DISTRICT COURT, ARAPAHOE COUNTY, COLORADO **7325 South Potomac Street** **Centennial, Colorado 80112**	DATE FILED: April 5, 2024 1:07 PM CASE NUMBER: 2024CV30677
Plaintiff(s): TAYLOR, DANIEL ET AL **v.** **Defendant(s): HGMD DESIGNATED ELECTION OFFICIAL**	▲ COURT USE ONLY ▲ **Case Number: 24CV30677** **Courtroom 204**

DIVISION 204 ORDER RE: PRETRIAL MATTERS AND DISCOVERY PROTOCOL

This Pretrial Order and Discovery Protocol shall apply to each case assigned to Division 204 of the Arapahoe County District Court. Counsel and any *Pro Se* parties are expected to familiarize themselves with the content of this Order and all its requirements. Questions regarding the content or interpretation of this Order should be raised before trial. This Order supplements the Delay Reduction Order also issued in this case and supersedes any earlier issued Division 204 Order.

Plaintiff shall serve copies of this Pretrial Order on any *Pro Se* Parties in accordance with C.R.C.P. 5, and file a Certificate of Service with the Court within 14 days of the date thereof. In the event of any conflict between this Pretrial Order and C.R.C.P. 16 (or 16.1 where applicable) or 121, this Order shall govern.

PROFESSIONALISM AND COURTROOM ETIQUETTE

Attorneys and Parties: The Oath of Admission all attorneys licensed to practice in Colorado have sworn or affirmed to uphold includes the following:

- I will treat all persons whom I encounter through my practice of law with fairness, courtesy, respect and honesty.
- I will use my knowledge of the law for the betterment of society and the improvement of the legal system.
- I will at all times faithfully and diligently adhere to the Colorado Rules of Professional Conduct.

Consistent with the Oath, this Court strives for this courtroom to be one where all litigants, witnesses, and counsel feel welcome and respected. In that regard, counsel are invited and encouraged to identify the applicable pronouns of counsel, litigants, and witnesses at the earliest juncture possible. This may be done in an initial signature block, in person or via WebEx at a conference or hearing, or in a witness list. Should the wrong pronoun be used, counsel are encouraged to bring that to the Court's attention at the time, or through a subsequent email to Division 204 (copied to all other counsel).

All parties should observe the following courtroom decorum:

- Stand when the Judge enters or leaves the courtroom, when addressing the Court, and when the jury enters or leaves the courtroom;
- Request permission to approach the bench or a witness;
- Address the Judge as "Your Honor";
- Refer to all other persons by their surnames, prefaced by the individual's title, e.g., Doctor, Agent, Officer, etc., and applicable pronouns.

All counsel and parties will be expected to strictly adhere to C.R.C.P. 1 and its directive that the Colorado Rules of Civil Procedure "shall be liberally construed, administered, and employed by the court and the parties to secure the just, speedy and inexpensive determination of every action."

***Pro Se* (Self-Represented) Parties:** All parties that represent themselves and are not attorneys are bound to abide by this Order, the Colorado Rules of Civil Procedure, and the laws of the State of Colorado in the same manner as attorneys, and you (just like all attorneys) must exhaustively CONFER with the other party(ies) or their counsel before asking the Court for relief. Should you need assistance, you may find the following resources to be helpful:

- The Colorado Judicial Branch website, Self Help tab, found at: www.courts.state.co.us. Forms can be found at this same website at: www.courts.state.co.us/Forms/Index.cfm.
- If you have specific questions there is a SELF-HELP CENTER in this courthouse at 7325 S. Potomac Street, Centennial, Colorado 80122, in Courthouse II, Room 131 (303.645.6845).
- The Arapahoe County Bar Association also has some resources listed on its website at: https://www.arapahoecountybar.org/.
- The "checkerboard" website, found at: https://checkerboard.co/.

