

*The administration of justice is the
firmest pillar of government.*
– George Washington

CRIMINAL PRACTICE STANDARDS

**SENIOR JUDGE CHRISTINE M. ARGUELLO
UNITED STATES DISTRICT COURT DISTRICT OF
COLORADO**

Alfred A. Arraj United States Courthouse
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Chambers A638

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**PRACTICE STANDARDS
CRIMINAL ACTIONS**
Senior Judge Christine M. Arguello, United States District Judge

I. SCOPE, PURPOSE, AND CONSTRUCTION

CMA Crim. Practice Standard 1.1

PURPOSE, SCOPE, AND CONSTRUCTION

(a) Scope, Title, and Citation. These rules are the Criminal Practice Standards of Senior Judge Christine M. Arguello and apply to all criminal actions assigned to her. These rules should be cited as CMA Crim. Practice Standard, Subdivision, Paragraph, Subparagraph, Item (e.g., “CMA Crim. Practice Standard 1.1(a)”).

(b) Interpretation of the Practice Standards. Consistent with Rule 2 of the Federal Rules of Criminal Procedure, these Practice Standards are to be interpreted to provide for the just determination of every criminal proceeding, to secure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expense and delay.

(c) Access to Practice Standards. Copies of these Practice Standards are available through the “Judicial Officers” tab on the District of Colorado’s homepage at <http://www.cod.uscourts.gov> and/or from the Clerk of Court in Room A105.

(d) Applicable Rules. Those appearing in this Court must know and follow:

- (1)** The Federal Rules of Criminal Procedure;
- (2)** The Federal Rules of Evidence;
- (3)** The Local Rules of Practice of the United States District Court for the District of Colorado (“Local Rules of Practice”); and
- (4)** The United States District Court for the District of Colorado Electronic Case Filing Procedures.

Failure to comply with the foregoing rules and procedures or these Practice Standards may result in the imposition of appropriate sanctions, including, but not limited to, striking non-complying papers, vacating hearings or trials, or dismissing counts or the action, with or without prejudice.

(e) Construction. These Practice Standards supplement, but do not supersede, the Local Rules of Practice and the Electronic Case Filing Procedures. If there is a direct conflict between these Practice Standards and the requirements of the Electronic Case Filing Procedures, the Electronic Case Filing Procedures control. If 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.

CMA Crim. Practice Standard 1.2

SCHEDULING AND COMMUNICATIONS WITH CHAMBERS

Communication with Chambers is done by EMAIL ONLY.

(a) **No Legal Advice or Status Updates.** If after fully and carefully reading these Practice Standards and the Local Rules of Practice, you still have a question about procedure, email Chambers at Arguello_Chambers@cod.uscourts.gov. Chambers staff cannot give legal advice or grant oral requests over the telephone, so please do not contact Chambers about substantive matters. Please **DO NOT** call or email Chambers to ask about the status of a motion or order.

(b) **No Ex Parte Communications.** With the exception as to scheduling matters and questions concerning the Practice Standards, unless specifically authorized, neither counsel nor *pro se* litigants may communicate about a case by email or letter to the Court. All communications must be made in the form of a motion, brief, notice, or status report, served on all opposing counsel and *pro se* parties, and filed as required by the Electronic Case Filing Procedures.

(c) **Courtesy Copies and Proposed Orders.** A courtesy copy for Chambers is not required. When directed (by the Local Rules of Practice, these Practice Standards, or Senior Judge Arguello) to submit a document directly to Chambers (*e.g.*, proposed jury instructions, *voir dire* questions, etc.), parties should submit documents as an editable email attachment in Microsoft Word format addressed to Arguello_Chambers@cod.uscourts.gov. PDF is not acceptable. The subject line of the email message should identify the case name, number, and the title of the document attached. Documents submitted directly to Chambers in this manner (with the exception of proposed orders accompanying motions) should NOT be filed in CM-ECF.

(d) **CM-ECF Assistance.** For information about filing documents electronically, please contact the ECF Help Desk at 303-335-2026.

(e) **Courtroom and Court Transcription Assistance.** For information regarding the courtroom, including telephonic connection, courtroom equipment, and technology, or to order a transcript, please send an email to Nicholas Richards at nicholas_richards@cod.uscourts.gov. For transcription, please specify the case number and date(s) of the requested transcription. See also CMA Crim. Practice Standards 1.3(c).

CMA Crim. Practice Standard 1.3

GENERAL PROVISIONS

(a) **Motion Hearings, Sentencing Hearings, and Trials.**

(1) Denver: Criminal matters will be heard on the Denver Term Week. Denver Term Weeks are the second week of every other month beginning January 9, 2023. The Denver Term Week Calendar can be found on the District of Colorado's homepage at www.cod.uscourts.gov under the "Calendars" tab. Unless otherwise directed, Denver criminal matters will be heard by Senior Judge Arguello in Courtroom A602 at the Alfred A. Arraj Courthouse. Matters to be heard by the Magistrate Judge will be in the courtroom assigned to that Magistrate Judge.

