

OPERATING STATEMENT

COMMERCIAL DIVISION,

DISTRICT COURT,

CITY AND COUNTY

OF DENVER

_____, 2000

A Commercial Division ("Division") of the Second Judicial District, the District Court in and for the City and County of Denver ("District") will be introduced on _____, 2000. This statement sets forth the manner in which the Division will operate, where, initially, the Chief Judge of the District will designate one District Court judge to the Division.

I. VENUE

All cases designated as commercial cases in the City and County of Denver will be assigned to the Division judge. Commercial cases with venue in the other Judicial Districts of the State may be transferred to the Division upon consent of all the parties thereto. Upon such consent, the case shall be transferred to the District and be under the direct supervision of a judge assigned to the Division for all purposes, including trial.

II. ADMINISTRATIVE AND TECHNICAL SUPPORT

The District's Administrative Office shall oversee the operations of the Division. A clerk in the office of the Clerk of the District Court will be designated to handle all Division matters, including the processing of papers and assisting the judge of the Division in managing the calendar and caseload. The clerk shall maintain a database of the events and phases of each Division case and report on the status of each case at the end of each term to the Chief Judge of the District and to the Chief Justice of the Colorado Supreme Court in a form prescribed. The Division clerk's database will be networked with the chambers of the Division judge.

III. COMMENCEMENT OF A COMMERCIAL ACTION

In accordance with C.R.C.P. 3(a) and (b), commencement of a commercial action takes place upon filing with the Clerk of a complaint. Effective _____, 2000, the Clerk will issue a discrete series of index numbers (00-CCI et seq.) for commercial cases, and commercial action filings will be accepted and shelved in a specially designated area of the Clerk's Office. In order to secure a commercial index number, a party filing a complaint in an action may seek to have it designated a commercial case by completing and filing a Commercial Civil Action cover sheet to be maintained in the Clerk's Office. This form will list the commercial action types provided in the Request for Commercial Division Designation ("RCDD"). The party shall select among the commercial action types on the form.

IV. DESIGNATION OF A COMMERCIAL DIVISION CASE

At any time upon or after the commencement of an action, any party may request that the action be designated a Division case. Such application shall be made by the service and filing of a RCDD.

The RCDD shall be accompanied by a double-spaced statement not more than two pages in length supporting the request for designation to the Division. Such statement shall describe the commercial aspects of the case and explain how the case would benefit from the designation. Unless otherwise ordered by the court, within twenty (20) days after receipt of service of the RCDD with such statement, all other parties in the action may file with the court a double-spaced statement not more than two pages in length in support of or in opposition to such designation.

The determination of whether a case shall be accepted for adjudication in the Division shall be within the discretion of the Division judge, who will consider the application based upon the papers submitted by the parties, including the complaint and responses thereto.

A. *Commercial Action Types:*

Actions suitable for the Division should generally involve a legal entity's organic laws, the interpretation or application of laws regulating the affairs of legal entities or their equity owners, managers, and agents, or commercial matters, such as the following:

1. Breach of contract, fraud, or misrepresentation actions involving (a) offer, purchase or sale of securities; (b) purchase or sale of the assets of a business; (c) merger, consolidation, or recapitalization of a business; (d) purchase, sale, or lease of, or security interest in commercial real or personal property; (e) partnership, shareholder, or joint venture agreements; or (f) franchise, distribution, or licensing agreements;
2. Derivative actions by shareholders or other entity owners of corporations or other legal entities;
3. Dissolution or liquidation of corporations or other legal entities;
4. Rights, duties, liability, or indemnity of (a) shareholders of corporations, partners of partnerships, members of limited liability companies, or other equity owners of other legal entities or members of unincorporated associations; (b) directors of corporations, general partners of limited partnerships, managers of limited liability companies or other managers of legal entities or unincorporated associations; or (c) agents or employees of principals or of legal entities or unincorporated associations, but excluding rights and duties of employers and employees, or prospective employees, under statutes governing hiring, discrimination, or establishing particular employment rights.

5. Internal affairs of entities, such as voting and inspection rights, authorization of acts on behalf of the entity, or interpretation of the organizational documents of the entity;
6. Commercial loans and negotiable instruments, letters of credit, and bank deposits;
7. Disputes invoking antitrust laws, unfair competition, non-competition covenants, or interference with business or contractual relations;
8. Liquidation or conservatorship of banks, credit unions, insurance corporations, or savings and loan associations;
9. Assignment of assets for the benefit of creditors; and
10. Intellectual property.

