

PRACTICE STANDARDS - CRIMINAL

Judge Gordon P. Gallagher
United States District Court
District of Colorado

Courtroom 323
Wayne Aspinall U.S. Courthouse

Chambers 310
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Grand Junction, CO 81501

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I. GENERAL PROCEDURES

A. Scope, Title, and Citation

The Criminal Practice Standards of Judge Gordon P. Gallagher apply to all criminal actions assigned to him. These rules should be cited as Crim. Practice Standard, Part, Section, Subsection, Paragraph, and Subparagraph (e.g., Crim. Practice Standard III(B)(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, fairness in administration, and to eliminate unjustifiable expense and delay.

C. 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 (the most current version); and
 - e. These Practice Standards.
 - f. Failure to comply with the foregoing rules or procedures or the Practice Standards of this Court may result in appropriate sanctions.

D. Communication with Chambers

1. **All communications with Chambers shall be by email only.** If after fully and carefully reading these Practice Standards and the Local Rules of Practice, there are still questions about **general procedures**, please email Chambers at Gallagher_Chambers@cod.uscourts.gov. Please do not contact Chambers about substantive matters as Chambers staff cannot give legal advice or grant oral requests over the telephone.
2. **No Case-Related or Ex Parte Communications:** All communications relating to a specific case must be (1) made in the form of a motion, brief,

notice, or status report; (2) be served on all opposing counsel and pro se parties; and (3) filed as required by the Electronic Case Filing Procedures. Except as specifically directed by these Practice Standards, counsel and pro se litigants may not communicate about a case by email or letter to Chambers.

3. **CM/ECF Assistance:** For information about filing documents electronically, please contact the ECF Help Desk at 303-335-2026.
4. **Courtroom Assistance:** For information regarding the courtroom, including telephonic connection, courtroom equipment, and technology, please email Gallagher_Chambers@cod.uscourts.gov.

E. Courtesy Copies, Proposed Orders, and Requested Submissions

1. Courtesy copies of documents filed electronically on CM/ECF are not required. If a party's Proposed Order includes substantial or legal findings (i.e., significantly more than simply "motion granted"), a courtesy copy of that Proposed Order shall be sent to Chambers as set forth below.
2. When directed by the Local Rules of Practice, these Practice Standards, or Judge Gallagher to submit a document directly to Chambers, parties should submit documents as an attachment to an email addressed to Gallagher_Chambers@cod.uscourts.gov **in an editable (Word) format**. Submissions in PDF format are not acceptable. The subject line of the email should identify the case name, number, and title of the document attached.

II. COURTROOM PROCEDURES

A. Courtroom Operations

For information regarding the courtroom, including telephonic or video connection, courtroom equipment and technology, courtroom protocol, use of deposition transcripts, the submission of trial exhibits and witness lists, and the use of exhibits at trial, please contact the Courtroom Deputy, **Donald Clement**, at **Donald_Clement@cod.uscourts.gov**. The courtroom is equipped with HDMI and VGA plug-ins for displaying exhibits. In addition, there are monitors at each table including the witness stand, large screens for the gallery, white pads, easels, and an ELMO.

Requests regarding remote witnesses (if allowed by the Court), submission of trial exhibits and witness lists, use of exhibits at trial, general courtroom procedures, and to schedule a technical walk-through shall be made to Mr. Clement at least **fourteen days** before the proceeding.

B. Recording of Proceedings

This Court uses the FTR digital taping system for some hearings (e.g., change of plea hearings). For inquiries regarding transcripts of proceedings, please email Gallagher_Chambers@cod.uscourts.gov. Please specify the case number and date(s) of the proceeding.

The Court generally will use a realtime reporter for other matters which can be considered contested hearings (e.g., sentencing, suppression hearings, and trials). The realtime reporter assigned to the Court is **Erin Valenti** at Erin_Valenti@cod.uscourts.gov. Transcripts of proceedings may be ordered from Ms. Valenti. Requests for realtime, daily, or hourly copy must be made at least **thirty days** before trial. For further details, contact Ms. Valenti.

