

**CRIMINAL PRACTICE STANDARDS**

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

**Courtroom A602  
Alfred A. Arraj United States Courthouse**

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

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

**I. PURPOSE AND RELATION TO OTHER RULES**

**A.** Pursuant to D.C.COLO.LCrR 26.1, the following describes the practice standards to be followed in criminal cases in which I am the presiding judge. These practice standards supplement the Federal Rules of Criminal Procedure and Local Rules of Practice of the United States District Court for the District of Colorado. These practice standards apply to all motions, petitions, applications, responses, replies, objections, orders and all other papers filed on or after **May 24, 2010**, and to all hearings and trials conducted on or after **May 24, 2010**. 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.** Copies of the Local Rules are available at <http://www.cod.uscourts.gov/LocalRules/Rules.aspx>, 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**.

**C.** Copies of these Practice Standards are available at <http://www.cod.uscourts.gov/Judges/Judges.aspx>, 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.

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

## **B. Communications With Chambers**

1. For information about the status of a motion or document, please use the CM/ECF system available at <https://ecf.cod.uscourts.gov>, or at <http://www.cod.uscourts.gov/PACER.aspx>, or from the District Court's home page at <http://www.cod.uscourts.gov> under "United States District Court" at the link for "PACER."

2. My Courtroom Deputy is **Valeri Barnes**. Please direct any questions concerning exhibits or courtroom equipment to her at 303-335-2087. Counsel should schedule times with Ms. Barnes before a hearing or trial to familiarize themselves with the courtroom's technology.

3. My official Court Reporter is **Darlene Martinez**. Transcripts may be ordered directly from her at 303-335-2312.

4. My Judicial Assistant is **Lee Ross**. We are sensitive to the anxieties of trial practice and we hope to minimize apprehension about local practices. If you have any questions, you may contact Ms. Ross at 303-335-2174.

## **C. Service By Electronic Means and Submission of Documents To Chambers**

**1. With the exceptions noted in this Court's Local Rules or these Practice Standards, do not send documents directly to Chambers unless requested by the Court to do so.**

2. When directed by Local Rules or these Practice Standards to submit a document directly to Chambers, *e.g.*, proposed orders, jury instructions, *voir dire* questions, etc., parties should submit documents as an e-mail attachment addressed to: [arguello\\_chambers@cod.uscourts.gov](mailto:arguello_chambers@cod.uscourts.gov). Documents submitted directly to Chambers in this manner should **NOT** be filed with the Clerk of Court using CM/ECF. Documents submitted to Chambers should be in Word Perfect 12 format. MS Word is also acceptable; however, PDF format is **NOT** acceptable for documents submitted to Chambers. The subject line of the e-mail message should identify the case name, number and the title of the document attached. Document formatting for documents submitted to Chambers, *e.g.*, typeface, margins, spacing, etc., should follow this Court's Local Rules and Practice Standards.

## D. Miscellaneous Criminal Matters

1. Since the *Booker* and *FanFan* decisions The Court does NOT accept plea agreements pursuant to Fed. R. Crim. P. 11(c)(1)(c).

2. **Notices of Disposition** – 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.

### 3. Changes of Plea

a. Changes of Plea are set approximately four (4) weeks from the date of the Notice of Disposition, unless specifically requested otherwise in the Notice. It is helpful to include mutually acceptable dates in the Notice for the Court to consider.

b. Pursuant to D.C.COLO.LCrR 11.1F, **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. In addition a courtesy copy of the plea documents are **REQUIRED** to be delivered to Chambers via fax (303-335-2317) or e-mail ([arguello\\_chambers@cod.uscourts.gov](mailto:arguello_chambers@cod.uscourts.gov)) **ONE (1) week** before the Change of Plea hearing. Please read the “Order Setting Change of Plea” carefully.

c. The AUSA assigned to a criminal matter must be present at a Change of Plea. If that AUSA cannot attend in person, he/she must be present by phone and a fully briefed substitute AUSA must be physically present.

