

PRACTICE STANDARDS FOR CRIMINAL CASES
~~(Criminal Cases)~~

Judge Daniel D. Domenico
United States District Court for the
District of Colorado

Courtroom A1002702
Chambers A1038
Alfred A. Arraj Courthouse

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TABLE OF CONTENTS

| | |
|---|-----------------|
| <u>I. GENERAL PROCEDURES.....</u> | <u>1</u> |
| <u>A. Applicable Rules.....</u> | <u>1</u> |
| <u>B. Communications with Chambers</u> | <u>1</u> |
| <u>C. Citations</u> | <u>2</u> |
| <u>D. Typeface.....</u> | <u>2</u> |
| <u>II. COURTROOM PROCEDURES</u> | <u>2</u> |
| <u>A. Courtroom Operations</u> | <u>2</u> |
| <u>B. Recording of Proceedings</u> | <u>2</u> |
| <u>C. Exhibits.....</u> | <u>3</u> |
| <u>III.MOTIONS AND OBJECTIONS PRACTICE</u> | <u>3</u> |
| <u>A. Length Limitations.....</u> | <u>3</u> |
| <u>B. Responses and Replies</u> | <u>4</u> |
| <u>C. Proposed Orders</u> | <u>5</u> |
| <u>D. Exhibits.....</u> | <u>5</u> |
| <u>E. Emergency Motions.....</u> | <u>6</u> |
| <u>F. Motions to Continue Hearings and Trials.....</u> | <u>6</u> |
| <u>G. Speedy Trial Act</u> | <u>7</u> |
| <u>IV.TRIALS</u> | <u>7</u> |
| <u>A. Trial Scheduling and Preparation</u> | <u>7</u> |
| <u>B. Jury Trials</u> | <u>7</u> |
| <u>V. PLEA AGREEMENTS.....</u> | <u>8</u> |
| <u>A. Treatment of Notice of Disposition.....</u> | <u>8</u> |

I. 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;
 - d. The Electronic Case Filing Procedures (Criminal Cases) of the United States District Court for the District of Colorado; and
 - e. These Practice Standards for Criminal Cases.
2. Failure to comply with the foregoing rules or procedures or these Practice Standards ~~of this Court~~ may result in ~~the imposition of~~ appropriate sanctions.

B. Communications with Chambers

1. Please do not call Chambers. Instead, inquiries to Chambers (e.g., questions about procedure or clarifications to these Practice Standards) should be made via **email** to **Domenico_Chambers@cod.uscourts.gov**. ~~Please do not call Chambers.~~ Email messages to Chambers should identify the case number and name in the subject line and copy all counsel of record. Chambers staff cannot give legal advice or grant informal requests not made via motion, so please do not contact Chambers about substantive matters.

1.2. For ~~information~~questions about filing documents electronically, please contact the **ECF Help Desk** at ~~(866) 365-6381 or (303) 335-2050~~, (866) 365-6381, or cod cmecf@cod.uscourts.gov. For other case filing and docketing questions, please contact the Court's Case Administration Specialist at (303) 335-2074.

C. Citations

1. Citation and formatting may be in *Bluebook* form or in any manner that consistently, accurately, and understandably conveys the supporting authorities necessary to support a party's legal argument.

~~2. Though it is not mandatory, counsel may wish to consult the short citation guide prepared by Judge Richard Posner of the Seventh Circuit Court of Appeals, a copy of which is available at https://www.law.gmu.edu/assets/files/faculty/Posner_citation_formatting_rules.pdf.~~

3.2. These Practice Standards may be cited as “DDD Crim. P.S. XX” (e.g., “DDD Crim. P.S. III(A)(1)”).

4.3. Whenever practicable, a citation to an unpublished opinion should include its Westlaw® citation. If an unpublished opinion is not readily available on Westlaw® or LexisNexis®, attach it as an exhibit to the brief or other paper.

D. Typeface

1. All papers filed with the Court ~~must~~shall be in a proportionally spaced, serif font.

~~E.A. Proposed Orders~~

~~1. Proposed orders submitted pursuant to the Local Rules of Practice or at the direction of the Court shall be filed via CM/ECF and emailed to Domenico_Chambers@cod.uscourts.gov in editable Word format. The email message should identify the case name and number in the subject line and refer to the underlying motion by CM/ECF number.~~

~~F.A. Continuances of Hearings and Trials~~

~~1. Motions to continue (including motions to vacate or reset) hearings and trials shall be determined pursuant to *United States v. West*, 828 F.2d 1468, 1469-70 (10th Cir. 1987). If a party seeks to continue a hearing or trial outside of Speedy Trial Act deadlines, it will also be decided pursuant to the Speedy Trial Act. Oral or written motions to continue made at the time of a hearing or trial may not be entertained by the Court. Stipulations for continuance shall not be effective unless and until approved by the Court.~~