C. Courtroom Decorum

It is of utmost importance to the Court to create a courtroom where all parties, witnesses, and counsel feel welcome and respected. In that regard, counsel are invited and encouraged to identify the preferred pronouns of counsel, clients, and witnesses at the earliest juncture possible. This may be done in an initial signature block, in person at a conference or hearing, or in a witness list. Should the wrong pronoun be used, counsel are encouraged to bring that to the Court's attention at the time, or through a subsequent email to Chambers.

Counsel should bring any accessibility or disability accommodation issues to the attention of the Courtroom Deputy prior to any hearing or trial so the Court can ensure that all necessary accommodations are in place.

All parties should observe the following courtroom decorum:

1. Stand when the Judge enters or leaves the courtroom, when addressing the Court, and when the jury enters or leaves the courtroom;
2. Request permission to approach the bench;
3. Address the Judge as "Your Honor";
4. Refer to all other persons by their surnames, prefaced by the individual's title (e.g., Dr., Agent, Officer, etc.) and preferred pronouns.

D. Oaths

The administration of the oath is a solemn moment, both as a matter of ceremony and to impress upon witnesses, jurors, and the public the seriousness of the undertakings in the oath. Please advise all persons appearing with you in court, including co-counsel, paralegals, clients, witnesses, and spectators that oath-taking is treated formally in the courtroom. The Court will administer an oath to a jury or witness ONLY when all other activity in the courtroom has ceased.

III. MOTIONS PRACTICE

A. General

1. **Filing:** Motions with separately filed briefs or memoranda in support are discouraged. The motion and all supporting arguments must be contained **within a single document**. In no event, however, will a separate motion and brief in support thereof be accepted unless they are filed contemporaneously. Additionally, separately filed documents will be combined and considered one document for purposes of the page limitations set forth below.

Exhibits to a motion or response must be filed on the same calendar day as the motion or response. Exhibits filed on a later day may be summarily stricken.

2. **Responses and Replies:** A response shall clearly and completely identify the antecedent motion or petition to which the response is made, including title, court CM/ECF docket number, and date filed. If necessary, a party may move the Court to file a reply. The reply shall clearly and completely identify the antecedent response to which the reply is made, by title, court CM/ECF docket number, and date filed.

3. **Page Limitations and Font Size:** All motions, objections, responses, and concomitant briefs shall not exceed **fifteen pages**. Replies, if permitted, are limited to **ten pages**. These page limitations shall not include any cover page, table of contents, signature block, or certificate of service. The body of the text and all footnotes shall be no smaller than 12-point font and the body of the text shall be double-spaced with at least 1" margins.

The Court will entertain motions to exceed the page limit where appropriate and for good cause. Such motions shall indicate the number of pages sought and the reason why additional pages are necessary.

B. Continuances of Hearings or Trials

1. **End of Justice Continuances Generally:** All motions for an ends of justice continuance must:

- a. Specify the number of days remaining on the speedy trial clock and the date the requesting party believes the speedy trial clock expires;
- b. Specify the number of days the party is seeking to exclude;
- c. Identify which parties join in the motion and which parties object to the motion.

2. **Continuances Outside the Speedy Trial Deadline:** A request to continue a hearing or trial to a date beyond the existing Speedy Trial deadline shall be made in writing and must 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 pursuant to *United States v. Toombs*, 574 F.3d 1262 (10th Cir. 2009). Furthermore:

- a. Oral or written motions to continue shall not be made at the time of a hearing or trial;
- b. Stipulations for continuance are not effective unless approved by the Court. When a motion to continue is granted, all parties will be notified as soon as practicable;
- c. All motions for an ends of justice continuance **must have a certification from counsel** that they have conferred with the defendant and that the defendant agrees to the requested exclusion generally and to the specific amount of time excluded;
- d. In a multi-defendant action, a statement of conferral from **all counsel** shall be included and counsel for those co-defendants joining in the motion (or not opposing) **must certify that they have conferred with their individual client and that their individual client concurs.**
- e. Any party who objects to the granting of an ends of justice continuance must file their objection within **seven days** of the filing of the motion.

3. **Continuances Within the Speedy Trial Deadline:** Motions to continue hearings and trials to a date within the existing Speedy Trial deadline will be determined pursuant to *United States v. West*, 828 F.2d 1468 (10th Cir. 1987). Counsel must also comply with the requirements of Crim. Practice Standard III(B)(2)(a)-(d).