(2) Grand Junction: Criminal matters will be heard on the Grand Junction Term Week. Grand Junction Term Weeks are the first week of every other month, beginning January 3, 2023. The Grand Junction Term Week Calendar can be found on the District of Colorado's homepage at www.cod.uscourts.gov under the "Calendars" tab. Grand Junction criminal matters will be heard by Senior Judge Arguello or Magistrate Judge Gallagher in Courtroom 323 at the Wayne Aspinall Courthouse.

(A) Motion and Sentencing Hearings.

(A) Defendants that are housed in Mesa County will be set on the Tuesday of the Grand Junction Term Week Docket. Defendants that are on bond and their attorney's office is in Grand Junction will be set on the Tuesday of the Grand Junction Term Week Docket. Counsel whose offices are outside the Grand Junction area or who cannot reasonably make a personal appearance, may appear via VTC. For VTC appearances, counsel are directed to contact Nicholas Richards via email at nicholas_richards@cod.uscourts.gov at least THREE (3) DAYS before the scheduled hearing for instructions on how to proceed by VTC.

(ii) Defendants that are housed in the Denver metropolitan area will be set on the Thursday of the Grand Junction Term Week Docket. Defendants that are on bond and their attorney's office is in the Denver metropolitan area will be set on the Thursday of the Grand Junction Term Week Docket. Counsel whose offices are outside the Denver metropolitan area or who cannot reasonably make a personal appearance may appear via VTC. For VTC appearances, counsel are directed to contact Nicholas Richards, via email, at nicholas_richards@cod.uscourts.gov at least THREE DAYS before the scheduled hearings for instructions on how to proceed by VTC

(3) Trials. Trials of all criminal cases will begin on the Monday of their respective term week, or as otherwise ordered by the Court.

(4) Punctuality. Court time is valuable to litigants, counsel, and court staff. Counsel **shall arrive 15 minutes before** any scheduled hearing and **30 minutes before** any trial and confer to confirm what issues are in dispute and what stipulations can be made. If a scheduled matter is called for hearing and a party or a party's counsel is not present, or if an attorney's tardiness delays the scheduled time of a proceeding, the Court may reset the matter for hearing, enter default, impose monetary sanctions, give the tardy attorney the opportunity to perform needed public service through a *pro bono* assignment, or enter any other order.

(b) Courtroom Organization and Protocol.

(1) Courtroom Setup. 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 argument, with the exception of opening statement and closing statement. The lectern can be raised up and down, but it cannot be repositioned.

(2) Cell Phones. All cell phones are to be **turned off** before entering the courtroom. If an attorney's cell phone rings during proceedings, the Court is likely to give counsel the opportunity to perform needed public service through a *pro bono* assignment.

(3) No Food or Drinks. No soda, coffee, gum, or food is allowed in the courtroom. Water bottles are permitted.

(4) Delivery of Supplies. The Court does not accept the delivery of supplies or other trial materials. Parties should coordinate among themselves for the delivery and receipt of any materials required for hearing or trial.

(5) New Issues or Filings. Prior to the beginning of the hearing, please advise the Courtroom Deputy of any recent or anticipated filings or issues.

(6) Courtroom Decorum. All parties should observe the following courtroom decorum:

(A) Stand when the Judge enters or leaves the courtroom, when addressing the Court, or when the jury enters or leaves the courtroom;

(B) Request permission to approach the bench (it will not normally be necessary for counsel to approach a witness on the stand, as the courtroom deputy, upon request of counsel, will hand a witness an exhibit);

(C) Address the Judge as “Your Honor”;

(D) Refer to all other persons by their surnames, prefaced by the individual’s title, e.g., Mr., Ms., Dr., Agent, Officer, etc., as appropriate.

(E) Dress in business attire.

(7) **Oaths.** The administration of an oath or affirmation is a solemn public ritual and an integral part of any judicial proceeding. Any public oath-taking requires the **undivided attention** of counsel as well as all others in the courtroom.

(c) **Recording of Proceedings.** Senior Judge Arguello does not have an assigned real time reporter. Therefore, requests for the following should be submitted to Nicholas Richards at nicholas_richards@cod.uscourts.gov.

(1) The transcript of the official record of all trials or proceedings;

(2) Requests for special services, such as daily or real-time copy, which must be made no later than the Final Trial Preparation Conference for a trial or three (3) business days before a hearing;

(3) If required, electronic equipment other than the ELMO to display exhibits

(d) **Glossary.** Not later than three (3) business days before commencement of a hearing, a bench trial, a jury trial, or any other proceeding, counsel and any *pro se* party shall provide a glossary of any difficult, unusual, scientific, technical, and/or medical jargon, words, names, terms, and/or phrases to Nicholas Richards at nicholas_richards@cod.uscourts.gov.

