

*Our bondage to law is the price we pay
for freedom. Judge Robert T. Mann*

PRACTICE STANDARDS CRIMINAL ACTIONS

TO: Counsel and Parties
FROM: Judge Robert E. Blackburn, United States District Judge
RE: Practice Standards (Criminal Actions)

I. PURPOSE AND RELATION TO OTHER RULES

A. Purpose And Authority

1. Consistent with Fed.R.Crim.P. 2, these practice standards are adopted to secure the just determination of every criminal proceeding. These practice standards shall apply to all motions, petitions, applications, responses, replies, objections, orders, and all other papers filed on or after **January 1, 2009**, and to all hearings and trials conducted on or after **January 1, 2009**. They may be revised without notice and may be modified by orders entered in specific cases. These practice standards have the force and effect of the orders of this court.

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.

C. Access To Local Rules & Practice Standards

1. Copies of the local rules are available at http://www.cod.uscourts.gov/rules_frame.htm, from the District Court's home page (<http://www.cod.uscourts.gov/>) under "United States District Court" at "Local Rules," and from the clerk of the court in **Room A105**.

2. Copies of these practice standards are available at http://www.cod.uscourts.gov/judges_frame.htm, from the District Court's home page (<http://www.cod.uscourts.gov/>) under "United States District Court" at "Judicial Officers' Procedures," and from the clerk of the court in **Room A105**.

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 Electronic Case Filing Procedures (Criminal Version 3.0 or the most current version).

B. Communications with Chambers

1. Do not deliver, fax, or e-mail pleadings, motions, papers, or correspondence directly to chambers absent a specific order. Instead, file all such materials via the CM/ECF system available at the sites specified in paragraph 2, below.
2. For information about the status of a motion or document, please contact **Kathy Triplett** at **303-335-2072** or utilize the CM/ECF system available at <https://ecf.cod.uscourts.gov/>, or at http://www.cod.uscourts.gov/pacer_frame.htm, or from the District Court's home page (<http://www.cod.uscourts.gov/>) under "United States District Court" at "PACER."
3. For information about courtroom technology, trial preparation, or submission of trial exhibits, please contact the courtroom deputy clerk, **Nel Steffens**, at **303-335-2090**.
4. For other information or assistance, please contact **Susan Schmitz**, at **303- 335-2350**. **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 paper or 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 REB Cr. Practice Standard, Part, Section, Subsection, Paragraph, Subparagraph, and Sub-subparagraph (e.g., REB Cr. Practice Standard V.F.3.A.1.a.).

D. Typeface

1. All papers filed with the court by anyone other than a judicial officer shall be in an Arial 12 point font (exclusive of footnotes and endnotes). Noncomplying papers may be stricken.

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 6.1 and 7.1 and ***United States v. West***, 828 F.2d 1468, 1469-70 (10th Cir. 1987). Oral or written motions to continue made at the time of the hearing or trial 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.

F. Motions for Extensions of Time

1. Motions for extension of time are strongly discouraged because of the adverse effects they have on case management. Thus, motions for extension of time will be granted only in rare and exceptional circumstances. Motions for extension of time require a showing of good cause, which must be established with particularity. Agreement by counsel does not constitute good cause. Unless the circumstances are truly unanticipated and unavoidable, the following do not constitute good cause: inconvenience to counsel or the parties; press of business; conflicts in scheduling (*a fortiori*, when more than one attorney has entered an appearance for a party); or practice as a sole practitioner.

III. COURTROOM PROCEDURES

A. Court Appearances

1. Court time is valuable to litigants, counsel, and court staff. **Please be prompt and prepared. If a scheduled matter is called for hearing and a party or an attorney is not present, the matter may be moved to the end of the docket, may be reset for hearing, sanctions may be imposed, or other orders may be entered as appropriate. If a party is not prepared as required by the order setting the hearing, sanctions may be imposed.**

Unless otherwise directed, all matters will be heard in **Courtroom A1001** located on the seventh 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 parties shall stand to make any statement or objection.

2. In jury trials, bench conferences are strongly discouraged and will be minimized. Unless waived a defendant must be present at the bench during any bench conference. Matters should be raised either before or after the trial day as required by the Trial Preparation Conference Order.

3. 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.