Conferral Requirement: This Court will strictly enforce the conferral requirements in the Colorado Rules of Civil Procedure, including those found at C.R.C.P. 121, §1-15(8), as

well as the conferral regarding Rule 12 motions set forth elsewhere in this Order. This Court requires that the parties confer in good faith before filing *any and all* motions. A good faith conferral includes allowing sufficient time for a meaningful discussion to occur *before* a motion is filed.

PRETRIAL CASE MANAGEMENT

Replevin and FED Cases: In any replevin or FED matter, proof of service on Defendant(s) must be filed at least 48 hours PRIOR to a scheduled hearing on possession. If proof of service is not filed at least 48 hours prior to the hearing, the hearing is subject to being vacated and reset.

Default: Application for entry of default under C.R.C.P. 55(a) must be filed within 21 days after default has occurred.

If a Defendant is in default, a motion for entry of default judgment under C.R.C.P. 55(b) must be filed with the application for entry of default. Motions for entry of default judgment must comply with C.R.C.P. 121 § 1-14. Reasonable inquiry regarding a person's military status requires confirmation through the Department of Defense's Servicemembers Civil Relief Act website (https://scra.dmdc.osd.mil) or equivalent confirmation.

Settings for Case Management Conference, Trial and Trial Management Conference in All Cases: Within 28 days of the case being at issue, the Responsible Attorney, as defined in C.R.C.P. 16(b)(2), must set the Case Management Conference, Trial, and Trial Management Conference by emailing Division 204 at 18division204@judicial.state.co.us and requesting dates. (Note: this is a shorter timeframe than would otherwise be required by C.R.C.P. 16.1(g)). The Responsible Attorney must include all other counsel that have entered their appearance, and any *pro se* parties as cc's on the email.

A case is "at issue" when: (a) all parties have been served and have filed all pleadings permitted by C.R.C.P. 7; or (b) defaults or dismissals have been entered against all non-appearing parties; or (c) at such other time as the Court directs.

No case will be set for trial for more than 5 days without prior approval of the Court. The Division Clerk shall set the case for trial. The Division Clerk shall set the Case Management Conference within 49 days of the at issue date. The Trial Management Conference will be scheduled at least 2 weeks before the first day of trial. The Responsible Attorney must correspond with counsel and any *pro se* parties to select from the dates offered by the Division Clerk for the Case Management Conference, Trial, and Trial Management Conference. Within 2 business days of the Division Clerk offering dates, the Responsible Attorney must email Division 204 of the selected dates that clear on the calendars of counsel and any *pro se* parties, or the Court will select the dates most convenient for its docket. **This Court adheres to the provisions of Chief Justice Directive (CJD) 08-08 which requires that 90% of all civil actions filed shall be concluded within one year of filing.**

Within 2 business days of notifying the Division Clerk of the selected dates, the Responsible Attorney shall file a Notice of Trial, Trial Management Conference and Case Management Conference.

Pleadings: C.R.C.P. 8 and 12 will be enforced in all regards, and in particular with respect to all Claims for Relief, Defenses, and Forms of Denial. The Court takes seriously the following excerpts from Comment 1 to C.R.C.P. 12:

- "The practice of pleading every affirmative defense listed in C.R.C.P. 8(c) irrespective of a factual basis for the defense, is improper under C.R.C.P. 11(a)."

- "The signature of an attorney constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."

- "To the extent a defendant does not have sufficient information under Rule 11(a) to plead a particular affirmative defense when the answer must be filed but later discovers an adequate basis to do so , the defendant should move to amend the answer to add the affirmative defense."

The Court reminds counsel of R.P.C. 3.1, which provides, in pertinent part:

> A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

Motions to Dismiss (C.R.C.P. Rule 12): The remedy for many, if not most, Rule 12 motions is amendment of the complaint pursuant to C.R.C.P. Rule 15(a). Accordingly, Rule 12 motions shall in the certificate of conferral required by C.R.C.P. Rule 121, 1-15 (8) state with specificity that the parties have discussed amendment of the complaint and the reason not to allow it; the failure to follow this procedure may result in the in the immediate denial of the motion.