4. **Sentencing** – Sentencing Statements, Motions for Departure, Motions for Variant Sentence, Motions for Decrease in Offense Level, Motions to Dismiss Counts, etc. **MUST** be filed **no later than two (2) weeks before** the scheduled sentencing hearing. Responses or objections to such motions **MUST** be filed **no later than one (1) week before** the scheduled sentencing hearing.

## III. MOTIONS PRACTICE

### A. Page Limitations and Citations

1. 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.

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

3. 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.

4. Whenever possible, a citation to an unpublished opinion should include its Westlaw® citation.

5. These Practice Standards should be cited as CMA Crim. Practice Standard, Section, Subsection, Paragraph, Subparagraph, and Sub-subparagraph (e.g., CMA Crim. Practice Standards III.A.5.).

**B. Typeface** – Papers filed with the Court should be Arial 12 point font, exclusive of footnotes and endnotes which should be Arial 11 point font.

**C. Motions for Extensions of Time**

1. Motions 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 extension of time shall be filed **no later than three (3)** days prior to the date the motion, response, reply, or other paper to which the extension applies is due.

**D. 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 Fed. R. Crim. P. 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 the proposed order 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 Order to Confer.

**E. Continuances of Hearings and Trials** – Motions to continue are strongly discouraged because they cause adverse effects on case management. Motions to continue shall be submitted to the Court as far in advance as possible of the matter to be continued. Oral or written motions to continue made at the time of a hearing or trial are unacceptable. All motions to continue must address how the ends of justice are best served by granting the continuance. Stipulations for continuance shall not be effective unless and until approved by the Court.

**F. Motions Hearings** – Motions may be determined without a hearing or may be set for an evidentiary hearing or oral argument, or set for a law and motion hearing. Law and motion hearings are intended to allow brief oral argument or to set appropriate preparation deadlines for an evidentiary hearing.

**G. Motions *In Limine*, Motions Under Fed. R. Evid. 702, and Trial Briefs**

1. Motions *in limine* are **NOT** discouraged by the Court. Parties should keep in mind that admissibility or inadmissibility of particular evidence often depends upon the context in which the evidence is offered, so the Court may be unable to rule on the Motion *in Limine* prior to trial. However, if the Court is forewarned about particular evidentiary disputes that are anticipated to arise during the course of the trial, the Court is much more likely to be able to make a more informed ruling on the evidentiary issue.

2. Parties should bear in mind that motions under Fed. R. Evid. 702 may require additional time for the Court to fully analyze. Thus, parties should file such motions as early as is practicable.

3. In order for the Court to be in a position to address Motions *in limine* at the Final Trial Preparation Conference or at a separately scheduled motions hearing prior to trial, such motions should be filed sufficiently in advance of the date of the Final Trial Preparation Conference or the hearing that the motion is ripe for adjudication prior to the Final Trial Preparation Conference or hearing date.

4. Similarly, Trial Briefs are **NOT** discouraged by the Court. However, parties wishing to file trial briefs should keep in mind that the Court has a busy docket, so the earlier the Trial Brief is filed, the more likely the Court will have had time to read it prior to trial.

## IV. COURTROOM PROCEDURES

**A. Court Appearances** – Court time is valuable. Counsel and parties should be prompt and prepared when they appear for a conference, hearing, or trial. If a scheduled matter is called and a party or counsel is not present, the Court may move the matter to the end of the docket, reset it, enter default and/or impose sanctions or other orders. If a party or counsel is not prepared, the Court may reset the matter without deference to the parties' needs, deny the request for relief, defense(s), or objection(s) and/or impose other sanctions. Unless otherwise directed, all matters will be heard in Courtroom A602 located on the sixth floor of the Arraj Courthouse. Matters heard by a Magistrate Judge will be in the courtroom assigned to that Magistrate Judge.