4. Please observe traditional courtroom decorum: please rise to address the court, and please request permission to approach the bench and any witness.

5. If you have a question about courtroom protocol, contact the courtroom deputy clerk, **Nel Steffens**, at **303-335-2090**.

C. Recording of Proceedings

1. The official record of all trials and proceedings will be taken by either electronic sound recording (audiotape) or by a realtime reporter. Prior to the beginning of any proceeding, please provide the courtroom technician or court reporter with your business card.

2. The realtime reporter assigned to the court is **Suzanne Claar**, at **303-335-2107**. Transcripts of proceedings may be ordered from Mrs. Claar. 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 Mrs. Claar.

D. Exhibits

1. Each party must pre-mark all exhibits that will be used or identified for the record in a hearing or trial. Whenever possible, each party must provide a copy of each exhibit to opposing counsel or any pro se party before a hearing or and before a trial pursuant to the Trial Preparation Conference Order. Exhibits not timely pre-marked or exchanged before a hearing or trial may not be admitted. Any stipulation of fact should be marked and marshaled as an exhibit.

2. Marking of Exhibits:

a. numerically for a **single party plaintiff (i.e., the government), petitioner, movant, or appellant**: Government's, Petitioner's, Movant's, or Appellant's exhibit 1, 2, 3, etc.;

b. numerically for **single or multiple party defendants, movants, and appellees** as follows: Defendant's, Movant's, or Appellee's surname exhibit 1, 2, 3, etc. (for example "Smith exhibit 57"); and

c. The case number shall appear on each exhibit sticker or label.

3. Exhibits must be bound, e.g., in three-ring notebooks or folders, and the notebook or folder must be labeled with the following information: (i) caption, (ii) nature of proceeding, (iii) scheduled date and time, (iv) party's name and designation, and (v) "original" or "copy." If exhibits are not bound and labeled properly, the hearing or trial may be delayed or continued until they are.

4. Number of Sets of Exhibits

a. For hearings, separate sets of bound exhibits must be brought to the hearing for the court, courtroom deputy clerk, and the witness stand; and

b. For trials, the Trial Preparation Conference Order will specify the number of sets of exhibits.

E. Witnesses

1. In scheduling witnesses, follow the "Baseball Rule": one at bat, one on deck, and one in the hole.

2. 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 to present the exhibit to the witness.

F. Witness & Exhibit Lists

1. Each party shall submit the Witness List and Exhibit List preferred by the court (forms are available in the clerk's office **Room A105**, or online at http://www.cod.uscourts.gov/judges/reb_witness.pdf and http://www.cod.uscourts.gov/judges/reb_exhibit_crim.pdf, or at http://www.cod.uscourts.gov/judges_frame.htm under "Judge Robert E. Blackburn" at "Witness List" and "Exhibit List," or from the District Court's home page (<http://www.cod.uscourts.gov/>) under "United States District Court" at "Judicial Officers' Procedures") to the courtroom deputy clerk before any hearing or trial or as provided in the order setting the hearing or the Trial Preparation

Conference Order.

G. Depositions

1. Together with Fed.R.Crim.P. 15, this practice standard governs the use of depositions in criminal proceedings:

a. Objections to any portion of a proposed deposition shall be filed and determined pursuant to D.C.COLO.LCivR 7.1 and REB Civ. Practice Standard V.A. and B. Any objectionable portion of the deposition shall be identified with specificity, i.e., by page and line. Objections may be resolved before trial to facilitate appropriate redaction.

b. For jury trials, parties shall provide a person to read the deposition answers.

c. 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 with **two (2) copies** of the relevant deposition transcript marked as an exhibit with government's designated portions highlighted in **yellow** and the defendant's in **blue**.

H. Videotape Depositions

1. Together with Fed.R.Crim.P. 15, this practice standard governs the use of videotaped depositions in criminal proceedings:

a. Objections to any portion of a proposed videotaped deposition shall be filed and determined pursuant to D.C.COLO.LCivR 7.1 and REB Civ. Practice Standard V.A.1. Objections may be resolved before trial to facilitate appropriate redaction.