II. PLEA AGREEMENTS

CMA Crim. Practice Standard 11 PLEA AGREEMENTS

(a) Notice of Disposition.

(1) **When to File.** A disposition is defined as the final settlement of a matter. Therefore, if you file a notice of disposition in a case, you are representing to the Court that (i) defense counsel and Government counsel have reached a **FINAL agreement** on **ALL** of the terms of the plea agreement; **AND** (ii) the defendant has agreed to those terms. If this is not the case, then **DO NOT** file a notice of disposition because that could be considered a violation of Colorado Rule of Professional Conduct 3.3, “Candor Toward the Tribunal.”

(2) **Tolling Speedy Trial.** Any notice of disposition filed pursuant to D.C.COLO.LCrR 11.1(a) shall be considered to be a final 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.

(3) **Dates Not Vacated.** The Final Trial Preparation Conference and the trial dates will **NOT** be vacated until the defendant’s plea is entered and accepted by the Court. The filing timeframes set in CMA Crim. Practice Standards 17.1(b), 24, and 30 are tolled until the change of plea hearing. If a plea is not entered by the defendant at the Change of Plea Hearing, then the case will proceed to trial as scheduled, unless the Court grants an ends of justice motion to exclude time from the speedy trial clock in which counsel has specifically and adequately addressed how the ends of justice are best served by granting the continuance in accordance with the provisions of 18 U.S.C. § 3161 and CMA Crim. Practice Standard 12(e) below.

(b) Change of Plea Hearing.

(1) Plea Hearing Date.

(A) **Denver.** Senior Judge Arguello’s order setting the trial and pretrial dates **also sets the Change of Plea Hearing date on the same day as the Final Trial Preparation Conference.** If a notice of disposition is filed, the Change of Plea Hearing will be held on the date already scheduled for the Final Trial Preparation Conference (in lieu of the Final Trial Preparation Conference). The parties may request an earlier date for their Change of Plea Hearing by including such a request in the Notice of Disposition. Provided the Court has room on its docket, the Judicial Assistant will then email counsel with dates that are available on the Court’s docket.

(B) Grand Junction.

(i) Magistrate Judge Gallagher will set the trial and pretrial dates. The Final Trial Preparation Conference will be set by Judge Arguello and will be held via VTC.

(ii) If a notice of disposition is filed and a consent order is in place, the hearing will be set on Magistrate Judge Gallagher's calendar. If no consent order is in place, the hearing will be set before Senior Judge Arguello.

(2) Courtesy Copy of Plea Agreement.

(A) No less than **three (3) business days** before the Change of Plea Hearing, the parties shall send a courtesy copy of the plea agreement (signed or unsigned) to the chambers of the judge before whom the change of plea hearing is scheduled.

(3) Signed Plea Agreement. Pursuant to D.C.COLO.LCrR 11.1(e), defense counsel shall **ALWAYS** bring the **signed original and one copy** of the "Statement by Defendant in Advance of Change of Plea" and the "Plea Agreement and Statement of Facts" to the courtroom at the time of the hearing.

(4) Who Must Be Present. The AUSA who negotiated the plea agreement and defense counsel who reviewed the plea agreement with the defendant must be present in person at the Change of Plea Hearing.

(c) Sentencing Hearing

(1) Sentencing Hearing Date. The Court will set the date of the sentencing hearing at the Change of Plea Hearing. The Sentencing Hearing will be set pursuant to CMA Crim. Practice Standard 1.3.

(2) Requests for Expedited or Immediate Sentencing Hearings. If a party seeks an expedited or immediate sentencing hearing, that party must first contact the Probation Office to find out how much time the Probation Office needs to prepare an Immediate Sentencing Report. That party must then file a motion providing the Court with this information and the justification for waiver of the full Presentence Investigation Report, so that the Court can determine whether to schedule an immediate sentencing hearing following the Change of Plea Hearing or whether to schedule an expedited sentencing hearing at a later date. Any expedited or immediate sentencing hearing will be set pursuant to CMA Crim. Practice Standard 1.3.

(3) Motions or Statements. Sentencing-related motions or statements

must be filed no later than fourteen (14) days before the sentencing hearing. Responses or objections to the opposing party's filings MUST be filed no later than seven (7) days before the scheduled Sentencing Hearing. Additionally, failure to file a response to the opposing party's sentencing statement or motion(s) will be construed as a concession of the relief requested by the opposing party. The above deadlines do not in any way alter or affect deadlines for the filing of objections or other pleadings established pursuant to Fed. R. Crim. P. 32. Sentencing-related filings are not to be filed under seal unless counsel is able to provide a compelling reason for sealing the filing. The mere inclusion of information of a personal nature in a filing is not a compelling reason to seal such a filing. Sentencing-related documents that are not filed correctly pursuant D.C.COLO.LCr.R 32.1(e) will be summarily STRICKEN.