### **B. Courtroom Organization and Protocol**

1. The Court is punctual and counsel and parties are expected to arrive at least ten minutes before scheduled hearing. **Turn off all cell phones and pagers before entering the courtroom.** If an attorney's tardiness delays the scheduled time of a proceeding or if an attorney's cell phone or pager goes off during proceedings, the Court is likely to give counsel the opportunity to perform needed public service through a *pro bono* assignment.
2. No soda, coffee or food is allowed in the courtroom. Water bottles are permitted, and water and cups are provided.
3. Counsel and represented parties are seated at the front tables closest to the bench, with the Government seated at the table closest to the jury box. Support staff should be seated at the tables directly behind counsel. There is one lectern in the courtroom from which attorneys will address the Court, witnesses, and the jury.
4. In jury trials, 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.
5. The administration of an oath or affirmation is a solemn public ritual and an integral part of any judicial proceeding. Any public oath-taking administered to witnesses, interpreters, and Court Security Officers **requires the undivided attention of counsel as well as all others in the courtroom.**
6. Please observe courtroom decorum, *e.g.*, dress appropriately, rise to address the Court and request permission to approach the bench and any witness.

7. Please advise the Courtroom Deputy of any late or anticipated filings to ensure that all necessary documents are present during a hearing or trial.
8. As a matter of courtesy, it is the Court's policy that everyone stand when the jury enters or leaves. (EXCEPTION: Do not stand for the jury panel members as they come into the courtroom initially for jury selection.)
9. As a sign of respect for the institution, you will refer to the judge as "Your Honor" or "the Court." Please refer to all other persons by their surnames, prefaced by Mr. or Ms., unless referencing a quote in which only a first name was used or where a surname cannot be recalled. You may refer to physicians as "Doctor," and law enforcement officials as "Agent," "Officer," "Detective," etc., as appropriate.
10. If you have a question about courtroom protocol, contact the Courtroom Deputy, **Valeri Barnes**, at **303-335-2087**.

### **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, if any, or Court Reporter with your business card.
2. The realtime reporter assigned to the Court is **Darlene Martinez**. Copies of forms to be filed that relate to transcripts should be mailed to Darlene Martinez, Court Reporter, U.S. District Courthouse, 901 19th Street, Denver, Colorado 80294. If counsel requires special services such as daily copy or real time, they should make such request **at least two (2) weeks in advance of the trial or hearing date**.

**D. Exhibits** – Each party should follow the following procedures regarding exhibits they intend use during evidentiary hearings and trials. Exhibits not prepared before an evidentiary hearing or trial may not be admitted. See *also* CMA Crim. Practice Standards V.E.

1. **Marking of Exhibits** – Parties should pre-mark all exhibits they plan to use or identify for the record in an evidentiary hearing or trial in the following manner:
  - a. Plaintiff (*i.e.*, the government), petitioner or appellant shall mark exhibits numerically, *e.g.*, Government's Exhibit 1, 2, 3, etc.

- b. Defendants and respondents shall mark exhibits alphabetically, e.g., Smith's Exhibit A, B, C, etc. If there are more than 26 exhibits, they should be marked Smith's Exhibit AA, BB, CC, etc.
  - c. Stipulated exhibits shall indicate that fact, e.g., Stipulated Exhibit 1, 2, 3, etc. (for Plaintiff(s)/Government) or Stipulated Exhibit A, B, C, etc (for Defendants).
  - d. Exhibits should also be labeled with the appropriate case number.
2. Each party's exhibits should be bound in three-ring notebooks or folders. The exhibit notebook or folder should include all exhibits that a party plans to use or introduce – stipulated, contested, and demonstrative. The notebook or folder should be labeled with the following information: (i) case caption and number, (ii) party's name and designation and (iii) "original" or "copy." Multi-page exhibits must be permanently fastened and each page numbered consecutively to prevent any pages from becoming separated or omitted.
3. **Two exhibit notebooks per party**, one containing the original exhibits and one containing a copy of the exhibits in proper sequence, shall be delivered to the Courtroom Deputy before commencement of the hearing or trial.
4. The Courtroom Deputy will place each party's original exhibit notebook(s) in the witness box. Thus, when asking a witness to look at an exhibit, counsel or a *pro se* party may simply say, "Please look at Exhibit No. \_\_\_ in the notebook in front of you," and the witness will be able to refer immediately to the exhibit in the Original Exhibit Notebook.
5. In addition to exhibit notebooks/folders for the Court and witness, counsel should provide copies of its marked exhibits to the opposing party.
6. Demonstrative exhibits and documents used to refresh memory must also be marked.
7. All exhibits are to be displayed on the Elmo and must fit on the Elmo. No over-sized exhibits are to be used **unless requested by prior motion and approved by the Court.**
8. **Trial Exhibit Lists** – for trials, each party should follow the procedures described in CMA Crim. Practice Standards V.E.

