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## Introduction to the Online Colorado Litigator's Handbook

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# Introduction to the Online Colorado Litigator's Handbook

by Robert S. Anderson

In 1993, the Colorado Bar Association's ("CBA") Litigation Section published the first edition of the *Litigator's Handbook of Colorado District Court Judges* ("*Litigator's Handbook*") as a tool for practitioners in the state courts.<sup>1</sup> At that time, district court local rules had recently been repealed in favor of statewide practice standards.<sup>2</sup> Although the standards had the effect of creating uniformity regarding certain procedures that they addressed, they created an information gap with respect to areas not covered by the practice standards. Likewise, there was widespread variation in interpretation and enforcement of the statewide standards at the district level.<sup>3</sup> Without local rules to refer to, attorneys needed a resource to provide guidance when appearing before judges outside their district, or with whom they had no previous experience. The first edition of the *Litigator's Handbook* surveyed district court judges on their practices and procedures in matters of common interest.<sup>4</sup>

The same issues that animated the first edition remain relevant today, and are now accompanied by new concerns. Reductions in staff and in court hours necessitated by current state budgetary constraints have made it more difficult for attorneys to obtain answers to basic questions.<sup>5</sup> The State Judicial Department has made more information available through its website, but court procedures and the practices of particular judges remain largely unaddressed.<sup>6</sup>

The practice of attorneys appearing outside their home districts is, if anything, more prevalent, but even local lawyers may not be familiar with their judges after a flurry of recent appointments.<sup>7</sup> Even the war on terrorism has had an impact, as increased security measures at state courthouses have had the unfortunate side effect of literally isolating judges from those who appear before them.<sup>8</sup>

Recognizing all of these concerns, the Litigation Section Council has updated the *Litigator's Handbook*, and has made it easily accessible to practitioners, without cost, by publishing it on the CBA website.<sup>9</sup> The Council conducted surveys of district court judges throughout the state, asking detailed questions about each judge's preferences and proscriptions for practice and procedure.<sup>10</sup>

## Litigator's Handbook Content

The practical information contained in the *Litigator's Handbook* ranges from whether the judge permits counsel to make a mini-opening statement during *voir dire* to how and when the judge takes up emergency motions. By accessing the online *Handbook*, a practitioner can quickly determine whether the judge he or she is appearing before prefers to refer certain mat-

ters to magistrates, or if the judge requires prior review of plea bargains in criminal matters. Issues of particular concern to civil, criminal, and domestic relations cases are addressed separately. The online *Handbook* also contains biographical information for each judge who answered.

A review of the responses received by sitting district court judges reveals consensus in certain procedural areas, but considerable variation in others, reflecting each judge's individual exercise of discretion. In domestic cases, for instance, First Judicial District Judge Stephen Munsinger indicates that he does not require the parties to attempt mediation, while Sixth Judicial District Judge Steven Patrick does require mediation efforts if the case involves children. Second Judicial District Judge Frank Martinez will appoint a discovery master in complex cases, cases with chronic disputes, and large asset value cases, while First Judicial District Judge Richard Jackson will supervise discovery himself, if necessary.

The *Litigator's Handbook* also contains answers to some questions that attorneys always want to know but may be afraid to ask. For attorneys anxious to learn when to expect a ruling on a contested motion, but who are concerned that calls to the court will antagonize the judge, the *Handbook* provides a useful resource. Eleventh Judicial District Judge Kenneth Plotz is among a number of judges who welcome such calls. In an effort to let attorneys know how they can expedite rulings, Thirteenth Judicial District Judge Douglas Vannoy suggests sending courtesy copies of motions to his home office address, which he helpfully lists in his response.

Several judges also provide commentary that indicates the court's general level of receptiveness to particular types of requests. First Judicial District Judge Frank Plaut notes, "Counsel should ask if they may approach the bench. Generally, the answer will be no." Seventeenth Judicial District Judge Thomas Ensor states: "*Problems with discovery that the court is required to resolve will put me in a very bad mood.*" (*Emphasis in text.*)

Biographies provided by some judges also offer insight, especially with respect to those judges who list publications they have authored. For example, a family law practitioner appear-

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ing before Eighteenth Judicial District Judge Angela Arkin would be wise to note her extensive writing in the field, as detailed in her biography.

While many of the judges' responses are as terse and matter-of-fact as the procedural questions that are posed, some provide a glimpse of the person behind the robe, and display the judge's bemusement or exasperation. For example, Sixth Judicial District Judge David Dickinson, commented on required formalities in this way: "Dress should be appropriate. . . . [S]o help me, I recently had two attorneys show up for a scheduled status conference in cutoffs, t-shirts, and beach sandals." First Judicial District Judge Leland Anderson, regarding how freely lawyers may move during witness examination, quipped: "Attorney should stand upright just like the podium." Also, Twentieth Judicial District Judge Morris Sandstead, responding to the request for any special procedures that he employs for cases involving a *pro se* party, stated: "Pray for patience."

