---and not the MJ procedures (with the exception of discovery matters, possibly)---where there is district judge assigned.**

## ***Discovery Issues***

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- Provide full, complete, by the rule disclosure of expert testimony.
- **The instructions in the court's standard form of scheduling order differ in at least one regard from the federal rules:**

**"If the parties propose more than twenty-five (25) requests for production and/or requests for admission, at the scheduling conference they should be prepared to support that proposal by reference to the factors identified in Fed. R. Civ. P. 26(b)(2)(C)."**

## ***Fed. R. Civ. P. 5.2 - Privacy Protection For Filings Made with the Court - Obligations.***

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Redact! Budget enough time to comply strictly with FRCP 5.2(a) and to review every page of your motion exhibits for this purpose. This most commonly arises when filing deposition excerpts, medical documents, or financial materials as exhibits to a motion. ***In most cases, it's pretty clearly an instance of the following seven-word synonym for malpractice: lawyer-overdelegated-to-paralegal-without-sufficient-review.*** Since various websites trawl and republish PACER filings, failing to redact can mean you have inadvertently published your client's SSN or other personal information to the web for all to see. Oops. Setting aside HIPAA and professional liability, this will win you some combination of a stricken pleading, a court order, a phone call from docketing staff requiring that you immediately correct the problem at chambers' direction, and/or a reputation for being the kind of lawyer who is careless with your client's sensitive information. I should not be the first person who has looked closely enough at your exhibits to discover there's a stray SSN, child's name, or DOB buried somewhere in the middle that you didn't notice before filing.

*Clerk's Note: the last point also often occurs with the filing of invoices as substantiation documentation in Proposed Bills of Costs – remember to use redaction tools, or at the very least, a black marker to cover checking account or hand urn credit card slips, etc.*

# Substantive Issues

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- **Diversity Jurisdiction**
- Well-established but little-known rule: When pleading diversity jurisdiction for an LLC (or LLP, or trusts, or most other entities other than corporations), you must identify the citizenship of the entity's underlying members. If the members are also LLCs, you must "go all the way down" to establish citizenship for the underlying individuals or corporations. See, e.g., *Siloam Springs Hotel, L.L.C. v. Century Sur. Co.*, 781 F.3d 1233, 1237 (10th Cir. 2015) ("only those state-created entities that are corporations, in the traditional understanding of that word, will be treated as a person for purposes of diversity jurisdiction"). At least if you draw Judge Martinez, failing to set this out in an initial pleading or a notice of removal will typically win you an Order to Show Cause threatening dismissal for lack of jurisdiction.
- **For corporations asserting diversity jurisdiction, judicial staff often notice that corporations many times fail to identify their principal place of business *and* the state(s) where they are incorporated, as required for establishing the citizenship of a corporation pursuant to 28 U.S.C. 1332(c)(1).**
- **Allege clear jurisdictional facts:**
  - 1) **Where individuals are citizens/domiciled NOT where they "reside."**
  - 2) **Where corporations are incorporated AND where their principal place of business.**
  - 3) **Clearly identify citizenship of ALL partners/owners of LLC.**

# Extensions of Time

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**Essentially, you (the parties jointly) get one free pass - by filing a stipulation, of no more than 21 days, court permission is not required. After the first stipulation, a motion - preferably unopposed – is necessary, showing good cause and seeking the court’s permission. The court emphasizes that the client must be aware of requests for continuances.**

## D.C.COLO.LCivR 6.1 EXTENSION OF TIME OR CONTINUANCE

(a) Extension of Time. The parties may stipulate in writing to **one extension of not more than 21 days** beyond the time limits prescribed by the Federal Rules of Civil Procedure to respond to a pleading or amended pleading, interrogatories, requests for production of documents, or requests for admissions. The stipulation must be filed before the expiration of the time limits to respond prescribed in the Federal Rules of Civil Procedure, and shall be effective on filing, unless otherwise ordered. **Any other request for an extension of time or continuance must be approved by court order on motion.**

(b) Content of Motion for Extension of Time or Continuance. A motion for extension of time or continuance shall state the reason for an extension or continuance, the length of the requested extension of time or continuance, and the total number of extensions or continuances granted previously.

(c) Service on Client. When a stipulation or motion for extension of time or continuance is filed, it shall be served contemporaneously by counsel on his or her client.