C. Motions for Extensions of Time

1. Motions for extension of briefing deadlines or other dates set by the Court require a showing of good cause, which must be established with particularity. Unless the circumstances are truly unavoidable and unanticipated, the following reasons do **not** constitute good cause: agreement of counsel, inconvenience to counsel or to the parties; the press of business; conflicts in scheduling; or practice as a sole practitioner.
2. Any motion for an extension of time shall be filed no later than **three** business days before the deadline to be extended.

D. Objections to Rule 404(b) Notices

Objections to a Fed. R. Crim. P. 404(b) notice shall be filed no later than **seven days** after such Rule 404(b) notice was filed.

E. Motions for Discovery

1. 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). Motions filed without conferral will be summarily struck.
2. If the parties can 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.
3. 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. Emergency Motions

Emergency motions are disfavored and are only those necessary to avoid imminent, irreparable harm will be addressed on an expedited basis. 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** (as well as copying any opposing counsel or pro se party on the email) to **Gallagher_Chambers@cod.uscourts.gov**, with a subject line containing “Emergency Motion,” and the case name and number.

G. Motions In Limine

1. **Generally:** Motions in limine are strongly discouraged if the motion cannot be resolved until evidence is presented at trial. In many circumstances (e.g., motions seeking to exclude evidence on the grounds of Fed. R. Evid. 401 or 403, motions where the precise verbatim language of the anticipated testimony is unknown), the determination of admissibility may turn on the factual context in which the evidence is offered or the specific language the witness will use. These types of motions are usually not amenable to resolution prior to trial and are not appropriate subjects for motions in limine. In such circumstances, the Court will treat any such motion as a trial brief and will not resolve it prior to trial.
2. **Time for filing:** If motions in limine are filed, they must be filed **fourteen days** before the Trial Preparation Conference. Any responses to the motions in limine shall be filed **seven days** before the Trial Preparation Conference.
3. **Conferral and One Motion Limit:**
 - a. Prior to filing a motion in limine, counsel shall confer in an attempt to resolve the contested evidentiary issues. If they are unable to come to a mutual resolution, counsel shall then determine which party will file the motion on the particular evidentiary issue and which party will file the response.
 - b. Each party shall be limited to **one** motion in limine unless the Court grants leave for a supplemental filing. The motion shall address all difficult or unusual evidentiary issues the party anticipates will arise at trial, with **each discrete evidentiary dispute separately numbered within the motion**.
 - c. The motion and response shall be **limited to eight pages**, unless

counsel moves to exceed the page limitation, establishes good cause for excess pages, and the Court grants the motion. All text in these filings will count against the page limits, except for the attorney or party signature blocks and the certificate of service. No reply brief in support of a motion in limine will be permitted.

H. Expert Disclosures

All required disclosures by the Government pursuant to Federal Rule of Criminal Procedure 16(a)(1)(G) or any Defendant(s) pursuant to Federal Rule of Criminal Procedure 16(b)(1)(C) shall occur **no later than thirty (30) days prior to trial**. Any objections to such disclosures or anticipated testimony, including but not limited to those that may be made pursuant to Federal Rules of Evidence 702, 703, and 705, and *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), shall be filed **within seven (7) days thereafter**.

IV. HEARINGS AND TRIALS

A. Durango Proceedings

Criminal matters will be heard during the Durango Term Week. Durango Term Weeks are generally the third full week of the following months: February, April, June, August, October, and December. The Durango Term Week Calendar can be found at <https://www.cod.uscourts.gov/Judges/Calendars.aspx>. Durango criminal matters will be heard by Judge Gordon P. Gallagher or Magistrate Judge James Candelaria at the LaPlata County Courthouse in Suite 150 in Durango.

B. Exhibits and Exhibit Lists: The following provisions govern all hearings and trials at which a party intends to present evidence by exhibit.

1. **Format:** Parties must use the exhibit list available on the Court's website at <http://www.cod.uscourts.gov/JudicialOfficers/ActiveArticleIIIJudges/HonGordonPGallagher.aspx>.
2. **When To File Exhibit Lists:** Parties shall file their exhibit lists via CM/ECF no later than **two business days** before a hearing or **seven** days before the Trial Preparation Conference.
3. **When to File Exhibits:**
 - a. **Motions Hearings:** each party must provide a copy of its exhibits to the Court, opposing counsel, or any pro se party at least **two business days** before the hearing.