I. Special Equipment (Audio/Video)

1. The court has audio, video, audio-visual, evidentiary presentation, and other special equipment that may be used by the parties. A listing of available equipment can be found on the District Court's website at http://www.cod.uscourts.gov/judges_frame.htm under "Courtroom Technology Manual for Attorneys." Notify the courtroom deputy clerk, **Nel Steffens**, at **303-335-2090**, no later than **fourteen (14) days** before 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. Glossary

1. Not later than **five (5) business days** before commencement of a hearing, a bench trial, a jury trial, or any other proceeding, counsel and any pro

se party shall file and provide the court, the court reporter, the courtroom deputy clerk, opposing counsel, and any pro se party with a glossary of any difficult, unusual, scientific, technical, and/or medical jargon, words, names, terms and/or phrases.

IV. TRIALS

A. Trial Preparation Conference

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

B. Trials To Court

1. For a trial to the court, a resumé or *curriculum vitae*, marked and marshaled as an exhibit, generally will suffice for the qualification of an expert witness.

C. Jury Trials

1. Jury trials will begin with jury selection on Monday morning at 8:30 a.m., with the trial commencing after jury selection. Counsel and pro se parties shall be present on the first day of trial at 8:00 a.m., to review and complete the required **Trial Checklist** with the courtroom deputy clerk (forms available in the clerk's office or online at http://www.cod.uscourts.gov/judges/reb_crm_check.pdf or at http://www.cod.uscourts.gov/judges_frame.htm under "Judge Robert E. Blackburn" at "Criminal Case Checklist," or from the District Court's home page (<http://www.cod.uscourts.gov/>) under "United States District Court" at "Judicial Officers' Procedures"). Commencing the second day of trial, the normal trial day will begin at 8:30 a.m., and continue until 5:00 p.m. Time permitting, motions in limine or other matters will be heard before or after the trial day; however, hearings in other cases may be set for such times. The trial day will have periodic morning and afternoon recesses of approximately **fifteen (15) minutes** duration. A noon recess will be scheduled for approximately one hour beginning sometime between 11:30 a.m. and 12:30 p.m., depending on the exigencies of trial.

2. Unless ordered otherwise, jurors and alternate jurors shall be selected using the **Juror Selection Protocol** of the court (written protocol available in the clerk's office or online at http://www.cod.uscourts.gov/judges/reb_jury_select.pdf, or at http://www.cod.uscourts.gov/judges_frame.htm under "Judge Robert E.

Blackburn” at “Jury Selection Protocol – Criminal,” or from the District Court’s home page (<http://www.cod.uscourts.gov/>) under “United States District Court” at “Judicial Officers’ Procedures”).

3. Voir Dire:

a. Not less than **five (5) business days** before trial, the parties shall file their proposed *voir dire* questions.

b. Unless ordered otherwise, each party shall be permitted reasonable *voir dire* examination following *voir dire* examination by the court.

4. **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.

5. Jury Instructions

a. Whenever practicable, the parties shall use or adapt for use the Criminal Pattern Jury Instructions prepared by the Criminal Pattern Jury Instruction Committee of the United States Court of Appeals for the Tenth Circuit. The pattern instructions and updates may be found online at <http://www.ca10.uscourts.gov>.

b. Counsel and any pro se party shall confer well in advance of trial, and not less than **five (5) business days** before trial, shall file and submit by electronic mail to blackburn_chambers@cod.uscourts.gov those jury instructions and verdict forms that the parties stipulate should be given to the jury. Otherwise, concerning special or disputed instructions or disputed verdict forms, not less than **five (5) business days** before trial, each party shall file and tender any special or disputed instruction or disputed verdict form as provided below in Subsections b, c, and d.

c. Proposed instructions and verdict forms shall be filed and submitted by electronic mail to blackburn_chambers@cod.uscourts.gov. Instructions must be tendered in preferably Word Perfect format (preferably Word Perfect 12 or a later version of Word Perfect) or Word, using an Arial 12 point font, double-spaced.

d. **Each instruction and verdict form tendered must be in a separate document or file.**

e. Tendered instructions and verdict forms must be submitted as attachments to an e-mail. The attachments must organized into three

groups: 1) Stipulated instructions; 2) Competing instructions; and 3) Non-stipulated instructions. When submitting proposed instructions and verdict forms, the instructions and verdict forms must be attached to the e-mail in the form and order specified below:

1. **Stipulated** – The file name and name for each stipulated instruction and verdict form must include a clear indication that the instruction or verdict form is stipulated, and a numerical designation. A file name such as “Stip 01” is sufficient. A name such as “Stip 01” is sufficient as the name for an individual instruction or verdict form. **All** stipulated instructions and verdict forms must appear as a first group of attachments in the e-mail, and the e-mail must clearly indicate the group of attachments that contains all stipulated instructions and verdict forms.