**E. Witnesses**

1. Parties should have witnesses ready to testify in order to expedite the hearing or trial.
2. **Trial Witness Lists** – for trials, each party should follow the procedures described below regarding witness lists. See CMA Crim. Practice Standards V.F. Witness lists are not required for hearings other than trials.

**F. Depositions** – The use of depositions in Court proceedings is governed by Fed. R. Crim. P. 15 and the following procedures:

1. At the beginning of a hearing or trial, a party shall deliver to the Courtroom Deputy the original transcripts of all depositions the party intends to use. To allow the Court to better rule on any objections to deposition testimony, the offering party should also provide the Court with a notebook containing copies of any deposition transcripts to be used with tabs that identify the relevant depositions.
2. If the parties intend to offer deposition testimony in lieu of a live witness at trial, the parties must provide the Court with copies of their respective page and line designations and cross-designations pursuant to the schedule set forth below.
3. Initial designations of deposition testimony, with specific page and line designations, must be submitted by the offering party directly to Chambers, with a copy to opposing counsel, **no later than three (3) weeks before the Final Trial Preparation Conference**. Counter-designations must be submitted by the offering party directly to Chambers, with a copy to opposing counsel, **no later than two (2) weeks before the Final Trial Preparation Conference**. Objections to any properly designated portion of a deposition shall be submitted directly to Chambers, with a copy to opposing counsel, **no later than one (1) week before the Final Trial Preparation Conference**. Designations, counter-designations and objections should **NOT** be filed using CM/ECF.
4. Objections shall be presented in a table that has four columns (see sample table below): 1) item number; 2) testimony (identified with specificity, *i.e.*, by page(s) and line(s)); 3) objection; and 4) ruling. **No later than two (2) weeks before the Trial**, the parties may also file legal briefs in support of any designations which are objected to and in support of any objections being made. The Court will attempt to resolve disputes regarding the admissibility of properly designated deposition testimony prior to trial to facilitate appropriate redaction.

Item #	Testimony	Objection	Ruling
1.			

5. In a jury trial, the party offering the depositions should provide a person to read the deponent's answers.

6. For bench trials, depositions will not be read in open court. Instead, the Court will read them in chambers in any requested sequence. The offering party should provide the Court with a notebook containing copies of any deposition transcripts to be used with tabs and highlighting (plaintiff/government in yellow and defendant in blue) that identify the designated testimony.

**G. Videotape Depositions**

1. The use of videotaped depositions in Court proceedings is governed by Fed. R. Crim. P. 15 and these Procedures.

2. Evidence to be presented by videotaped deposition shall be designated with as much specificity as possible.

3. The use of videotape depositions will generally follow the time-lines and procedures noted above for written depositions. Designations and objections should be marked in the same format as described above, using a copy of the written transcript.

**H. Special Equipment (Audio/Video)** – The Court has audio, video, 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/Judges.aspx>, under "Courtroom Technology Manual for Attorneys." Parties should notify the Courtroom Deputy, **Valeri Barnes (303-335-2087)**, no later than **two (2) weeks** before a hearing or trial of the date and time if they need such equipment or need equipment to be brought through security for use in the courtroom.