## **Advice from chambers:**

- **“Local Rule 6.1 trips people in requiring service to the client - their COS should say that they've done so. Also, many parties do not take advantage of the stipulation option. If it's an agreed extension that the rule allows you to file as a stipulation - that is self-executing and thus more efficient.”**
- **“Don't forget to serve your client if requesting an extension of time, per Local Rule 6.1(c). This will commonly get your motion stricken or denied without prejudice, sometimes meaning the original deadline is past before you can re-file, which creates additional problems.”**

## Requests for Entry of Default

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The Entry of Default and Default Judgment is a two-step process: an Entry of Default is performed by the clerk, per Fed. R. Civ. P. 55(a). See Williams v. Smithson, 57 F.3d 1081, at \*1 (10th Cir. June 20, 1995) (table decision); U.S. Commodity Futures Trading Com'n v. Trimble, Civil Action No. 11-cv-02887-PAB-KMT, 2013 WL 317576, at \*1 (D.Colo. Jan. 28, 2013). The instructions regarding entry of default are followed strictly by the Clerk's Office, especially that an affidavit or declaration **by counsel** must accompany the Motion (Request) for **Entry of Default (a separate affidavit will be necessary for the Motion for Default Judgment)**. This is **in addition to** the affidavit of the process server (Fed. R. Civ. P. 4(l)). Please also note that this district requires the party filing the request to ALSO include in the affidavit that an individual subject to default is not a military servicemember under **50 U.S.C. app. § 521, the Service Member's Civil Relief Act of 2003**.

A motion for Default Judgment is usually determined by a judicial officer under Fed. R. Civ. P. 55(b)(2), though the clerk can award a sum certain default judgment pursuant to Fed. R. Civ. P. 55(b)(1) and the court's local rule D.C.COLO.LCivR 55.1 [see next screen]. The local rule is styled after, again, the Colorado Rules of Civil Procedure, 121, § 1-14. The requirements of the rule are fairly straightforward, but perhaps it helps to keep in mind that you must file an affidavit explaining the facts set forth in subdivision (a), and a proposed form of judgment setting forth ALL the details in subdivision (b).



**Defaults (continued) -- Sum Certain Default Judgment – USDC Local Rule Modelled After C.R.C.P. § 1-14. DEFAULT JUDGMENTS**

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**D.C.COLO.LCivR 55.1 DEFAULT JUDGMENT FOR A SUM CERTAIN**

**(a) Required Showing.** To obtain a default judgment under Fed. R. Civ. P. 55(b)(1), **a party shall show by motion supported by affidavit:**

(1) that the defendant who has been defaulted:

(A) is not a minor or an incompetent person;

(B) is **not in the military service**, as set forth in the Servicemembers Civil Relief Act, 50 App. U.S.C. § 521, Protection of Servicemembers Against Default Judgments;

C) has not made an appearance; and

(2) **the sum certain** or the sum that can be made certain by computation.

**(b) Form of Judgment.** The moving party **shall submit a proposed form of judgment** that recites:

(1) the party or parties in favor of whom judgment shall be entered;

(2) the party or parties against whom judgment shall be entered;

(3) when there are multiple parties against whom judgment is entered, whether the judgment is entered jointly, severally, or jointly and severally;

(4) the sum certain consisting of the principal amount, prejudgment interest, and the rate of postjudgment interest; and

(5) the sum certain of attorney fees enumerated in the document on which the judgment is based.

## **Professional Courtesy**

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- 1) Consider refraining from objecting to short extensions of time that are not going to materially affect the schedule.**
- 2) Consider refraining from opposing motions to amend made early in the case -- particularly if challenging as futile, often better resolved on a motion to dismiss -- highlight the deficiencies for the plaintiff and argue for dismissal without leave to amend.**
- 3) Make a good faith effort to resolve discovery disputes without court intervention -- in particular, make your compromise position known to the other party before raising your dispute with the Court.**

### **General Advice**

‘A big thank you to all the lawyers and parties who do comply with the rules, properly cite to evidence/record, and provide us relevant case law. It makes our job easier - and it'll make deciding your case faster.’

Generally minor or technical problems are usually not hard to fix, but time-saving to get it right the first time. Remember that it's better to potentially avoid the embarrassment and annoyance of having filings stricken, re-filing, responding to orders to show cause, having to explain yourself to clients or senior lawyers, etc.

Don't be afraid of federal court practice (i.e., don't feel obligated to get your client new counsel when an insurance company or other defendant removes to federal court. You can do it.).