2. **Competing** – Competing instructions and verdict forms are those instructions and verdict forms addressing issues about which the parties agree an instruction or verdict form is necessary, but disagree about its wording. The file name and name for each competing instruction and verdict form must include a clear indication that the instruction or verdict form is competing, a designation of the party tendering the instruction, and a numerical designation. A file name such as “Comp G 01” or “Comp D 01” is sufficient. A name such as “Comp G 01” or “Comp D 01” is sufficient as the name for an individual instruction or verdict form. **All** competing instructions and verdict forms must appear as a second group of attachments in the e-mail, and the e-mail must clearly indicate the group of attachments that contains all competing instructions and verdict forms.

3. **Non-stipulated** – Non-stipulated instructions and verdict forms are those requested by an individual party to which any other party objects, but does not tender a competing instruction or verdict form. The file name and name for each non-stipulated instruction and verdict form must include a clear indication that the instruction or verdict form is non-stipulated, a designation of the party tendering the instruction, and a numerical designation. A file name such as “Non-stip G 01” or “Non-stip D 01” is sufficient. A name such as “Non-stip G 01” or “Non-stip D 01” is sufficient as the name for an individual instruction or verdict form. **All** non-stipulated instructions and verdict forms must appear as a third group of attachments in the e-mail, and the e-mail must clearly indicate the group of attachments that contains all non-stipulated instructions and verdict forms.

f. Not less than **five (5) business days** before trial, each party shall file a brief or memorandum in support of the proposed instructions

and verdict forms that are competing or non-stipulated.

g. At the jury instruction conference (charging conference) after the close of evidence, or any prior jury instruction conference, the court shall consider only those instructions and verdict forms managed in conformity with the foregoing sections or that address unanticipated matters raised during trial.

6. Jurors will be permitted to take notes during the trial.

7. The jury will be instructed before closing argument.

8. Each juror will be given copies of the written jury instructions and verdict forms for use and consideration during deliberations.

V. MOTION PRACTICE

A. Motions *In Limine*, Motions Under Rule 702 & Trial Briefs

1. Motions *in limine* are **strongly** discouraged, *a fortiori*, when the motion is evidence driven and cannot be resolved until evidence is presented at trial. In the extremely limited circumstances in which a motion *in limine* is necessary, it shall be filed and determined in the time and manner prescribed by D.C.COLO.LCivR 7.1C and REB Civ. Practice Standard V.A.1. and B.1.

2. Motions implicating Fed.R.Evid. 702 shall be filed and marshaled in the time, format, and manner required in the Trial Preparation Conference Order or as otherwise ordered.

3. Trial briefs shall not be filed absent specific court order. When required, trial briefs shall not exceed **ten (10) pages** and shall be filed not later than **five (5) business days** before trial. Please flag evidentiary issues in a trial brief rather than by motion in limine. However, a trial brief may not be used as a spurious, belated substitute for a motion that must be filed as a motion.

B. Amended Papers & Supplements

1. However denominated or titled, amended papers, including amended motions, petitions, applications, objections, responses, or replies shall not be filed without leave of court.

2. However denominated or titled, supplements to papers, including motions, petitions, applications, objections, responses, or replies shall not be filed without leave of court.

C. Replies

1. Replies to responses shall not be filed without leave of court.

D. Leave of Court

1. Leave of court must be obtained before such amended papers, supplements, or replies may be filed. A request for leave to file such a paper shall not be contained or included in the paper sought to be filed.

VI. PLEA AGREEMENTS

A. Treatment Of Notice Of Disposition

1. Any notice of disposition filed pursuant to D.C.COLO.LCrR 11.1A, shall be considered to be a pretrial motion within the meaning of 18 U.S.C. § 3161(h)(1)(F) for the purpose of computing time under the Speedy Trial Act of 1974, 18 U.S.C. §§ 3161-74.