

*We are all servants of the laws to
the end that it may be possible for
us to be free.*
Cicero, *Pro Cluentio*, 66 B.C.

PRACTICE STANDARDS CRIMINAL ACTIONS

TO: Counsel and Parties
FROM: Judge Marcia S. Krieger, United States District Judge
RE: Practice Standards (Criminal Actions)

I. PURPOSE AND RELATION TO OTHER RULES

A. Purpose and Authority

Consistent with FED.R.CRIM.P. 2, these revised practice standards are adopted to secure the just determination of every criminal proceeding. These revised practice standards shall apply to all motions and petitions filed on or after **January 5, 2009**, and to all hearings and trials conducted on or after **January 5, 2009**. They may be revised without notice and may be modified by orders entered in specific cases.

B. Relation to Local Rules

1. These practice standards supplement, not supplant or supersede, the Local Rules of Practice of the United States District Court for the District of Colorado. To the extent that there is a direct conflict between these practice standards and the requirements of the Electronic Case Filing Procedures, the Electronic Case Filing Procedures control. In circumstances in which these practice standards and Electronic Case Filing Procedures contain different, but not directly inconsistent, requirements, parties should comply with both sets of procedures to the extent possible.

C. Access to Local Rules & Practice Standards

1. Copies of the local rules are available through the “Local Rules” link on the District of Colorado’s home page at <http://www.cod.uscourts.gov>, and/or from the Clerk of Court in **Room A105**.

2. Copies of these practice standards are available through the “Judicial Officers’ Procedures” link on the District of Colorado’s home page at <http://www.cod.uscourts.gov> and/or from the Clerk of Court in **Room A105**.

3. The Court calendar for the pending week is available through the “Judicial Officers’ Calendars” link on the District of Colorado’s home page at <http://www.cod.uscourts.gov>.

II. GENERAL PROCEDURES

A. Applicable Rules

1. Those appearing in the District Court must know and follow:
 - a. The Federal Rules of Criminal Procedure;
 - b. The Federal Rules of Evidence;
 - c. The Local Rules of Practice of the United States District Court for the District of Colorado; and
 - d. The United States District Court for the District of Colorado Electronic Case Filing Procedures (Criminal Cases).

B. Communications with Chambers

1. All pleadings, motions, and other papers must be filed electronically. However, if a filing relates to a hearing to be conducted within the following forty eight (48) hours or will require prompt action or consideration by the court, a courtesy copy should be e-mailed to chambers at krieger_chambers@cod.uscourts.gov, with the body of the e-mail containing the case name and docket number, a description of the attached document, and the date and time at which the document was filed.

2. For information about the status of a motion or document, please utilize the CM/ECF system available at <http://ecf.cod.uscourts.gov>, or through the District Court home page at <http://www.cod.uscourts.gov> at "PACER."

3. If authorized to appear by telephonic connection, or information about courtroom technology, trial preparation, or submission of trial exhibits, please contact the Courtroom Deputy Clerk, **Patricia Glover**, at **303-335-2185**.

4. For other information or assistance, please contact the Judicial Assistant, **Janine Agüero**, at **303-335-2289**. Please do not contact the law clerks about procedural or scheduling matters. They may speak to counsel only pursuant to the court's specific instructions.

C. Citations

1. Citations shall be made pursuant to the most current edition of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (currently the 18th ed. 2005).

2. General references to cases, pleadings, depositions, or documents are insufficient if the document is more than one page in length. Whenever possible, specific references in the form of pinpoint citations shall be used to identify relevant excerpts from a document.

3. Whenever practicable, a citation to an unpublished opinion should include its Westlaw® citation.

4. These Practice Standards should be cited as MSK Cr. Practice Standard, Part, Section, Subsection, Paragraph, and Subparagraph (e.g., MSK Cr. Practice Standard V.B.1.).

D. [Reserved]

E. Continuances of Hearings and Trials

1. Motions to continue (including motions to vacate or reset) hearings and trials shall be determined pursuant to D.C.COLO.LCivR 7.1 and shall be granted only for good cause. (*See* MSK Cr. Practice Standard V.5.A.2.) Oral motions to continue made at the time of the hearing are unacceptable. Stipulations for continuance shall not be effective unless and until approved by the court. When a motion to continue is granted, all parties will be notified as soon as practicable.