(4) Failure to Comply. Failure to comply with this Practice Standard may result in a continuance of the Sentencing Hearing. The deadlines for filing such papers will be extended only upon the showing of good cause.

(d) Supervised Release Revocation Hearings

(1) Supervised Release Violation Report. The Probation Officer shall file the Supervised Release Violation Report with the Court not later than twenty-one (21) days prior to the Final Hearing on Supervised Release.

(2) Sentencing Statements. Not later than seven (7) days before the Supervised Release Revocation Hearing, the defendant shall file a sentencing statement indicating whether he/she intends to admit or deny the allegations and setting forth his/her sentencing position. The Government's response to the defendant's sentencing statement must be filed not later than five (5) days before the Supervised Release Revocation Hearing. Sentencing-related documents that are not filed correctly pursuant to D.C.COLO.LCrR 32.1(e) will be summarily STRICKEN.

(3) Failure to Comply. Failure to comply with this Practice Standard may result in a continuance of the Supervised Release Revocation Hearing. The deadlines for filing such papers will be extended only upon the showing of good cause.

III. PRETRIAL MOTIONS

CMA Crim. Practice Standard 12 **PRETRIAL MOTIONS**

(a) **Caption.** Case captions shall comply with the form set out in D.C.COLo.LCivR 1.2, found under the “Forms” link on the District Court’s homepage (<http://www.cod.uscourts.gov/>). Failure to use the correct form of a caption may result in the pleading being summarily stricken.

(b) **Multi-Defendant Caption.** The case caption shall reflect the defendant’s number and name on the caption. Captions should reflect ONLY the defendant or defendants to which the pleading concerns, i.e., DO NOT LIST ALL DEFENDANTS IN THE CAPTION UNLESS THE MOTIONS PERTAINS TO ALL DEFENDANTS. Failure to use the correct form of a caption may result on the pleading being summarily stricken.

(c) **Procedure, Format, and Length.**

(1) **Requests for Court action.** All requests for the Court to take action, make any type of ruling, or provide any type of relief must be contained in a written motion.

(2) **Font and Format.** Papers filed with the Court should be in Arial 12 point font, including footnotes, and conform to the other formatting requirements (margins, line spacing, etc.) of D.C.COLo.LCivR 10.1.

(3) **Page Limits.** There are no page limits on motions and briefs (unless specifically ordered by the Court). However, keep in mind that the mere provision of string citations without any analysis of the law and the application of that law to the facts of the case will not prove very persuasive to the Court.

(4) **Citations.** Citations shall be made pursuant to the most current edition of THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION. General references to cases, pleadings, depositions, or documents are insufficient if the referenced document is more than one page in length. Whenever possible, pinpoint citations shall be used to identify relevant excerpts from a document. Whenever possible, a citation to an unpublished opinion should include its Westlaw® citation.

(d) **Motions for Extensions of Time.**

(1) A motion for extension of time will be granted only upon a showing of good cause (agreement by counsel does not constitute good cause) and only if the extension of time does not adversely affect case management. Unless the circumstances are truly unanticipated and unavoidable, the following do not constitute good cause: inconvenience to counsel or the parties, press of other business, and/or scheduling conflicts (especially if more than one attorney has

entered an appearance for a party).

(2) Any motion for an extension of time shall be filed as early as practicable based on the underlying reasons for the request for additional time.

(e) **Motions for Discovery.** The Court will not consider any motion related to the disclosure or production of discovery that is addressed by the discovery order and/or Federal Rule of Criminal Procedure 16, unless counsel for the moving party, **prior to filing the motion, has conferred or made reasonable, good faith efforts to confer with opposing counsel in an effort to attempt to resolve the disputed matter, e.g.,** questions or disputes relating to the scope and/or timing of disclosure of such discovery. If the parties are able to resolve the dispute, the motion shall be entitled “Unopposed Motion for _____,” and the parties shall submit via email to Chambers the proposed order that the parties wish the Court to enter. If the parties are unable to resolve the dispute, the moving party shall state in the motion the specific efforts that were taken to comply with this duty to confer.

(f) **Objections to Rule 404(b) Notices.** Objections to Rule 404(b) Notices shall be filed no later than seven (7) days after the Rule 404(b) Notice is filed.