**V. TRIALS**

**A. Motions Hearing** – Unless otherwise ordered by the Court, all motions hearings will be conducted by the Court.

**B. Trial Settings** – The case will be set for trial during or immediately following the Discovery Conference. See D.C.COLO.LCrR 17.1.1. Unless otherwise instructed by the Magistrate Judge, counsel and *pro se* parties shall report to Chambers (**Room A638 located on the sixth floor**) immediately following the Discovery Conference to set the case for trial, for a motions hearing, and for a Final Trial Preparation Conference.

**C. Final Trial Preparation Conference** – The Court will preside over the Final Trial Preparation Conference which will be scheduled **approximately three (3) weeks** before trial. Counsel who will try the case must attend the Final Trial Preparation Conference. At this conference, counsel and/or any *pro se* party should raise outstanding issues for the Court. The parties should anticipate discussing witnesses, exhibits, *voir dire*, jury instructions, verdict forms, and outstanding motions or issues.

**D. Trials**

1. **Criminal Bench trials** usually begin at 9:00 a.m. and counsel and/or *pro se* parties should be present to check in with the Courtroom Deputy at 8:30 a.m.

2. **Criminal Jury Trials** normally begin on Mondays at 9:00 a.m., unless otherwise specified by the Court. Counsel should be present **one-half hour before** the scheduled trial time to go over any last minute preparation that may be necessary. Jury selection will begin as close to 9:00 a.m. as possible. Subsequent trial days will normally begin at 9:00 a.m. and continue until 4:30-5:00 p.m. The lunch recess will usually begin between noon and 12:30 p.m. and will usually be of 75-minute duration. We will usually take a mid-morning and mid-afternoon break of approximately 15 minutes.

**E. Exhibit Lists and Trial Exhibits**

1. **Stipulated Exhibits** – It is the expectation of the Court that **counsel will meet and confer no later than two (2) weeks** before the Final Trial Preparation Conference so they may stipulate to the authenticity and admissibility of exhibits and to avoid duplicate exhibits, *i.e.*, the same exhibit is **NOT** to be introduced as separate exhibits by both the Government and the Defendant. Rather, the exhibit should be marked as a Joint exhibit. Regarding stipulated exhibits, counsel should mark the appropriate boxes on an Exhibit List to be submitted prior to trial.

2. Exhibit lists should be e-mailed directly to Chambers ([arguello\\_chambers@cod.uscourts.gov](mailto:arguello_chambers@cod.uscourts.gov)) **no later than one (1) week before the Final Trial Preparation Conference.**

3. Parties should mark and organize exhibits as described above in Section IV.D before trial.

4. **There will be no juror notebooks of exhibits.** Jurors will deliberate with the admitted exhibits in the original exhibit notebook(s).

## **F. Witness Lists**

1. **No later than one (1) week before the Final Trial Preparation Conference**, each side should submit to Chambers, with a copy to opposing counsel, a list of its proposed witnesses. This list is not dispositive and is primarily for scheduling purposes; thus, the defendant need not identify their proposed witnesses by name, but should, to the extent possible, give an estimation of the length of testimony. Parties should **NOT** file this list using CM/ECF, but should e-mail the witness list directly to Chambers e-mail address as an attachment.

## **G. Trials To Court**

1. **Not less than one (1) week** before trial, each party shall file proposed findings of fact, conclusions of law and orders. The parties should state their proposed findings of fact as nearly as possible in the same order as their anticipated order of proof at trial. The parties should focus their closing arguments on their proposed findings of fact and conclusions of law and to emphasize the evidence on which they rely to support their positions.

2. For a trial to the Court, a proper resumé or *curriculum vitae*, marked and introduced as an exhibit, generally will suffice for the determination of an expert witness' qualification.