~~G.A. Emergency Motions~~

~~1. Emergency motions are only those necessary to avoid imminent, irreparable harm. Counsel filing an emergency motion should ensure that: (1) the caption of the motion begins with the word “emergency”; (2) the motion is electronically filed using the CM/ECF drop-down menu option entitled “Emergency” on the docket text modification screen; and (3) Chambers is notified of the motion by email at Domenico_Chambers@cod.uscourts.gov, with a subject line containing “Emergency Motion,” and the case name and number.~~

II. COURTROOM PROCEDURES

A. Courtroom Operations

1. For information regarding the courtroom, including instructions on how to proceed by telephone conference or video teleconference~~telephonic connection~~, courtroom equipment and technology, courtroom protocol, trial preparation and submission of trial exhibits, and the use of exhibits and deposition transcripts at hearings or trial, ~~the submission of trial exhibits and witness lists, and the use of exhibits at trial~~, please contact the Courtroom Deputy, **Patricia Glover Robb Keech**, at **Robb Keech@cod.uscourts.gov(303) 335-2185**.

B. Recording of Proceedings

1. ~~The realtime reporter assigned to the court is Tracy Weir at (303) 335-2358. Transcripts of proceedings may be ordered from Ms. Weir. To order transcripts of proceedings, please contact the Court Reporter, Tamara Hoffschmidt, at tamarahoffschmidt@gmail.com. Requests for real-time, daily, or hourly copy must be made at least 30thirty days before the trial or hearing. For further details, contact Ms. Weir.~~

2. Not later than **five business days** before any hearing, trial, or other proceeding, counsel and any pro se party ~~mustshall~~ file ~~and provide the Court, the court reporter, courtroom deputy clerk, opposing counsel, and any pro se party with~~ a glossary of any difficult, unusual, scientific, or technical words, names, places, terms, or phrases.

C. Exhibits

~~1. Each party must pre-mark all exhibits that will be used or identified for the record in a hearing or trial. The case number shall appear on each exhibit sticker or label.~~

2.1. Counsel ~~must~~shall confer and agree from the commencement of discovery on a numbering system that will avoid confusion and duplication, and that will allow the same exhibit number to be used for each exhibit for ~~hearing~~deposition and trial purposes (e.g., the employment contract at issue would be the same exhibit with the same number for all ~~hearings~~depositions and at trial). All exhibits should be identified by number only (e.g., “Exhibit 1,” not “Plaintiff’s Exhibit 1”). ~~Counsel shall confer and agree from the commencement of discovery on a numbering system that will avoid confusion and duplication, and that will allow the same exhibit number to be used for each exhibit for deposition and trial purposes (e.g., the employment contract at issue would be the same exhibit with the same number for all depositions and at trial).~~ Numbers for trial exhibits need not be consecutive.

2. Each party must pre-mark all exhibits that will be used or identified for the record ~~at~~in a hearing or trial. The case number ~~must~~shall appear on each exhibit sticker or label.

III. MOTIONS AND OBJECTIONS PRACTICE

A. Length Limitations

1. All motions, objections, responses, and briefs ~~must~~shall not exceed **4,000 words**. Reply briefs ~~must~~shall not exceed **2,700 words**.

2. These ~~length~~length~~type-volume~~ limitations ~~shall~~include footnotes, but ~~shall~~exclude the case caption, any table of contents or table of authorities, signature block, certificate of service, and certificate of compliance with the applicable ~~length~~length~~type-volume~~ limitations. Motions and opening briefs ~~must~~shall be combined in a single document and ~~will~~shall be considered one paper for purposes of the applicable length~~type-volume~~ limitations.

3. ~~All motions, objections, responses, and briefs~~Each pleading must contain a separate statement, immediately after the signature block, certifying that the paperpleading complies with the applicable lengthtype-volume limitations set forth in these Practice Standards (e.g., “I hereby certify that the foregoing paperpleading complies with the lengthtype-volume limitation set forth in ~~Judge Domenico’s Practice Standard~~DDD Crim. P.S. III(A)(1).”).

4. A party may file a motion to exceed the applicable lengthword limitation explaining the reasons why additional length iswords are necessary. Any such motion mustshall be filed no later than **three business days** before the date the motion, response, reply, or other paper is due.

5. For any party who does not have access to a word-processing system with a word-count function, typewritten or legibly handwritten paperspleadings are subject to page limitations instead of the word limits of paragraph (1) above. The following equivalents should be used:

- a. 2,700 words = 10 pages;
- b. 4,000 words = 15 pages; and
- c. 5,500 words = 20 pages.

B. Responses and Replies

1. A response mustshall clearly and completely identify by title and; ~~court~~ CM/ECF docket number, ~~and date filed~~, the antecedent motion, objection, or other paper or petition to which the response is made. Similarly, a reply mustshall clearly and completely identify by title and; ~~court~~ CM/ECF docket number, ~~and date filed~~, the antecedent paper the reply supports and the antecedent response to which the reply is made. No sur-reply or supplemental brief is permitted without leave of Court.