(g) **Ends of Justice Continuances of Hearings and Trials.**

(1) All motions for an ends of justice continuance must:

- (A) Specify the numbers of days remaining on the speedy trial clock;
- (B) Specify either the Grand Junction or Denver Term Week the party is requesting the trial be continued to;
- (C) Identify which parties join in the motion and which parties object to the motion; and
- (D) Provide an analysis of the factors set forth in 18 U.S.C. § 3161(h)(7)(B). The Court encourages counsel to closely examine the continuance factors set forth in 18 U.S.C. § 3161(h)(7)(B) and to specifically address how the ends of justice are served by granting the continuance. In *United States v. Toombs*, 574 F.3d 1262, 1271–72 (10th Cir. 2009), the Tenth Circuit explained that “the record, which includes the oral and written statements of both the district court and the moving party, must contain an explanation of why the mere occurrence of the event identified by the party as necessitating the continuance results in the need for additional time.” It also held that a “record consisting of only short, conclusory statements lacking in detail is insufficient. For example, it is insufficient to merely state that counsel is new and thus needs more time to adequately prepare for trial or that counsel or witnesses will

be out of town in the weeks preceding trial and therefore more time is needed to prepare for trial. Simply identifying an event and adding the conclusory statement that the event requires more time for counsel to prepare is not enough.” *Id.*

- (2) Any party who objects to the granting of an ends of justice continuance must file his/her/its objection within seven (7) days of the filing of the motion.

(h) **Motions Under Fed. R. Evid. 702**

(1) **Duty to Confer.** The Court will not consider any motion challenging expert opinion/testimony under Fed. R. Evid. 702, unless counsel for the moving party, prior to filing the motion, has conferred or made reasonable, good faith efforts to confer with opposing counsel in an effort to attempt to resolve the disputed matter(s). If the parties are able to resolve the dispute, the motion shall be entitled “Unopposed Motion for _____,” and the parties shall submit via email to Chambers the proposed order that the parties wish the Court to enter. If the parties are unable to resolve the dispute, the moving party shall state in the motion the specific efforts that were taken to comply with this duty to confer.

(2) **Content.** All Rule 702 motions shall:

(A) Identify the expert witness and separately state each opinion/testimony the moving party seeks to exclude;

(B) Follow each opinion with the specific foundational challenge made to the opinion/testimony;

(C) Indicate whether an evidentiary hearing is requested, explain why such a hearing is necessary, and specify the time needed for the evidentiary hearing (assuming time is divided equally between the parties); and

(D) Include the expert witness’s report as an exhibit.

(3) **Evidentiary Hearing.** If an evidentiary hearing is held, the time for the evidentiary hearing will be divided equally between the parties. Unless otherwise ordered, **the expert witness** whose testimony or opinion is proffered **shall be present at the hearing.**

(4) **Timing.** Parties should bear in mind that motions under Federal Rule of Evidence 702 may require additional time for the Court to fully analyze and may require an evidentiary hearing. Thus, parties should file such motions **as early as practicable.**

(i) **Motions Hearings.** With the exception of motions to suppress, the Court generally rules on motions without oral argument or evidentiary hearing. However, if the parties believe an oral argument or a hearing is necessary and would assist the Court, a specific request for such hearing shall be made promptly by separate motion. Preference in scheduling oral argument on a contested motion will be given in those instances in which at least one party certifies to the Court that said oral argument will be handled by an attorney of record in the case who has eight years or less of legal experience. Additionally, at least three (3) business days prior to such hearing, counsel shall advise the Court regarding which issues are still in dispute and which issues have been resolved.

(1) **Witnesses.** No later than three (3) business days before the hearing, the parties must submit to Chambers via email, with a copy to opposing counsel, a list of its proposed witnesses and an estimate of the length of time of each witness's testimony. Proposed witness lists should NOT be filed using CM/ECF, but should be emailed as an attachment directly to Chambers at Arguello_Chambers@cod.uscourts.gov.

(2) **Exhibits.** No later than three (3) business days before the hearing, the parties must submit to Chambers via email a list of its proposed exhibits. With regard to the marking of exhibits and the use of exhibit binders for motions hearings, the parties must follow the procedures used for trials, which is set forth below in CMA Crim. Practice Standard 17.1(b).

IV. TRIALS AND PRETRIAL MATTERS

CMA Crim. Practice Standard 17.1

SCHEDULING AND PRETRIAL MATTERS

(a) **Final Trial Preparation Conference.**

(1) Senior Judge Arguello will preside over the Final Trial Preparation Conference, which will be scheduled approximately ten (10) days before trial. Unless otherwise ordered, all Final Trial Preparation Conferences will be held via VTC. Counsel are directed to contact chambers via email at Arguello_Chambers@cod.uscourts.gov at least three (3) days before the scheduled hearing for instructions on how to proceed via VTC. Counsel who will try the case must attend this conference. At this conference, counsel and/or any *pro se* party should bring to the Court's attention to any problems or issues that need to be resolved or addressed before trial commences or that may arise during the course of the trial. The parties should anticipate discussing witnesses, exhibits, *voir dire*, jury instructions, verdict forms, allotted time for openings and closings, evidentiary issues, and/or outstanding motions.