## **H. Jury Trials**

### **1. Jury Selection Process**

a. **Twelve regular jurors and one alternate juror** (unless the Court determines that the number of alternate jurors should be increased) will be chosen for trial. The identity of the alternate juror shall remain anonymous to all but the Court and the parties.

b. **Thirty-one** prospective jurors will be chosen at random by lot and seated in and in front of the jury box.

c. *Voir dire* will be conducted by the Court and counsel and will be directed to those thirty-one prospective jurors seated in the jury box.

d. The Court will conduct *voir dire* first. 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, e.g., if juror number 7 is the first juror excused, then juror number 32 will be substituted for juror 7. Following the Court's *voir dire*, each party will be permitted fifteen minutes for *voir dire*, as described below.

e. After *voir dire* 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* of any replacement jurors shall be conducted by the Court.

f. The alternate juror shall be in the seat selected by the Court prior to trial.

g. Pursuant to Fed. R. Crim. P. 24(b) and (c)(2) and (c)(4)(A), the defendant is entitled to eleven peremptory challenges, i.e., ten for the regular jurors and one for the alternate, and the government is entitled to seven peremptory challenges, i.e., six for the regular jurors and one for the alternate.

h. When the Court directs, the parties shall exercise their regular (non-alternate) juror peremptory challenges in the following order:

- the government may exercise its first peremptory challenge;
- the defendant may exercise his/her first & second peremptory challenge;
- the government may exercise its second peremptory challenge;
- the defendant may exercise his/her third & fourth peremptory challenge;
- the government may exercise its third peremptory challenge;
- the defendant may exercise his/her fifth & sixth peremptory challenge;
- the government may exercise its fourth peremptory challenge;
- the defendant may exercise his/her seventh & eighth peremptory challenge;
- the government may exercise its fifth peremptory challenge;
- the defendant may exercise his/her ninth peremptory challenge;
- the government may exercise its sixth peremptory challenge;
- the defendant may exercise his/her tenth peremptory challenge.

i. When the Court directs, the parties shall exercise their alternate juror peremptory challenges in the following order:

- the government may exercise its seventh peremptory challenge as to the alternate juror only, or the challenge is waived; and
- the defendant may exercise his/her eleventh peremptory challenge as to the alternate juror only.

j. If either side accepts the jury before exercising all of its peremptory challenges, the other side may continue to exercise available peremptory challenges in response to which the side accepting the jury with peremptory challenges remaining may exercise remaining peremptory challenges, but only with respect to a prospective juror who was seated in the place of another prospective juror who was excused through the exercise of a peremptory challenge and then only immediately after the exercise of the challenge.

k. Peremptory challenges shall be made using a strike sheet.

l. All but the last peremptory challenge for each side shall be directed at prospective jurors in seats one through thirteen only, with the exception of the seat designated for the alternate. As required by Fed. R. Crim. P. 24(c)(2) and (4), the last peremptory challenge for each side may be used to remove the alternate juror only.

m. Panelists in seats one through thirteen who are excused by peremptory challenge shall be replaced immediately after each round of challenges by the next available juror in seats fourteen through thirty-one. For example, if jurors 2, 6, and 12 are excused in the first round, then juror 14 shall replace juror 2, juror 15 shall replace juror 6, and juror 16 shall replace juror 12.

n. *Batson* challenges are to be made at the conclusion of the exercise of peremptory challenges immediately prior to the jury being seated and sworn.

## 2. ***Voir Dire***

a. The parties shall submit their proposed *voir dire* questions directly to Chambers e-mail address, with a copy to opposing counsel, in Word Perfect format (or MS Word format) as an e-mail attachment **no later than one (1) week** before the Final Trial Preparation Conference. Parties should **NOT** file their proposed *voir dire* questions on the CM/ECF system.