Cases filed under C.R.C.P. 16.1: No later than 49 days after the case is at issue, the Plaintiff (or the Responsible Attorney) must file a Certificate of Compliance as required under C.R.C.P. 16.1(h). No Case Management Order or Case Management Conference is required unless any party is appearing *pro se*, in which case an in-person Case Management Conference is required. The Responsible Attorney, if there is one, shall email the Division to schedule this Conference. If there is no Responsible Attorney, then the *pro se* Plaintiff is responsible to schedule this Conference.

Cases NOT filed under C.R.C.P. Rule 16.1:

Case Management Conference: This Court requires that a Case Management Conference take place via WebEx in ALL cases governed by C.R.C.P. 16. The setting of the Case Management Conference shall be handled in the manner specified above in the section addressing "Settings". At the Case Management Conference, counsel should anticipate that the Court will inquire about nature and basis of the claims and defenses, the proportionality factors, ESI, the adequacy of the opposition's Initial Disclosures pursuant to C.R.C.P. 26(a)(1), the Discovery Protocol Order set forth below, and any other case management issues that may arise.

Case Management Order: No later than 7 days before the Case Management Conference, the parties shall file, in editable format, a proposed Case Management Order that fully complies with C.R.C.P. 16. Since the trial date will already be set, the proposed Case Management Order shall include specific dates for all deadlines, e.g., "May 1, 2023", rather than "49 days before trial".

Continuances: C.R.C.P. 121, §1-11 states that all motions for continuance or requests for extension of time will not be considered without a certificate that a copy of the motion has also been served upon the moving attorney's client. This Court will deny any motion for continuance or request for extension of time that fails to include such a certificate.

Dispute Resolution: No later than 35 days after the case is at issue, the parties shall discuss the possibility of a prompt settlement or resolution of the case using Alternative Dispute Resolution (ADR) (*see*, C.R.S. §13-22-302) including the services of the Office of Dispute Resolution (ODR) (www.ColoradoODR.org; 720-625-5940).

No later than 42 days after the case is at issue, **the parties shall file a "Stipulated Plan Regarding Settlement"** which shall identify the ADR provider, and a date certain when the services shall be provided. If the parties fail to file a Stipulated Plan Regarding Settlement, they shall schedule ODR mediation to be completed no later than 35 days prior to the trial date and file a Notice confirming the scheduled ODR mediation with the Court.

The parties **shall certify in their proposed Trial Management Order** that they have complied with this part of this Order. Failure to comply may result in sanctions, including without limitation, the trial date being vacated.

Related Cases: Parties shall file a Notice of Related Case with the Court, identifying the case number and county of origin and state whether consolidation is appropriate within 35 days after the case is at issue.

TRIAL PREPARATION

Trial Management Order. The Responsible Attorney shall prepare and circulate to all counsel and any *pro se* parties, and shall be responsible for filing the proposed Trial Management Order (TMO) 7 days before the date of the Trial Management Conference. The TMO shall comport with the provisions set forth in C.R.C.P. 16(f). **ALL parties must**

participate in the preparation of the TMO. Counsel should be aware that when the Court has multiple trials ready to be tried on a particular date, the presence and timeliness of a TMO is one criterion used to determine priority.

Jury Instructions. If this matter is set for a jury trial, counsel are required to meet and confer regarding jury instructions before submitting the same to the Court. Proposed jury instructions shall be emailed to Division 204 *and* electronically filed no later than 7 days before trial. See C.R.C.P. 16(g). The first party represented by counsel to demand a jury trial and who has not withdrawn that demand shall be responsible for ensuring compliance with this portion of C.R.C.P. 16, and shall be responsible for filing one set of those instructions on which the parties have agreed. This set should not be annotated. Each party shall also file, within the same time frame, those instructions they wish to tender but to which the opposing party will not stipulate. Two versions of these unstipulated instructions shall be filed, one with annotations and one without annotations. All these instructions should be emailed to the Division Clerk at 18division204@judicial.state.co.us in an editable format. Do not submit the basic introductory or evidentiary instructions, other than a 2:1, 2:2, or 2:3 Statement of the Case instruction. The Court will provide the basic introductory instructions to the jury.