- b. **Trial:** The parties must provide a copy of its exhibits to Chambers no later than **two business days** prior to trial.

4. Exhibits Preparation

- a. All parties are to use numerical exhibit labels. This generally is most efficient if the Government estimates the number of exhibits it might need (e.g., estimate 100 exhibits and use numbers 1-100; the next party can then use exhibit numbers 101-200). Overestimate as appropriate so that no duplication of numbers occurs. The Court is not concerned if there is a gap in numbers, (e.g., no one uses numbers 120-130).
- b. The parties must pre-mark all exhibits that will be used or identified for the record. Exhibits not timely pre-marked before a hearing or trial may not be admitted.
- c. The case number shall appear on each exhibit sticker or label. If exhibits are not bound and labeled properly, the trial may be delayed or continued until they are.
- d. There is no need for duplicate exhibits or for a party to seek to admit exhibits offered by another party and admitted by the Court or by stipulation.
- e. The parties shall confer and attempt to stipulate to the admissibility of any exhibits.
- f. No oversized exhibits are to be used unless requested by prior motion and approved by the Court.
- g. If a particular exhibit has more than two (2) pages and is not otherwise paginated internally, pages within the exhibit shall be numbered sequentially.

5. Submission of Exhibits to the Court

Parties shall submit **one USB flash drive** and **three exhibit notebooks**, one containing the original exhibits and two containing copies of the exhibits for the Court. Parties shall contact Chambers at Gallagher_Chambers@cod.uscourts.gov prior to delivery of exhibits and shall deliver the exhibits as directed by Chambers per the designated deadline. The following information should appear on the cover of each notebook: (i) caption, (ii) nature of the proceeding, (iii) scheduled date and time, and (iv) "original" or "copy."

Generally, parties shall deliver exhibits to the Court address associated with the location where the trial or hearing will be held (e.g., for a Durango trial, the parties would deliver the exhibits notebooks and USB flash drive to the Court representative in Durango).

C. **Witness Lists**

1. **Format:** The parties must use the witness list form available through the District Court website at <http://www.cod.uscourts.gov/JudicialOfficers/ActiveArticleIIIJudges/HonGordonPGallagher.aspx>.
 - a. The witness lists shall include the anticipated length of testimony by the proponent for each witness, including anticipated cross- and redirect-examination.
 - b. The parties are **required to confer in advance of the filing deadlines** to estimate cross-examination times for each other's witnesses.
 - c. The list shall also identify the expertise of any testifying experts and shall also advise the Court whether any witnesses will appear by video and whether there is any objection to any/all potential video testimony.
2. **When to File:** Each party shall submit a list of its proposed witnesses as set forth below:
 - a. **Hearings:** Parties shall file their witness lists via CM/ECF no later than **two business days** before the hearing
 - b. **Trial Preparation Conference:** Parties shall file their witness lists via CM/ECF no later than **seven days** before the Trial Preparation Conference.
3. **Updated Lists:** On the morning of commencement of trial, each party shall provide the Courtroom Deputy with **four paper copies** of a final list of its witnesses, which includes an estimate of the time anticipated for each witness's direct and cross-examination. One copy will be made available to the Court Reporter to assist in the transcription of Court proceedings, so please be sure that names are spelled correctly.

D. **Presentation of Evidence Via Deposition Transcript**

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

1. Deposition designations and objections: If a party intends to offer deposition testimony in lieu of a live witness at a hearing or trial, counsel shall exchange with each other their designations of anticipated deposition testimony at least **twenty-one** days prior to the hearing or trial.

If any party objects to any deposition designations, the parties shall jointly file with the Court a single marked-up transcript of their respectively designated deposition testimony no later than **fourteen days** before trial. The Government's designations shall be highlighted in yellow, and Defendant's designations shall be highlighted in blue. The parties shall also file a chart identifying the designation by page and line number and any objections to that designation. Objections must state the rule and a short statement of the basis for the objection.