1-2. A notice of supplemental authority may be filed if new relevant authority is issued *after* briefing closed on a motion, objection, or other pending issue. Such a notice must be limited to (a) a citation to the new authority including the date of issuance, and (b) a single-sentence reference to the issue to which the filing party believes the new authority pertains (including a citation to the location(s) in previously filed briefing where the issue was raised). If the new authority is not readily available on Westlaw® or LexisNexis®, attach it as an exhibit to the notice. No comment, briefing, or response as to the significance or interpretation of the new authority is permitted without leave of Court. No notice of supplemental authority regarding any authority that issued before the close of briefing may be filed without leave of Court.

C. Proposed Orders

1. Proposed orders submitted pursuant to the Local Rules of Practice or at the direction of the Court ~~must~~ shall be filed via CM/ECF and emailed to Domenico_Chambers@cod.uscourts.gov in editable Word format, copying all counsel of record. The subject line of the email message should identify the case number and name and ~~number in the subject line and refer to the~~ CM/ECF docket number of the underlying motion by CM/ECF number.

D. Exhibits

1. Exhibits to motions, objections, responses, and briefs must be labeled in the CM/ECF system both by exhibit number and by name (e.g., “Exhibit 1 - Smith Affidavit”).

2. Copies of documents attached as exhibits to a motion, objection, or other opening brief should not be attached as exhibits to the response, and copies of documents attached as exhibits to a response should not be attached as exhibits to a reply. Any additional exhibit should be attached to the corresponding response or reply and consecutively numbered.

3. Voluminous exhibits are discouraged. Parties should limit exhibits to essential portions of documents.

E. Emergency Motions

1. Emergency motions are only those necessary to avoid imminent, irreparable harm. Counsel filing an emergency motion should ensure that: (1) the caption of the motion begins with the word “Emergency”; (2) the motion is electronically filed using the CM/ECF drop-down menu option entitled “Emergency” on the docket-text modification screen; and (3) Chambers is notified of the motion by email at Domenico_Chambers@cod.uscourts.gov and copying all counsel of record, with a subject line containing “Emergency Motion,” and the case number and name, and the CM/ECF docket number of the motion.

F. ~~Motions to Continuances of~~ Hearings and Trials

1. Motions to continue (including motions to vacate or reset) hearings and trials ~~will~~ shall be determined pursuant to *United States v. West*, 828 F.2d 1468, 1469-70 (10th Cir. 1987). If a party seeks to continue a hearing or trial outside of Speedy Trial Act deadlines, it will also be decided pursuant to the Speedy Trial Act. Oral or written motions to continue made at the time of a hearing or trial may not be entertained by the Court. Stipulated ~~ed~~ motions for continuance ~~are~~ shall not be effective unless and until approved by the Court.

E.G. Speedy Trial Act

1. Every motion filed ~~must~~shall include a statement concerning the status of, and the impact the motion may have, on the ~~s~~Speedy ~~t~~Trial Act clock.

IV. TRIALS

A. Trial Scheduling and Preparation ~~Conference~~

1. The Court generally will ~~generally contact the parties to~~ set a trial date and Trial Preparation Conference date after the Arraignment and Discovery Hearing and the issuance of the Discovery Conference Memorandum~~counsel for both sides have entered an appearance. If the Court has not contacted the parties or issued an order regarding trial scheduling within two business days after the Discovery Conference Memorandum has issued, counsel and pro se parties may email Chambers at Do~~ menico Chambers@cod.uscourts.gov and politely inquire regarding trial scheduling. Such email messages should identify the case number and name in the subject line and copy all counsel of record.

2. In most cases, the Court will set a~~The~~ Trial Preparation Conference the week before trial~~will usually be held approximately four to seven days before trial~~. Counsel who will try the case must attend.

2.3. The Court's order setting the trial date and Trial Preparation Conference date will specify the pretrial tasks to be completed (*e.g.*, motions *in limine*, proposed jury instructions, etc.) and the deadlines for those tasks.

B. Jury Trials

~~1. The jury in criminal cases will normally consist of twelve jurors, and the Court may in its discretion impanel alternate jurors pursuant to Fed. R. Crim. P. 24(e). Each side shall have the number of peremptory challenges prescribed by Fed. R. Crim. P. 24(b) and (e)(4).~~

2.1. Challenges pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), ~~must~~shall be made ~~and considered~~ after peremptory challenges ~~have~~are concluded and before the jury is sworn. A party that wants to preserve a *Batson* challenge should request that the Court not ~~to~~ release any jurors subject to the challenge.

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

4.3. ~~The jury will be instructed before closing argument, and e~~Each juror will be given a copy of the written jury instructions for use during deliberations.

V. PLEA AGREEMENTS

A. Treatment of Notice of Disposition

1. Any notice of disposition filed pursuant to Local Criminal Rule 11.1(a) ~~will~~shall be considered to trigger the exclusion of Speedy Trial Act time pursuant to ~~a proposed plea agreement within the meaning of~~ 18 U.S.C. § 3161(h)(1)(G) ~~for the purpose of computing time under the Speedy Trial Act, 18 U.S.C. §§ 3161-74.~~