(2) **Witness Lists.** No later than one week before the final trial preparation conference, the Government must submit to Chambers **via email**, with a copy to opposing counsel, a list of its proposed witnesses and an estimate of the length of time of each witness's testimony. No later than the Wednesday before jury selection, the defendant must submit to Chambers a list of its potential witnesses for purposes of *voir dire* (this list will remain confidential until read at *voir dire*). Proposed witness lists should NOT be filed using CM/ECF, but should be emailed as an attachment directly to Chambers at Arguello_Chambers@cod.uscourts.gov.

(3) **Exhibit Lists.** No later than one week before the Final Trial Preparation Conference, the parties must **email** Chambers their exhibitlists.

(4) **Marking of Exhibits.** Parties should pre-mark all exhibits they plan to use or identify for the record in the following manner:

(A) The Government shall mark exhibits numerically, e.g., Government's Exhibit 1, 2, 3, etc.

(B) The defendant shall mark exhibits alphabetically, e.g., Defendant's Exhibit A, B, C, etc. If there are more than 26 exhibits, they should be marked Defendant's Exhibit AA, BB, CC, etc.

(5) **Exhibit Binders.**

(A) Unless otherwise indicated, each party's exhibits must be submitted to the Clerk's office (ATTN: Nicholas Richards) on a flash drive no later than 12:00pm on the Monday before the first day of the trial or relevant hearing. The exhibit flash drive should include all exhibits that the parties plan to use or introduce, including those that are stipulated, contested, and demonstrative. With the exception of composite exhibits, each exhibit shall consist of a single document and not a group of separate documents. The hearing or trial may be delayed or continued until exhibits are provided.

(B) Unless otherwise indicated, on the first day of trial, each party shall provide the courtroom deputy with:

(i) Four copies of their Exhibit and Witness Lists;

(ii) One three-ring binder from each party containing that party's original exhibits (for the Court). Jurors will not receive individual exhibit binders; instead, they view exhibits on the ELMO during the trial. During deliberations, jurors will use a thumb drive of admitted exhibits. The parties will prepare the thumb drive of admitted exhibits and provide the same to the courtroom deputy before deliberations begin. All exhibits must be in numerical or alphabetical sequence; and

(iii) An electronic version of the exhibits in proper sequence on disc or thumb drive for the Court Reporter.

(C) The courtroom deputy will place each party's original exhibit binder in the witness box. Thus, when asking a witness to look at an exhibit, counsel or a *pro se* party need simply say, "Please look at Exhibit No. in the binder in front of you," and the witness will be able to refer immediately to the exhibit in the original exhibit binder.

(D) Voluminous Evidence.

(i) Parties shall either (a) redact voluminous evidence to reflect only the relevant portions and portions necessary for context; or (b) consistent with the requirements of Fed. R. Evid. 1006, prepare and offer charts, summaries, or calculations to communicate the contents of voluminous evidence to the Court and jury.

(ii) Additionally, parties shall include any redacted evidence or Rule 1006 chart, summary, or calculation they intend to use at trial in the list of exhibits set forth in the Final Pretrial Order and in the exhibit copies exchanged following the Final Pretrial Conference. The underlying voluminous evidence on which such redacted,

summary, chart, or calculation exhibit is based shall be identified in an appendix to the exhibit list and such underlying evidence shall be made available to the other parties at the time the parties exchange exhibits.

(E) Copy for the Opposing Party. Counsel should provide copies of its marked exhibits to the opposing party or parties.

(F) No Oversize Exhibits; ELMO & Electronic System Training. All exhibits are to be displayed on the ELMO, which is approximately 8½" x 11". Over-sized exhibits or demonstratives are not as effective as using the ELMO and will not be permitted unless they are approved by the Court. Alternatively, exhibits may be presented through the Court's electronic system and screens via a laptop computer. Training in effective use of the ELMO system, and/or the Court's electronic system, prior to a hearing or trial is highly encouraged, and can be arranged by contacting Nicholas Richards at nicholas_richards@cod.uscourts.gov.

(b) Sequestration Orders. Sequestration orders should be strictly observed. Expert witnesses may not sit in on trials in which sequestration orders have been entered except with express prior authorization. Witnesses should not be "prepped" or their testimony reviewed during breaks after they have been sworn in. Witnesses who have not yet testified at trial should not be provided transcripts of trial proceedings. However, they may be prepared by asking them questions based upon hypotheticals. Once excused, witnesses may sit in the courtroom, unless a party has a good faith belief that the witness will be called again for rebuttal purposes and makes an ongoing exclusion request with the Court.

(c) Bench Conferences. Bench conferences are strongly discouraged and will be minimized. Matters that may otherwise justify a bench conference should be raised either before or after the trial day or during a break.

