

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO  
Honorable Michael E. Romero**

**In re:** )  
**MOTION PRACTICE STANDARDS IN** ) **STANDING ORDER 2004-1-MER**  
**ADVERSARY PROCEEDINGS AND** )  
**CONTESTED MATTERS** )

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**AMENDED STANDING ORDER 2004-1-MER  
REGARDING  
DISPOSITIVE MOTION PRACTICE STANDARDS IN ADVERSARY PROCEEDINGS  
AND CONTESTED MATTERS BEFORE JUDGE MICHAEL E. ROMERO, UNITED  
STATES BANKRUPTCY COURT FOR THE DISTRICT OF COLORADO**

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THIS MATTER comes before the Court *sua sponte* and on consideration of the need for an effective method of dealing with dispositive motion practices in adversary proceedings and contested matters. In order to better serve the public and the bar, and with particular need to more efficiently address dispositive motions filed pursuant to Fed.R.Civ.P. 12(b)(6) and 56 (Fed.R.Bankr.P. 7012 and 7056),

IT IS ORDERED that the following procedures shall apply in all adversary proceedings and contested matters under Fed.R.Bankr.P. 9014:

**I. INTRODUCTION**

**A. Purpose and Authority**

Consistent with Fed.R.Civ.P. 1, these dispositive motion practice standards are adopted to secure the just, speedy, and inexpensive determination of every adversary proceeding and contested matter. These motion practice standards shall apply to all adversary proceedings and contested matters filed on or after **August 16, 2004**. This Standing Order may be revised from time to time, if need so arises, and may be revised without notice and may be modified by orders entered in specific proceedings/cases.

**B. Scope**

These motion practice standards supplement and do not supplant or supercede the Federal Rules of Bankruptcy Procedure (Fed.R.Bankr.P.), Bankruptcy Official Forms, and/or Local Bankruptcy Rules (L.B.R.). They govern motion practice and procedure before Judge Michael E. Romero, United States Bankruptcy Court for the District of Colorado.

## II. MOTION PRACTICE REQUIREMENTS

### A. Applicability of these Dispositive Motion Practice Procedures

The dispositive motion practice procedures shall be effective *immediately* upon the commencement of an adversary proceeding. *The motion practice procedures are applicable even if a Fed.R.Bankr.P. 7026 Order or Fed.R.Bankr.P. 7016 Order has not yet entered.*

The motion practice procedures shall also be effective *immediately* in contested matters, as defined by Fed.R.Bankr.P. 9014, upon the filing of the motion. *The motion practice procedures are applicable even if a scheduling order has not yet entered.*

### B. Page Limitations and Service

All dispositive motions and their supporting memoranda and the responses thereto and their supporting memoranda shall be limited to 15 pages double-spaced 12 point font. Motions, responses and memoranda in excess of the foregoing limitations may only be filed upon leave of court. Motions shall be filed and served concurrently on opposing parties pursuant to Fed.R.Bankr.P. 7004. Unless otherwise provide in a Fed.R.Bankr.P. 7016 Order, responses to a dispositive motion may be filed and served not later than 15 days after the service of the motion. *Replies to responses to dispositive motions may only be filed upon leave of court.*

### C. Motions to Dismiss Pursuant to Fed.R.Bankr.P. 12(b)(6)

1. Rule 12(b)(6) motions are discouraged if the defect is correctable by the filing of an amended pleading. If both Plaintiff and Defendant have counsel, counsel *must* confer with opposing counsel prior to the filing of the motion if the deficiency can be corrected by amendment and counsel must exercise their best efforts to stipulate or otherwise agree to appropriate amendments. In the event that a Rule 12(b)(6) motion is filed, counsel shall state in said motion that counsel conferred with, or attempted to confer with opposing counsel, and that the parties could not agree to correct and amend the pleading.
2. Rule 12(b)(6) motions must be in the following format:
  - a. For each claim for relief that the movant seeks to have dismissed, the movant must clearly enumerate each element that movant contends must be alleged, but was not.

- b. The responding party must utilize the same format for each challenged claim. If the responding party disputes that the particular element must be alleged, the element should be identified as disputed and addressed in an accompanying brief. If the responding party contends that a proper and sufficient factual allegation has been made in the complaint, the respondent shall identify the page and paragraph containing the required factual allegation.
- c. If matters outside the pleadings are submitted in support of a Rule 12(b)(6) motion, the party shall file said motion as a motion for summary judgment motion, not as a motion under Rule 12(b)(6). While this Court *may* issue an order indicating how the matter will be treated (as summary judgment under Rule 56 or as a motion to dismiss under Rule 12(b)(6)), a party acts at his/her own peril if a motion is filed under Rule 12(b)(6) and the movant submits matters outside of the pleadings. In accordance with Rule 12(b), extraneous material in a motion to dismiss *may be excluded* by the court if the court treats the motion to dismiss as a motion to dismiss and not as a motion for summary judgment.