If applicable to your case, combine the following instructions into one instruction: CJI-Civ. 3:4; 3:7; 3:8; 3:9; 3:10; 3:11; 3:14, 3:15; 3:16. If applicable, combine 5:1 and 5:5 into one instruction. The parties are encouraged to combine any other instructions they believe appropriate.

The parties shall agree upon a succinct 2:1, 2:2, or 2:3 Statement of the Case instruction that the Court can read to the jury at the beginning of the trial. If the parties cannot agree, one 2:1, 2:2, or 2:3 instruction shall be submitted with the language upon which the parties cannot agree highlighted, which the Court will then use to formulate the 2:1, 2:2, or 2:3 instruction to be given at the beginning of trial.

Exhibit Notebook. Instead of creating an exhibit notebook for each juror, the parties shall provide one exhibit notebook to be used by the jury during deliberations. Trial exhibits from each party shall be placed into the notebook unless the exhibit is incapable of being placed into a notebook. All exhibits shall be tabbed with appropriate numbers. Any exhibit which consists of multiple pages shall have each page numbered, with the exhibit number and page number included on every page. Jurors will take the notebook to the jury room when they retire to deliberate.

Exhibits. Counsel are encouraged to prepare a written stipulation as to undisputed facts and stipulate to the admission of exhibits as to which there is no controversy. Counsel for each party shall separately prepare an Exhibit Index for all Exhibits they expect to offer, including on the list a note regarding the exhibits upon which admissibility has been stipulated.

Mark all exhibits prior to trial. **All parties shall use numbers**, with Plaintiff's starting at #1, and each Defendant starting with the next 100 series not used by Plaintiff. For example, if Plaintiff marks #s 1-149, then Defendant #1 will start at #200, Defendant #2 will then

start at #300 (assuming Defendant #1 does not exceed 100 of their own exhibits). The parties shall not mark any identical exhibit more than once. Exhibits may be grouped together for ease of reference. The civil action number of the case should also be placed on each of the exhibit labels.

Because Civil Divisions no longer have Court Reporters and because of a reduced work force in the Arapahoe County District Court, this Court is no longer able to maintain custody of exhibits after the termination of hearings and trials. Therefore, it is **ORDERED** that, unless the Court orders otherwise or all parties agree on the record that exhibits need not be retained, the parties will upload all exhibits tendered and admitted at trial to the case through the CCE e-filing system no later than 2 days after the trial concludes. In cases where exhibits are not capable of being uploaded, the exhibits shall be placed on a portable digital device and preserved untampered by the proponent of the exhibits pending appeal. Otherwise, when uploading exhibits, the parties shall file a caption sheet and label each exhibit accordingly, e.g., Exhibit 1,001 (admitted); Exhibit 1,008 (tendered, not admitted). In addition to uploading all the exhibits, the following shall also apply:

The parties shall retain custody of their respective exhibits and depositions, whether or not the exhibit was received into evidence, until the need for the exhibits and depositions has terminated and the time for appeal has expired or all appellate proceedings have been terminated plus sixty-three days. No withdrawn exhibit shall be modified in any manner. No demonstrative exhibit shall be preserved as part of the record in the case, either in this Court or for transmittal to the Court of Appeals. The parties shall provide a photograph(s) of any such exhibit(s) on or before the first day of trial for inclusion in the record. Photograph(s) shall be in digital format and electronically filed and all parties shall agree that the items are accurately represented. The proponent of the exhibit shall retain possession of the item, as with all other respective exhibits upon completion of the trial. Any violation of this order regarding the maintenance of exhibits will be subject to sanctions including contempt of court under C.R.C.P. 107.

Copies of Exhibits for Court and Counsel. To avoid unnecessary printing, at least three days prior to trial, counsel shall e-file any exhibits counsel wishes to introduce into evidence. This will serve as the Court's copy of exhibits. Further, counsel are instructed to coordinate the electronic exchange of exhibits prior to trial. This procedure shall serve in lieu of providing hard copies of exhibits to the Court and opposing counsel.