**Judicial staff finds it very helpful when attorneys include their direct line on the docket. It makes it much easier to call them, without having to be re-routed to be connected to them.**

**Participate/encourage the junior lawyers at your firm to participate in the Court's pro bono program.**

## ***Other Important Sources of Practice Information:***

### **Electronic Case Filing Procedures:**

As mentioned previously, the court's electronic filing procedures page on the court's ECF website: <http://www.cod.uscourts.gov/CourtOperations/CMECF.aspx> is a highly valuable tool and necessary for effective practice in this court. The local rules specify that the electronic case filing system is the means to file documents in cases, and counsel are required to register in the system. See D.C.COLO.LCivR 5.1 Formatting, Signatures, Filing, and Serving Pleadings and Documents. Numerous special instructions and guidelines are provided on the page, but refresher training is available through the page. The most important two documents are the following:

[Electronic Case Filing Procedures \(Civil Version 6.0\)](#)

[Electronic Case Filing Procedures \(Criminal Version 6.0\)](#)

### **Judicial Practice Standards:**

Under D.C.COLO.LCivR 43.1 Hearing and Trial Procedures, judicial officers (both district and magistrate judges) may establish specific practice standards. Those standards may, and will, change periodically, so it is valuable to reference the standards of the particular judge(s) presiding over your case periodically, or better, before you have a specific filing or event pending (a hearing involving expert testimony; a dispositive motion; a trial or evidentiary hearing, etc.).

See the Judicial Officers' pages on the district court website for the specific standards:

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

## ***Forms and Instructions:***

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The Forms page:

(<http://www.cod.uscourts.gov/CourtOperations/RulesProcedures/Forms.aspx>)

... contains the district's specific, or the federal judiciary's generally-used forms, covering such matters as the forms particular to specific local rules; general civil; filing civil actions; general criminal; Criminal Justice Act; bonds; waivers; special proceedings, miscellaneous, and court records order forms from the National Archives.

### **Limited Representation:**

Effective December 1, 2016, the U.S. District Court for the District of Colorado permits Limited Representation (also called "unbundling" or "discrete task representation") of all unrepresented parties -- non-prisoners and prisoners -- in civil actions.

The Clerk's Office has assembled on the [Limited Representation webpage](#) a collection of rules, forms, and resources to assist counsel – not to provide legal advice or a suggested course of conduct – but as a convenient compilation of materials applicable to providing limited representation to pro se parties in this District.

## ***Miscellaneous Technical and Practical Applications:***

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On the court's website, attorney information is contained in two areas – the Attorney Services Portal:

<https://www.cod.uscourts.gov/CMECF/Register/Login.aspx>,

which posts a User Guide; please also visit the Attorney Information menu tab on the website:

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

Criminal Justice Act, the Civil Pro Bono program, Attorney Discipline, and other attorney-centric information is available on that page.

Numerous sub-pages of the website are worth exploring: from the list of mediators prepared by the Faculty of Federal Advocates ...

<http://www.cod.uscourts.gov/CourtOperations/RosterofMediators.aspx>

... to the posting of the district court's operations plans and general orders in effect:

<http://www.cod.uscourts.gov/CourtOperations/OrdersandOpinions/CourtPlansandGeneralOrders.aspx>

***Please take the time to familiarize yourself with the court's local website.***

**Judicial Conference Policies:**

It is also worth exploring the federal judiciary's website, for nationwide policies, practices, forms, rulemaking, and regulations – all of which may apply to this district's operations.

See <http://www.uscourts.gov/>.

## **CIVIL PRO BONO PANEL PROGRAM:**

Effective December 1, 2014, the U.S. District Court **adopted Local Attorney Rule 15 - Civil Pro Bono Representation** - that implements the court's Civil Pro Bono Panel plan. The plan is a program consisting of volunteer attorneys serving on a panel who are willing to represent individuals of limited financial means (not strictly limited to the “indigent”) in civil matters whenever requested by the Court. To date, 175 individual lawyers and almost 50 law firms have joined the Panel, and almost 175 cases (for both plaintiff and defendant pro se parties) have had counsel appointed and litigated to a conclusion, including 15+ trials or evidentiary hearings. See the court’s website [Civil Pro Bono Panel](#) program webpage for more information.

The following are some of the unique aspects of the Civil Pro Bono Panel program:

- The individual attorney or law firm selected to review a case has the absolute freedom to decline accepting a case for any reason, and during the initial review process, counsel remains anonymous. No penalty occurs when cases are declined.
- Counsel may choose to have additional co-counsel assigned to assist, as either a mentor or “second chair.”
- Individual lawyers, law school clinical programs, or law firms can join the Panel. Participants can specify how many cases will be accepted per year, and no more than that amount will be assigned.
- If a law firm joins the program, it can assign cases to any attorney(s) based on the law firm’s schedule and training needs, as long as the attorneys are members of the U.S.D.C. bar and in good standing.
- Cases are initially screened by the court to ensure exhaustion of remedies, and are selected based on their merit.
- Panel members can specify which types of cases/causes of action to accept.

Most types of costs are reimbursed by the Faculty of Federal Advocates, the U.S. District Court’s partner in this program (see [Pro Bono Programs](#) on their website), and contingent fee agreements or attorney fee award retention are permitted under Local Attorney Rule 15.

**THANK YOU**