As used herein, the term "legal entity" is intended to include all forms of entities recognized by law, including those with only a single owner or member, including for profit and nonprofit entities and unincorporated associations, but excluding individuals other than in the status of sole proprietors of businesses.

V. CASE MANAGEMENT PROCEDURES

If a case is designated a Division case, the parties shall be bound by these procedures and shall be obligated to:

1. Attempt in good faith to achieve early resolution of their dispute by use of appropriate forms of non-binding alternative dispute resolution (ADR) in which a Division judge may direct the parties to engage, or such other forms of ADR in which the parties may agree;
2. Cooperate in identifying and thereafter promptly engaging in limited-issue discovery in aid of early dispositive motions or settlement;
3. Cooperate with each other and the Division court in good faith efforts to reach a fair and reasonable settlement or other final resolution of the case; and
4. Cooperate with each other and the Division court in establishing a firm discovery plan and entering into appropriate stipulations for the purpose of saving time during the pre-trial and trial phases of the case.

The Division procedures shall be as set forth in C.R.C.P. 16 and as set forth in the following standard procedural orders.

B. *Case Management Conference:*

Following the filing of the proposed Case Management Order, the Division judge shall schedule a Case Management Conference at which a representative of each party, having full authority to agree with respect to pre-trial and settlement matters, shall attend. Such conference shall be scheduled, where practicable, within thirty (30) days of filing of the proposed Case Management Order. The following subjects as well as others at the court's discretion, shall be addressed at the conference:

1. Modifications and approval of the proposed Case Management Order
2. Means for early disposition, including the following—
 - (a) Arbitration, mediation, and other forms of alternative dispute resolution
 - (b) Scheduling pre-discovery dispositive motions; and
 - (c) Scheduling limited-issue discovery in aid of early dispositive motions or settlement.

C. *Alternative Dispute Resolution (ADR):*

Division cases will be subject to mandatory alternative dispute resolution process at the discretion of the Division judge and subject to C.R.S. § 13-22-311. A mediator or mediation panel will be provided through the office of dispute resolution (as established pursuant to C.R.S. § 13-22-303) or other public or private service.

D. *Differentiated Case Management and Tracking:*

Based upon the nature and complexity of the case, the Division judge, in consultation with the parties, shall assign to each case a tracking category, and, if appropriate, establish guidelines for differentiated treatment of each case in terms of the requisite degree of case management and direct involvement by the Division judge, the pace at which the case should proceed to trial, and time frames for disposition.

E. *Settlement Conferences:*

The Division judge, through a magistrate or settlement judge, shall make diligent efforts throughout the pre-trial phase of the case to assist the parties in reaching a fair and reasonable settlement or other resolution of the matter. To that end, the Division judge, in his or her discretion, may schedule one or more formal settlement conferences. Except upon order of court, the pendency of any form of ADR shall not alter the date for commencement of trial.

F. *Pre-Trial Procedures:*

The Division judge shall establish procedures consistent with the requirements of each case to ensure close interaction with the court and the parties, in aid of shortening the trial.

G. *Trial Management Order:*

The Trial Management Order in form required by C.R.C.P. 16(c)(1) shall be submitted to the Division judge not less than forty-five (45) days prior to the trial date. The parties shall stipulate in the Trial Management Order to all facts about which there is or could be no reasonable dispute.

H. *Trial Management Conference:*

Following the filing of the proposed Trial Management Order, the Division judge shall schedule a Trial Management Conference at which a representative of each party, having full authority to agree with respect to trial and settlement matters, shall attend. Such conference shall be scheduled, where practicable, within twenty (20) days of filing of the proposed Trial Management Order. The following shall be filed by the parties not less than five (5) days prior to the Trial Management Conference:

1. Trial briefs regarding all legal issues raised in the proposed Trial Management Order and all objections to exhibits, witnesses or testimony;
2. proposed jury instructions; and
3. any pre-trial motions to be submitted by a party with supporting legal briefs.

VI. DIVISION DECISIONS

Written decisions by the Division judge involving matters of law shall be compiled by the Clerk, maintained in the Clerk's Office and with the Commercial Division judge, and available for publication at no cost other than administrative expenses incurred by the Clerk's Office in providing the information.