Scheduling/Witnesses. No later than 7 days before trial, each party shall file an **Order of Proof**, indicating: the name and address of each witness; a one sentence description of the subject matter of the witness's testimony; whether the witness is a "will" or "may" call; whether the witness will be called live or by WebEx; and, the estimated length of direct, cross, and re-direct examinations. The listing by a party of a witness as a "will" call means that person *will* be called by that party to testify and will obviate the need for any other party to subpoena that witness to testify at trial.

It is the obligation of counsel to have witnesses scheduled to prevent any delay in the presentation of testimony or running out of witnesses before 5:00 p.m. on any trial day. Accordingly, there shall be no more than a five (5) minutes delay between witnesses. Delay

in this regard may result in the Court requiring the non-delaying party to commence its case-in-chief or the delaying party may be deemed to have rested its case.

Voir Dire, Opening Statements and Closing Arguments. Before beginning counsel's voir dire, each will be permitted to give a brief, non-argumentative, non-advocating opening statement that shall not exceed 3 minutes. Counsel will be limited to 30 minutes on voir dire unless otherwise ordered by the Court. Counsel will be limited to 30 minutes for opening statement unless otherwise ordered by the Court. Time limits for closing argument will be determined at the close of the evidence; however, counsel may plan for time limits on closing argument of not less than that time afforded for opening statement.

Depositions. If depositions will be used (whether by video or by reading) in lieu of live testimony, you must provide designations of such testimony to opposing counsel no later than 35 days before trial. Any objections and cross-designations shall be made no later than 28 days before trial. Any objections to the cross-designations and any supplemental designations shall be made no later than 21 days before trial.

No later than 21 days before trial, the proponent of the witness to be called to testify by deposition shall email to Division 204 a condensed copy of the transcript of each such witness for which any objections have been made, using the following color coding: the objected to portion of the testimony shall be highlighted in yellow; the objection shall be highlighted in orange. The submission shall be accompanied by a chart showing the page and line numbers for each objected to portion of the endorsed testimony, along with a column for the objection and legal basis thereof, and a column for the proponent's response to the objection and legal basis thereof. The chart shall also be filed with the Clerk of the Court. The same rules apply to both video and written depositions.

Court Reporters. Civil divisions no longer have Court Reporters. Unless the parties decide to bring in a freelance Court Reporter, all court proceedings will be recorded on the Court's digital recording device, ForTheRecord ("FTR").

The parties shall apprise the Court of their desire to use a freelance Court Reporter no later than 28 days before the date of trial.

Interpreters. Pursuant to Chief Justice Directive 06-03, the courts shall assign and pay for language interpretation for all parties in interest during or ancillary to a court proceeding. If you require a language interpreter, you must inform the court not later than **35 days prior** to your next court appearance or hearing to ensure that an interpreter is present to assist you. Failure to timely contact the Managing Interpreter may prevent you from receiving an interpreter on the date and time of your scheduled court appearance. A court-appointed interpreter will be scheduled to assist you for all court appearances at no charge. A language interpreter may only interpret what is said between parties during a hearing and immediately prior to or after the hearing. A language interpreter may not provide legal advice or any other service that is not related to interpreting. Interpreters may not provide any services that may constitute a violation of the language interpreter's Code of Professional Responsibility.

If interpreter services are no longer needed, you must advise the Managing Interpreter not later than 72 hours prior to your scheduled court appearance. Failure to comply with this notice of cancellation will impact the Managing Interpreter's ability to provide interpreter services to other parties in interest and may impact your ability to obtain interpreter services in the future.

Motions Challenging Admissibility of Expert Testimony: All motions challenging the admissibility of expert testimony pursuant to C.R.E. 702 shall be filed no later than 49 days before trial; any Responses shall be filed no later than 14 days after such a Motion is filed; and any Replies shall be filed no later than 7 days after a Response is filed.