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

### 3. Jury Instructions and Verdict Forms

a. **PLEASE NOTE:** The Court has developed standard preliminary jury instructions and standard final jury instructions (see link to “Preliminary Jury Instructions - Standard Criminal” and “Final Jury Instructions - Standard Criminal”) dealing with instructions that are generic to all cases. These are the standard instructions that will be used at trial and the parties need not submit instructions covering these issues. If the parties wish to modify or add to the Court’s Standard Instructions, the parties should follow the instructions set forth in paragraphs 3.b-g below. With respect to other instructions which the parties wish to have submitted to the jury, whenever practical, the parties should use the Criminal Pattern Jury Instructions prepared by the Criminal Pattern Jury Instruction Committee of the United States Court of Appeals for the Circuit. They are available online at <http://www.ca10.uscourts.gov>.

b. The Court contemplates **three categories of jury instructions and/or verdict forms**, which are described below. Each category of instruction and/or form must be submitted directly to the Chambers e-mail address as an e-mail attachment in Word Perfect (or MS Word) format as described below **no later than two (2) weeks before the Final Trial Preparation Conference**. The purpose of submitting the instructions in Word Perfect format is to allow the Court to edit the proposed instructions as necessary. Parties should **NOT** file their proposed instructions and/or verdict forms on the CM/ECF system.

c. **Stipulated Instructions** – The parties should meet and confer well in advance of the Final Trial Preparation Conference and stipulate to as many proposed jury instructions as possible and to a verdict form. It is the responsibility of counsel for the Government to submit the stipulated jury instructions and verdict form directly to Chambers, with a copy to opposing counsel or the *pro se* defendant. In order to assist the Court in distinguishing between the various instructions submitted, stipulated instructions should contain the word “STIPULATED” at the bottom of each stipulated instruction immediately preceding the legal authority for the instruction. There should be no duplication of stipulated instructions or verdict forms, *i.e.*, if the parties stipulate to a particular instruction or verdict form, then that instruction should be submitted as stipulated only,

and no similar instruction or form should appear in any party's competing or non-stipulated instructions.

d. **Competing instructions** are those instructions and verdict forms about which all parties agree that an instruction or form is necessary, but disagree about the wording of the instruction or form. In order to assist the Court in distinguishing between the various instructions submitted, at the bottom of each competing instruction immediately preceding the legal authority for the instruction, competing instructions should identify the party tendering the competing instruction and the fact that it is a competing instruction, *e.g.*, "Government's Competing Instruction" or "Defendant's Competing Verdict Form."

e. **Non-Stipulated Instructions** are those instructions and verdict forms requested by a party (or parties) to which any other party objects, but does not request/tender a competing instruction or verdict form. In order to assist the Court in distinguishing between the various instructions submitted, at the bottom of each non-stipulated instruction immediately preceding the legal authority for the instruction, non-stipulated instructions should identify the party tendering the competing instruction and the fact that it is a non-stipulated instruction, *e.g.*, "Government's Non-Stipulated Instruction" or "Defendant's Non-stipulated Instruction."

f. There should be no repetition in instructions or verdict forms, *i.e.*, if the parties stipulate to a particular instruction or verdict form, then that instruction should be submitted as stipulated only, and no similar instruction or form should appear in any party's competing or non-stipulated instructions.

g. With respect to competing or non-stipulated instructions, the Court expects that, with the submission of such instructions, each party will provide the Court with brief legal argument and citation to the legal authority upon which that party relies for the instruction tendered. Each party may file a brief or memorandum with objections to another party's competing and/or non-stipulated instructions and verdict forms **no later than one (1) week before** the Final Trial Preparation Conference.

h. **Format of Proposed Jury Instructions and Verdict Forms**

1. Each proposed instruction and verdict form 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**

Proposed instructions should **NOT** be numbered.

2. Each proposed instruction and verdict form should contain citations to authority supporting its use at the bottom of the instruction.

3. Proposed instructions and verdict forms should be submitted with hard page breaks between each separate instruction and verdict form.