(d) Time Limits on Opening Statement/Closing Argument. Unless otherwise ordered, the time limit for opening statement is one hour and the time limit for closing argument is one hour, inclusive of rebuttal. If counsel intends to do rebuttal, s/he must so advise the court and reserve the time. Counsel are not allowed to tag-team on opening and/or closing, i.e., only one lawyer per side can do opening and only one lawyer per side can do closing (including rebuttal).

(e) Speaking Objections Not Permitted. Speaking objections are not allowed. Objections and responses thereto shall be made specifically and concisely (e.g., "Objection: relevance"), rather than in an argumentative or suggestive manner.

CMA Crim. Practice Standard 24
JURY TRIALS

(a) Witness and Exhibit Lists. See CMA Crim. Practice Standards 17.1(b)(5)(A) and (B).

(b) Number of Jurors. In accordance with Federal Rule of Criminal Procedure 23, the Court will seat 12 jurors, unless it determines that one or more alternate jurors is appropriate. The alternate juror(s) will be selected by random draw immediately following closing arguments.

(c) Jury Selection. Prior to the jurors being brought up to the courtroom, the Clerk's Office provides the Court with a list of juror names, chosen by computer in a randomly selected order. The prospective jurors on the list are seated in the jury box in the order in which they were drawn. The total number seated in the box is the number of jurors the Courts intends to seat, plus the additional prospective jurors needed to provide the lawyers with the number of peremptory challenges set forth in Federal Rule of Criminal Procedure 24.

(d) Voir Dire.

(1) The Court will conduct most of the *voir dire* examination. The parties may submit proposed *voir dire* questions to Chambers at Arquello_Chambers@cod.uscourts.gov, with a copy to opposing counsel, in Microsoft Word format as an email attachment no later than one week before the Final Trial Preparation Conference. Parties should NOT file proposed *voir dire* questions on the CM/ECF system. Routine questions (e.g., whether the jurors know any of the parties, whether they have served on a jury, whether they have any legal training or experience), need not be submitted as these will be included as part of the Court's standard *voir dire*. All proposed *voir dire* questions must be written in a format that can be asked of the jury panel as a whole, i.e., the question must be able to be answered either "yes" or "no."

(2) Any juror excused by the Court for hardship will be replaced by the next numerically identified prospective juror in the jury pool who has not already been seated in the jury box.

(3) Unless ordered otherwise, each side will have fifteen minutes of *voir dire* examination following *voir dire* examination by the Court. Such *voir dire* examination shall be limited to non-argumentative questions submitted by the parties and follow-up questions based on previous answers.

(4) After *voir dire* examination is completed, the Court will entertain challenges for cause. Any juror excused for cause will be replaced by the next numerically identified prospective juror in the jury pool who has not already been seated in the jury box. *Voir dire* examination of any replacement jurors shall be conducted by the Court.

(e) **Peremptory Challenges.** Peremptory challenges shall be exercised simultaneously by the parties using a strike sheet.

(f) **Batson Challenges.** Challenges pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986) are made after peremptory challenges are concluded and immediately prior to the jury being sworn.

(g) **Note Taking and Questions by Jurors.** Jurors will be permitted to take notes during the trial. The jurors' notes will be destroyed after the jury is discharged.

(h) **Condensed Trial Day.**

(1) **Trial Schedule.** The first trial day begins at 8:30 a.m. with jury selection. An hour-long lunch break is provided at approximately 12:00 p.m., and the jurors are excused between 4:30 and 5:00 p.m. All other days will begin promptly at 8:00 a.m. A fifteen-minute recess is taken at approximately 10:00 a.m., and a half-hour lunch recess is taken at approximately 12:15 p.m. Jurors are excused for the day between 2:30 and 2:45 p.m.

(2) **Counsel Should Arrive Early Each Day of Trial.** Counsel should be present in the courtroom **30 minutes before the trial day is scheduled to begin** to address any issues that may arise before the start of the trial day. It is counsel's responsibility to bring such issues to the Court's attention by alerting the courtroom deputy prior to the beginning of the trial day. It is the Court's firm expectation that the jury will be seated and trial will begin promptly at 8:00 a.m. each day.

CMA Crim. Practice Standard 30 **JURY INSTRUCTIONS**

(a) **Jury Instruction.** The jury will be instructed before closing arguments and each juror will be given a copy of the written jury instructions for their use and consideration during deliberations.

(b) **The Importance of (Too-Often-Neglected) Jury Instructions.** The parties' preparation of thorough, thoughtful, and clear jury instructions simply cannot be overstated. The Court devotes substantial time to reviewing and refining proposed jury instructions and expects no less effort from counsel. To this end, the Court requires preparation and submission of instructions several weeks in advance of trial, so counsel and the Court can devote the time necessary for this crucial task before other trial preparation demands become overwhelming.