Other Pre-Trial Motions. All other pre-trial motions, including Motions *in Limine*, must be filed no later than 35 days before the Trial Management Conference; any Responses shall be filed no later than 14 days after such a Motion is filed. No replies shall be filed as to Motions *in Limine*.

The requirements of **C.R.C.P. 121 § 1–15 concerning the time for filing motions and the content and length of briefs, will be strictly enforced unless otherwise ordered by the Court**. The Court may rule on motions without hearing, pursuant to C.R.C.P. 121, or the Court may order a hearing prior to trial.

Trial Briefs. A single Trial Brief may be filed by each party. Trial Briefs shall be filed no later than 14 days before trial and shall not exceed ten pages in length.

OTHER MSCELLANEOUS MATTERS

Discovery Procedures.[1] Discovery in all cases will be subject to the provisions of the Court ordered Discovery Protocol attached hereto.

Settlement. The parties are to e-file a Notice of Settlement within 24 hours of settlement or resolution of their case. It is not productive for the Court to expend unnecessary time and effort on pending matters that are rendered moot by settlement between the parties. Parties shall file a Notice or Stipulation of Dismissal Due to Settlement within 21 days from the date of settlement, unless otherwise ordered by the Court.

[1] This Court applies *The Sedona Principles for Electronic Document Production* and advises counsel to be familiar with the practices and procedures it sets forth. *See* https://thesedonaconference.org/publications.

DIVISION 204 ORDER RE: DISCOVERY PROTOCOL

The following discovery protocols shall guide all counsel in their conduct of written and oral discovery in this case. This Order is meant to supplement C.R.C.P. 16 and/or 16.1 and to be read in conjunction with those rules.

Counsel are reminded that all discovery responses shall be made in the spirit and with the understanding that the purpose of discovery is to elicit facts and to get to the truth. The Rules of Civil Procedure are directed toward securing a just, speedy, and inexpensive determination of every action. The discovery process shall not be employed to hinder or obstruct these goals nor to harass, unduly delay or needlessly increase the cost of litigation.

These discovery protocols shall be considered as part of the responsibility of parties and counsel to comply with the Rules of Civil Procedure relating to discovery.

DISCOVERY DISPUTES

This Court does *NOT* permit written discovery motions absent Court Order.

Should the parties have a discovery dispute, they shall email Division 204 at 18division204@judicial.state.co.us to request a hearing to be conducted via WebEx to address the dispute. The Court understands that prompt resolution of such disputes is important to the parties so will endeavor to conduct the hearing within 3 business days of being contacted. The parties shall submit a **Joint Notice of Discovery Dispute**, not longer than 3 pages total, single-spaced, apprising the Court of the nature of the dispute. If the parties wish to reference legal authority, they will need to do so within the page limitation. If the dispute involves written discovery, the parties shall attach to the Joint Notice the pertinent excerpts of the discovery and responses. If the dispute involves oral discovery, the parties shall attach, if a transcript is available, the pertinent excerpts thereof.

WRITTEN DISCOVERY

The parties should refrain from interposing repeated boilerplate type objections such as "overbroad, unduly burdensome, vague, ambiguous, not reasonably calculated to lead to the discovery of admissible evidence" and other similar objections. In the event any such objections are made, they shall be followed by a clear and precise explanation of the legal and factual justification for raising such an objection. Additionally, if the objecting party otherwise responds to the discovery request but does so subject to or without waiving such an objection, that party shall describe with reasonable specificity the information which may be available, but which is not being provided as a result of the objection raised.

When a responding party claims not to understand either a discovery request or the meaning of any words or terms used in a discovery request, that party shall, within 14 days of receiving the discovery request, seek clarification of the meaning from counsel who served the discovery. A failure to seek such clarification shall be considered a violation of this Order for Discovery Protocol.

A discovery response which does not provide the information or material requested but promises to do so at some point in the future will be treated as the equivalent of no response unless the party so responding provides a specific reason for the information not being produced as required by the Rules of Civil Procedure, and also provides a specific date by which such information will be produced.