**D. Motions for Summary Judgment Pursuant to Fed.R.Civ.P. 56**

- 1. Preliminary Statement: Summary judgment practice is not encouraged before this Court. In particular, and by way of example only, adversary proceedings brought under 11 U.S.C. §§ 523 and 727 are routinely fact intensive, thus, summary judgment is *not* routinely an appropriate vehicle for adjudicating such matters. Moreover, the relative speed with which this Court attempts to accommodate parties in setting hearings and trials often makes summary judgment practice more a hindrance than a help to judicial economy and efficacy. Thus, the Court encourages parties, if they must bring a motion for summary judgment, to seriously think about the process, review Rule 56 and these procedures, and present to the Court quality pleadings setting forth the most succinct, accurate, and complete presentation of the subject at issue.
- 2. Required Pleading Elements for the Movant: For each claim for relief or in defense (to which summary judgment is requested), the movant shall set forth the following:
  - a. Burden of Proof: The movant shall succinctly set out (1) who has the burden of proof, (2) whether the burden shifts upon a specific

showing by a party, and (3) what is the burden of proof (e.g. preponderance of the evidence, *prima facie*, etc.).

b. Elements of the Claim(s): The movant shall separately identify each element that must be proved by the movant to prevail on the claim.

c. Alleged Material Undisputed Facts: The movant shall set forth, for each identified element, **in a one sentence paragraph-by-paragraph format (each sentence/paragraph shall be numbered)**, the alleged material facts which exist without substantial controversy (i.e. the undisputed facts) and the movant shall identify, **with specificity**, all pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits in support of these undisputed material facts.

d. Alleged Material Facts Which Are, in Good Faith, Disputed: The movant shall set forth, for each identified element, **in a one sentence paragraph-by-paragraph format (each sentence/paragraph shall be numbered)**, the alleged material facts which exist which are actually and in good faith controverted, if any. To the extent that there are material facts which exist which are actually and in good faith controverted, movant shall explain why summary judgment should be granted in light of the controverted material fact(s).

e. Legal Basis(es) for Summary Judgment: The Movant shall set forth the specific basis(es) upon which movant is entitled to judgment as a matter of law, including specific citations to statutes and case law supportive, or in contradiction, of its motion.

3. Required Pleading Elements for the Responding Party: The responding party shall use the same format for each claim or defense, specifically:

a. Burden of Proof: If the responding party disputes the burden of proof, the responding party shall so state and succinctly set out (1) who has the burden of proof, (2) whether the burden shifts upon a specific showing by a party, and (3) what is the burden of proof (e.g. preponderance of the evidence, *prima facie*, etc.). If the responding party does not dispute the burden of proof, it shall so state.

- b. Elements of the Claim(s): The movant shall separately identify the defenses, if any, to each element that must be proved by the movant to prevail on the claim.
- c. Alleged Material Undisputed Facts: The responding party shall set forth, for each identified element, **in a one sentence paragraph-by-paragraph format (each sentence/paragraph shall be numbered)**, in short and plain terms the party's admissions or denials as to each of the movant's alleged material facts and shall identify all pleadings, depositions, answers to interrogatories, and admissions on file, together with any affidavits which refute the alleged undisputed material facts.
- d. Alleged Material Facts Which Are, in Good Faith, Disputed: The responding party shall set forth, for each identified element, **in a one sentence paragraph-by-paragraph format (each sentence/paragraph shall be numbered)**, the alleged material facts which exist which are actually and in good faith controverted, if any.
- e. Legal Basis(es) for Denial of Summary Judgment: The responding party shall further set forth the basis(es) upon which the responding party asserts that the moving party is not entitled to judgment as a matter of law, including specific citations to statutes and case law supportive, or in contradiction, of its motion.

IT IS FURTHER ORDERED that failure to comply with this Order and/or the procedures identified herein may result in denial of requested relief and/or imposition of appropriate sanctions pursuant to Fed.R.Bankr.P. 7016 and 7037 (Fed.R.Civ.P. 16 and 37).

IT IS FURTHER ORDERED that this Order shall become effective **August 16, 2004**

Dated this 5<sup>th</sup> day of October, 2004.

BY THE COURT:

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Michael E. Romero  
United States Bankruptcy Judge