2. Motions to continue trial must state specific grounds under the Speedy Trial Act, 18 U.S.C. §3161(h)(8).

F. [Reserved]

G. Captions

1. In multi-defendant cases, all pleadings filed in the case shall bear the complete case caption. If a pleading pertains only to a particular defendant or defendants, the name of such defendant or defendants shall be in **bold** print on the caption.

III. COURTROOM PROCEDURES

A. Court Appearances

1. Court time is valuable to the parties, counsel, and court staff. Please be prompt and prepared. If a scheduled matter is called for hearing and a party or a party's counsel is not present, the matter may be moved to the end of the docket, reset for hearing, a default entered, sanctions imposed, or other orders entered as appropriate. If a party is not prepared as required by the order setting the hearing, the matter may be reset without deference to the parties' needs; the request for relief, defense(s), or objection(s) may be denied; or other sanctions imposed. Unless otherwise directed, all matters will be heard in Courtroom A901 located on the ninth floor. Matters heard by a Magistrate Judge will be in the courtroom assigned to that Magistrate Judge.

B. Courtroom Organization and Protocol

1. The Government's table is closest to the jury box. There is one lectern in the courtroom at which all counsel and *pro se* parties stand to make argument. In jury trials, bench conferences are strongly discouraged and will be minimized. The defendant(s) may be present at any bench conference. Matters should be raised either before or after the trial day.

2. Please remember that the administration of an oath or affirmation is a solemn and integral part of a proceeding. Your complete attention and that of everyone in the courtroom is expected and required.

3. Please observe traditional courtroom decorum: please rise to address the court and please request permission to approach the bench. Under most circumstances you will not be authorized to approach a witness. If you would like something presented to a witness, please request the Courtroom Deputy Clerk, **Patricia Glover**, to do so.

4. Rather than handing a witness an exhibit, counsel or a *pro se* party should direct the witness to the appropriate exhibit already available at the witness stand or request the Courtroom Deputy Clerk, **Patricia Glover**, to present the exhibit to the witness.

5. Ordinarily, witness examination is concluded by redirect examination. Only if a new topic is raised in redirect examination will re-cross examination be permitted.

6. If you have a question or issue about courtroom protocol, contact the Courtroom Deputy Clerk, **Patricia Glover**, at **303-335-2185**.

C. Recording of Proceedings

1. The official record of all trials and proceedings will be taken by a realtime reporter. Prior to the beginning of any proceeding, please provide the court reporter with your business card.

2. The realtime reporter assigned to the court is **Paul Zuckerman, 303-629-9285**. Transcripts of proceedings may be ordered from Mr. Zuckerman. Requests for realtime, daily, or hourly copy must be made **at least thirty (30) days before the trial or hearing**. Further details can be obtained from Mr. Zuckerman.

D. Exhibits – Refer to the Setting and Trial Preparation Order.

E. Witnesses – Refer to the Setting and Trial Preparation Order.

F. [Reserved]

G. Depositions

1. For jury trials, parties shall provide a person to read the deposition answers. Objections shall be raised in the same manner as if the witness were testifying in person.

2. For bench trials depositions will not be read in open court. Instead, the court will read them in chambers in any requested sequence. At the beginning of the trial, the offering party shall provide the Courtroom Deputy Clerk, Patricia Glover, with two (2) copies of the relevant deposition transcript marked as an exhibit with the offering party's designated portions highlighted in yellow and the other party's designation in blue.

H. Videotape Depositions

Objections shall be raised in the same manner as if the witness were testifying in person. The proponent of the testimony should have the ability to "fast forward" or otherwise "skip" testimony that is excluded.

I. Special Equipment (Audio/Video)

1. The court has audio, video, audio-visual, and other special equipment that may be used by the parties. Notify the Courtroom Deputy Clerk, **Patricia Glover**, at **303-335-2185**, no later than fourteen (14) days before a hearing or trial of the date and time you need such equipment or need your own equipment to be brought through security for use in the courtroom.

J. [Reserved]

IV. TRIALS

A. Trial Preparation Conference

1. The Trial Preparation Conference will be held approximately three to ten days before trial. The Court will issue a Setting and Trial Preparation Order which will set confirm the trial date, confirm the Trial Preparation Conference date, and specify the tasks to be completed by and during the Trial Preparation Conference.

2. Issues to be addressed at the Trial Preparation Conference:

- a. jury selection;
- b. sequestration of witnesses;
- c. presentation of exhibits to the jury;
- d. timing of presentation of witnesses and evidence;
- e. any anticipated disputes with regard to jury instructions;
- f. anticipated evidentiary issues (need for scheduling of hearings outside the presence of the jury);

- g. any stipulations as to fact or law; and
- h. any other issue affecting the duration or course of the trial.