A response to a discovery request that does not provide the information or material requested but rather states that the party is continuing to look for or search for such information or material will be treated as the same as no response unless that party provides a clear description of where such information or material is normally located, who is normally in custody of such information or material, where the party has searched, the results of the search, as well as the identity of all persons who have engaged in such a search. The responding party shall also provide a clear explanation of the ongoing search and a specific date by which the search will be complete.

Whenever a party objects to discovery based upon a claim of attorney/client privilege, work product protection or any other privilege or protection, that party shall produce a detailed privilege/protection log that includes at least the following for each such item for which privilege is claimed:

- The information required by C.R.C.P. 26(b)(5);
- The date of the information or material;
- All authors and recipients; and
- The specific privilege or protection which is claimed.

The proponent of the privilege has the burden of establishing that privilege.

DEPOSITIONS

Depositions shall be conducted in compliance with the Colorado Rules of Civil Procedure.

During all depositions, counsel shall adhere strictly to C.R.C.P. 30(d)(1) and (3). No objections may be made, except those which would be waived if not made under C.R.C.P. 32(d)(3)(B) (errors, irregularities), and those necessary to assert a privilege, to enforce a limitation on evidence directed by the Court, or to present a C.R.C.P. 30(d)(3) motion (to terminate a bad faith deposition). Objections to form shall be stated: "Objection as to form." Any further explanation is inappropriate and prohibited unless specifically requested by the attorney asking the question.

THERE SHALL BE NO SPEAKING OBJECTIONS. It is inappropriate and prohibited for an attorney, during the course of questioning, to advise a witness to answer, "if you know," or "if you remember." It is similarly prohibited for an attorney during questioning to advise a witness not to speculate. All such questions shall be considered speaking objections. All deponent preparation shall be conducted prior to the commencement of the deposition and shall not take place during the course of the deposition.

It is appropriate for the deponent to request clarification of a question. However, it is not appropriate for counsel to do so.

A deponent and an attorney may not confer during the deposition while questions are pending. Similarly, neither a deponent nor counsel for a deponent may interrupt a deposition when a question is pending or a document is being reviewed, except as permitted by C.R.C.P. 30(d)(1).

Counsel shall refrain from excessive objections that have the purpose or effect of disrupting the flow of questioning or the elicitation of testimony.

Counsel may instruct the deponent not to answer only when necessary to preserve a privilege, to enforce a limitation on evidence directed by the Court, or to present a motion under C.R.C.P. 30(d)(3). Whenever counsel instructs a witness not to answer a question, counsel shall state on the record the specific reason for such an instruction, the specific question, part of a question or manner of asking the question upon which counsel is basing the instruction not to answer the question.

EXAMINATIONS CONDUCTED PURSUANT TO C.R.C.P. 35 AND SPECIALLY RETAINED HEALTHCARE EXPERT DISCLOSURE

In accordance with C.R.C.P. 35(a), this Court specifies the following manner, conditions and scope of any Rule 35 Examination:

1. A party being examined pursuant to C.R.C.P. 35 will be permitted to audio record the examination.

2. If the Rule 35 witness uses a questionnaire, it must be provided to counsel for the person to be examined no later than 3 business days before the examination and it must be the same questionnaire as that used with the Rule 35 witness' non-litigation examinations.

3. The party retaining the Rule 35 witness must disclose the witness' 10 most recent written reports. The examinee's name and other identifying information shall be redacted by the witness or his/her office, but at the expense of the requesting party, which expense shall be reasonable.

4. The Rule 35 witness shall sign and produce an Affidavit attesting to the witness' good faith estimate, over the last 5 years of:
    a. The approximate percentage of work devoted to clinical practice versus litigation;
    b. The approximate percentage of income derived from litigation; and
    c. The approximate percentage of time testifying on behalf of plaintiffs versus defendants.

In addition, the Affidavit requirement in #4 above applies to all healthcare providers specially retained to provide expert testimony, no matter which party retained the expert.

SO ORDERED this day of April 5, 2024.

BY THE COURT:

Thomas W. Henderson
District Court Judge