(c) **Conferral and Timing/Method of Submission.** The parties shall meet and confer well in advance of the final trial preparation conference and stipulate to the verdict

form and as many of the proposed jury instructions as possible. Only true conflict or uncertainty in binding substantive law should prevent agreement. The parties shall exchange their proposed jury instructions and verdict forms at least one week before meeting. It is the Government's responsibility to schedule the meeting(s), as well as to submit stipulated jury instructions (and, if applicable, a stipulated verdict form) directly to Chambers via e-mail at Arguello_Chambers@cod.uscourts.gov, with a copy to opposing counsel/party, **at least two weeks before the Final Trial Preparation Conference**. Similarly, competing and non-stipulated instructions (defined and described in greater detail below) should also be submitted to Chambers via email by the party proffering such instructions **at least two weeks before the Final Trial Preparation Conference**. Instructions should NOT be filed via ECF.

(d) Model Preliminary and Final Instructions. The Court has developed model, generic preliminary and final jury instructions that are pertinent to all criminal actions, so the parties need not submit instructions covering these issues. See Senior Judge Arguello's model preliminary and final instructions, available at <http://www.cod.uscourts.gov/JudicialOfficers.aspx>. If the parties wish to modify the Court's model instructions, or believe additional preliminary or final instructions are necessary, they should attempt to stipulate to such instructions.

(e) Form Instructions. The Court generally follows the most current version of the form instructions provided in Federal Jury Practice and Instructions and the Tenth Circuit's Criminal Pattern Jury Instructions. However, the Court encourages the parties to carefully read and tailor any form instructions to the facts and circumstances of the particular case, as well as to edit such instructions as necessary to use plain language, rather than legal or technical jargon.

(f) Categories of Jury Instructions. The Court contemplates three categories of jury instructions, as described below. In order to assist the Court in distinguishing among the instructions, at the bottom of each competing instruction, immediately preceding the legal authority for the instruction, the instruction should be identified as "Stipulated," "Competing," or "Non-Stipulated," and should also identify the party tendering the instruction (e.g., "Government's Competing Instruction," "Defendant's Non-Stipulated Instruction.")

(1) "Stipulated Instructions": Stipulated instructions are those instructions about which the parties agree after conferral.

(2) "Competing Instructions": Competing instructions are those instructions about which the parties agree that an instruction is necessary, but disagree about the content of that instruction.

(3) **“Non-Stipulated Instructions”**: Non-stipulated instructions are those instructions requested by a party to which the other party objects, but does not request/tender a competing instruction.

(4) Each proposed competing or non-stipulated instruction should contain, at the bottom of the instruction, one paragraph of argument from each side, including citations to **legal authority**, explaining why the instruction is tendered or opposed.

(g) **Format of Proposed Jury Instructions.**

(1) Proposed instructions should NOT be numbered. Each proposed instruction should contain a title, which shall be centered in bold, all caps typeface on the top of the page corresponding to the instruction, e.g.:

**INSTRUCTION NO.
ELEMENTS OF OFFENSE**

[Instruction]

Defendant’s Competing Instruction. Source: [Legal authority]

(2) If the parties edit a form or pattern instruction, the parties shall either “redline” such changes or specifically describe them at the bottom of the instruction.

(3) Proposed instructions should be submitted with “hard page breaks” (**not** the use of “hard returns”) between each instruction.

(4) When referring to this Court in the body of the instructions, always capitalize the word “Court.” When referring to the defendant, use the appropriate prefix and the defendant’s surname, e.g., “Mr. Smith.”

(h) **Charging Conference.** Assuming the parties are cooperating in good faith, the Court will attempt to finalize the proposed instructions and provide them to the parties prior to the start of trial. The Court will examine the jury instructions again when it holds a charging conference, generally after the Government rests. At the charging conference, the Court will review the proposed final instructions and verdict form with the parties and they will have an opportunity to request changes to the proposed instructions and verdict form and to state their objections on the record. The Court will also address unanticipated matters that arise during trial and that require changes to the jury

instructions and/or verdict form at the charging conference or after the close of evidence.

(i) **Verdict Form.** As with jury instructions, the Court urges counsel to confer and to craft a verdict form that is understandable to lay persons. In all but the simplest cases, the Court prefers special interrogatory verdict forms, which provide a “roadmap” for the jury with specific questions keyed to each count, as well as specific instructions about where to proceed in the verdict form, if, for example, the Government fails to prove an element of a count. See Senior Judge Arguello’s Criminal Jury Verdict Form, available at <http://www.cod.uscourts.gov/JudicialOfficers.aspx>. Verdict forms shall not be filed via CM-ECF; instead, they should be submitted pursuant to the same deadlines and method provided in CMA Crim. Practice Standard 30(c).

(j) **Final Instructions.** Court staff will prepare a final, clean set of instructions and the verdict form for the jury. See sample instructions, available under “Hon. Christine M. Arguello,” at <http://www.cod.uscourts.gov/JudicialOfficers.aspx>.