B. Bench Trials

1. Bench trials will begin on Tuesday morning at 9:00 a.m. Trial days run as with jury trials. *See* MSK Cr. Practice Standard IV.C., below. Counsel and *pro se* parties shall be present at 8:30 a.m. to check in with the Courtroom Deputy Clerk, Patricia Glover.

C. Jury Trials

1. Jury trials will begin with jury selection on Monday afternoon in accordance with the Setting and Trial Preparation Order, with the trial commencing after jury selection. Counsel and *pro se* parties shall be present thirty (30) minutes prior to the scheduled trial time to discuss trial preparation matters with the Courtroom Deputy Clerk, Patricia Glover. Commencing the second day of trial, the normal trial day will begin at 8:30-9:00 a.m. and continue until 4:00-5:00 p.m. Time permitting, motions *in limine* or preliminary matters will be heard before or after the trial day; however, hearings in other cases may also be set for such times. The trial day will have periodic morning and afternoon recesses of approximately ten (10) minutes duration. A lunch break will be scheduled for one to one and one-half hours, beginning sometime between 11:30 a.m. and 12:30 p.m., depending on the exigencies of trial.

2. *Voir Dire* – governed by the Setting and Trial Preparation Order.

3. *Batson* challenges [*See Batson v. Kentucky*, 476 U.S. 79 (1986)] shall be made and considered at the conclusion of *voir dire* examination by the Court, but before the jury is seated and sworn.

4. Jury Instructions and Verdict Forms – submission is governed by the Setting and Trial Preparation Order.

5. Jurors will be permitted to take notes during the trial. The jury will be instructed with introductory instructions given before opening statements and with concluding instructions before closing arguments. Introductory jury instructions are posted on the Court website and need not be filed. Any objections to these instructions must be made prior to *voir dire*. The proposed concluding instructions and verdict form will be prepared by the Court in a packet given to counsel after the trial begins. This packet will replace all instructions submitted by the parties. At the charging conference, counsel and the Court will work from the packet and verdict form. All objections shall be made to the packet and verdict form prepared by the Court. If counsel desire to tender additional instructions, they should be given to the Courtroom Deputy Clerk, Patricia Glover, before the charging conference. Each juror will be given copies of the written jury instructions (but not verdict forms) for their use and consideration during deliberations. These will be destroyed with each juror's notes after the jury is

discharged.

V. MOTION PRACTICE

A. Motions

1. The Setting and Trial Preparation Order sets two motion filing deadlines and a motions hearing date. The first deadline is for filing of pretrial motions other than motions to suppress; the second is for filing responses to pretrial motions and for filing motions to suppress. The motions hearing is not a status conference. If no motions are filed, or all have been resolved, the motions hearing automatically will be vacated. Please make every effort to resolve pending motions or define issues in dispute before the motion hearing. File appropriate documents to resolve or withdraw motions if there is no dispute to be determined.

2. Motions for extension of time require a showing of good cause. Mere agreement among counsel does not constitute good cause. Furthermore, unless circumstances are extraordinary and were not able to be anticipated, the following will not be treated as good cause: inconvenience to counsel, and press of other business or schedule conflicts (especially when more than one attorney has entered an appearance for a party).

3. An unopposed motion shall be designated as such and a proposed order shall be submitted. A response shall clearly and completely identify by the title and docket number or date filed the antecedent motion or petition to which response is made. Similarly, a reply shall clearly and completely identify by title and docket number or date filed the antecedent response to which reply is made.

B. Motions *in Limine* & Trial Briefs

1. Motions *in Limine* are strongly discouraged when the motion is evidence driven and cannot be resolved until evidence is presented at trial.

2. Trial briefs - refer to the Setting and Trial Preparation Order.

C. Rule 702 Motions

1. Rule 702 motions must comply with the format set forth in www.co.uscourts.gov/judges/msk_702_procedures.pdf. Evidentiary hearings will be held on Rule 702 motions in accordance with such procedures.

D. Motions Concerning Pretrial Conditions of Release or Detention

1. Motions to modify the conditions of release or detention, and motions seeking leave for a defendant to travel outside the jurisdiction, will not be granted without a

hearing unless they are accompanied by or include a statement that the United States Attorney's Office and the United States Probation Office consents. Without such consent the motion may be considered at the next hearing scheduled in the case or a hearing may be set.