4. **Stylistic conventions** – When referring to this Court in the body of the instructions, always capitalize the word “Court.” In addition, do not use articles when referring to the parties. Do capitalize the parties. The preferred format is: “Government” and “Defendant Smith,” rather than “the Defendant.” Please proofread submissions carefully.

i. **Jury Instruction Conference:** Assuming the parties are cooperating in good faith and have reached stipulations as to many of the instructions, the Court attempts to finalize the proposed instructions and provide them to the parties prior to the start of trial. The Court will hold a charging conference before the case goes to the jury. At the charging conference, the Court will review the proposed final instructions and verdict forms with the parties and they will have an opportunity to request changes to the proposed instructions and to state their objections to the final instructions on the record. The Court will address unanticipated matters that arise during trial and that require changes to the jury instructions at the charging conference or after the close of evidence.

j. The Court will consider only those jury instructions and verdict forms tendered using the procedures described above. Court staff will prepare a final, clean set of instructions and verdict form for the jury.

k. Unless otherwise ordered by the Court, jurors will be permitted to take notes during the trial. The Court will instruct the jury before closing argument. Each juror will be given copies of the written jury instructions for his/her use and consideration during deliberations.

4. **Miscellaneous Trial Matters**

a. **Sequestration Order** – 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 hypothetical. 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.

## I. Typical Pretrial Schedule (Time-Line)

- ◆ **Set Trial and Final Trial Preparation Conference Dates**
- ◆ **Well Before Final Trial Preparation Conference** – Parties shall meet and confer regarding proposed (i) jury instructions, (ii) exhibits, (iii) witnesses, and (iv) *voir dire* questions.
- ◆ **Three (3) Weeks Before Final Trial Preparation Conference** –
  - ▶ Parties intending to use deposition testimony must notify the Court and other parties of designated portions of deposition and videotape deposition testimony. CMA Crim. Practice Standards IV.F.2. and G.3.
- ◆ **Two (2) Weeks Before Final Trial Preparation Conference** –
  - ▶ Parties intending to use deposition testimony must notify the Court and other parties of counter-designated portions of deposition and videotape deposition testimony. CMA Crim. Practice Standards IV.F.2. and G.3.
  - ▶ Government must submit proposed stipulated jury instructions and verdict form directly to Chambers via e-mail attachment. CMA Crim. Practice Standards V.H.3.c.
  - ▶ All parties must submit proposed competing and non-stipulated jury instructions directly to Chambers via e-mail attachment. CMA Crim. Practice Standards V.H.3.d., and e.
  - ▶ Counsel should meet and confer regarding stipulation of exhibits. CMA Crim. Practice Standards V.E.1.
- ◆ **One (1) Week Before Final Trial Preparation Conference** –
  - ▶ Parties objecting to use of designated or counter-designated deposition testimony must submit objections to Chambers. CMA Crim. Practice Standards IV.F.3.
  - ▶ Objections to proposed competing and non-stipulated jury instructions due. CMA Crim. Practice Standards V.H.3.g.

- ▶ Parties to submit proposed voir dire questions and exhibit and witness lists directly to Chambers via e-mail attachment. CMA Crim. Practice Standards V.E.2., F.1., H.2.a.
- ◆ **Final Trial Preparation Conference** (approximately three (3) weeks before trial).
  - ▶ Note: Motions *in Limine* should be submitted sufficiently in advance of the FTPC so that the matters raised in the Motions are ripe for decision. CMA Crim. Practice Standards III.F.
- ◆ **Two (2) Weeks Before Trial –**
  - ▶ Parties must notify Courtroom Deputy of any special audio/visual equipment requests. CMA Crim. Practice Standards IV.H.
  - ▶ Parties must notify Court Reporter of any special requests relating to transcripts or court reporting. CMA Crim. Practice Standards IV.C.2.
- ◆ **One (1) Week Before Trial** – Parties submit proposed findings of fact and conclusions of law (**bench trials only**). CMA Crim. Practice Standards V.G.
- ◆ **First Day of Trial** – Parties arrive thirty minutes early and provide the Court with final copies of exhibit lists, witness lists, marked exhibits in notebooks/folders, original deposition transcripts (if necessary) and transport any special equipment through security. CMA Crim. Practice Standards V.D.2.