Trial and hearing procedures are covered in some detail, and their accessibility online at any time of day or night should be particularly helpful in supplying answers to logistical questions (Is there a VCR available in the courtroom? Can I send someone in early to set up exhibits?) that may arise only during the eleventh hour, an hour when the inquiring attorney will generally find court staff to be unavailable.

The *Handbook* is not necessarily intended to be a source of practice tips, but some judges provide practical insight that reflects their experience in viewing and ruling on cases from the bench. Sixth District Judge Dickinson states, on working hours during trial: "I frankly don't think the jury hears a word anyone says much after 4:30 [P.M.]." Judge Arkin permits criminal practitioners to discuss reasonable doubt or the burden of proof during *voir dire* "if that is the way that counsel wants to use their 30 minutes."

## How to Access the Online *Litigator's Handbook*

Judges, attorneys, and their clients all benefit when practitioners have access to information that allows them to understand and comply with the particular requirements of the judges before whom they appear. The CBA Litigation Section Council will update the *Litigator's Handbook* as new judges take the bench, and as sitting judges revise their procedures, to ensure that it remains a helpful tool for lawyers. The Council invites suggestions and comments from practitioners and judges regarding the *Handbook*, which can be directed to CBA Deputy Executive Director Greg Martin at [gmartin@cobar.org](mailto:gmartin@cobar.org).

To access the information in the *Litigator's Handbook*, simply log on as a member to the CBA website, <http://www.cobar.org>.

org, click on Member Resources, and then click on *Litigator's Handbook*.

## NOTES

1. *The Litigator's Handbook of Colorado District Court Judges* (Denver, CO: CBA Litigation Section, 1994, 1993 ("First Edition *Handbook*").

2. See C.R.C.P. 121(a).

3. See *People ex rel. Sullivan v. Swihart*, 897 P.2d 822, 824-25 (Colo. 1995) (enactment of C.R.C.P. 121 did not affect the repeal of all directives, local rules, and standing orders).

4. First Edition *Handbook*, *supra*, note 1 at "Introduction."

5. See Mullarkey, "The Impact of Colorado's Fiscal Crisis on the Judicial Branch," 32 *The Colorado Lawyer* 10 (Oct. 2003). During fiscal year 2003, the Judicial Department reduced staff by 13 percent, and many clerks' offices reduced public hours at a time when case filings were expected to rise.

6. See generally <http://www.courts.state.co.us/district/districts.htm> (Judicial Department website page on district courts). Some districts also have established their own websites to supplement information provided by the Judicial Department. See, e.g., <http://www.elpasocounty.courts.com> and <http://www.17thjudicialdistrict.com>.

7. See Colorado Judicial Department's Fiscal Year 2003 *Annual Statistical Report*, available online at <http://www.courts.state.co.us/panda/statrep/pandaannualsindex.htm>. Nineteen new appointments to district court judgeships were made in fiscal year 2003, including replacements for judges who retired or were not retained during the most recent retention election. This rate of replacement represents a one-year turnover of 14 percent.

8. See generally Jackson, "The Isolation of the Bench: A Disappointing Result of 'Progress,'" 29 *The Colorado Lawyer* 2 (Feb. 2000). The article, though written prior to the events of September 11, describes the problems resulting from the physical separation of judges from those who appear before them after necessary security measures are put in place.

9. References to judges' responses contained in this article are taken from the online edition of the *Handbook*. Specific instructions to members for accessing the online *Handbook* can be found at the end of this article.

10. CBA Litigation Council members include Chair, Kimberly Schutt; Immediate Past Chair, A. Michael Chapman; and other members: Robert S. Anderson, Peter Black, Rebecca Koppes Conway, Peter Goldstein, Alden V. Hill, Irving Johnson, John Purvis, Mickey Smith, and Yeuin Willett. CBA Deputy Executive Director Greg Martin spearheaded the implementation of the survey and coordinated publication on the CBA website. The Litigation Council also wishes to express its appreciation to Judicial Department Public Relations Representative Karen Salaz for her efforts in facilitating communication between the Council and the judges. Most important, the Council, on behalf of the Bar, expresses its thanks to those district court judges who participated in the survey.

To access this information, just log on to the Colorado Bar Association Website.

[www.cobar.org](http://www.cobar.org) > Member Resources > Litigator's Handbook