2. For jury trials, parties shall provide a person to read the deposition answers aloud from the witness stand.
3. For hearings or bench trials, depositions will not be read in open court. Instead, the Court will read them in chambers in any requested sequence. At the beginning of the hearing or trial, the offering party shall provide the Courtroom Deputy with two copies of the relevant deposition transcript marked as an exhibit with the Government's designated portions highlighted in yellow and the defendant's in blue.

E. Presentation of Evidence Via Videotaped Depositions

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

1. The procedure set forth above with regard to designating deposition testimony and lodging objections shall apply where the deposition testimony will be presented by video.
2. In addition to providing the Court with a copy of a transcript of the designated and objected-to portions of the testimony, the **parties shall provide the Court with a copy of the video recording on a USB flash drive.**
3. The chart identifying designations shall include time stamps of where each objected-to portion of testimony may be found on the recording.
4. If the Court is not able to resolve objections before trial to facilitate appropriate redaction of the video recording, the party proffering the recording shall be prepared at trial to "fast-forward" past any testimony that the Court may exclude.

F. Trial Preparation Conference

The Court will set a date for the Trial Preparation Conference approximately **fourteen days** before trial. Counsel who will try the case must attend. Once trial has been set, the Court will issue an order that will confirm the trial date and the Trial Preparation Conference date.

Not later than **seven days** prior to the Trial Preparation Conference, the parties shall submit, via CM/ECF, the following:

1. **Final witness and exhibit lists:** the parties shall file their proposed witness and exhibit lists via CM/ECF and by email to Gallagher_Chambers@cod.uscourts.gov in accordance with Section IV(B) and (C).
2. **Proposed jury instructions and verdict forms:** the parties shall file their instructions and verdict forms via CM/ECF and shall submit a courtesy copy by email to Gallagher_Chambers@cod.uscourts.gov in editable (Word) format. Verdict forms shall be submitted in a separate file from jury instructions. Within the jury instruction file, each jury instruction shall begin on a new page.

Clear and concise jury instructions and verdict forms are imperative. While the Court encourages the use of stock and model instructions, counsel should review those instructions and the verdict form with the average layperson in mind and modify language that is overly complicated so that the jury instructions and verdict form are understandable to laypersons.

- a. To the maximum extent possible, the parties shall agree on one stipulated set of proposed jury instructions, including both stock and substantive instructions. Only true conflict or uncertainty in binding substantive law should prevent such agreement.
- b. The jury instructions shall identify the source of the instruction and supporting authority. Whenever practicable and appropriate, the parties shall use or adapt for use the Criminal Pattern Jury Instructions prepared by the Criminal Pattern Jury Instruction Committee of the United States Court of Appeals for the Tenth Circuit. The pattern instructions and updates may be found online at <https://www.ca10.uscourts.gov/>.
- c. To the extent that counsel are unable to agree on certain proposed instructions, they may each submit their preferred version of any disputed instruction, including supporting authority. Each disputed instruction should be identified by party and numbered (e.g.,

Government's Disputed Instruction No. 1) for the purpose of making a record at the jury instruction conference.

- d. The same process as in subsection (c) shall be used for verdict forms.
- e. Where possible, the Court will attempt to ensure that jury instructions and verdict forms will be finalized before the trial begins.

- 3. **Proposed voir dire questions:** It is not necessary to submit generalized questions that are commonly asked in every jury selection (e.g., where the prospective juror works or what organizations they belong to). Only submit questions that are uniquely raised by the particular facts or issues in the case (e.g., in an embezzlement case, questions focusing on prospective jurors' work experience with finances and financial control policies).

G. Trial Briefs

- 1. A general trial brief setting forth the party's theory of the case is unnecessary, but to the extent there are unusual legal or evidentiary issues that may arise, a brief that primarily recites the authorities the parties intend to rely upon may be helpful.
- 2. If filed, trial briefs shall not exceed ten pages and shall be filed not later than **seven days** before trial. Please flag evidentiary issues in a trial brief rather than by motion in limine. A trial brief may not be used as a substitute for a motion.

H. Jury Trials

- 1. The parties shall be present on the first day of trial **at 8:00 a.m.** Jury selection will begin **at 8:30 a.m.** The second day of trial will begin **at 8:30 a.m.** and continue **until 4:00 p.m.** The trial day will have morning and afternoon recesses of approximately fifteen minutes in duration. A lunch break of approximately one hour will be taken at approximately 12:00 p.m.
- 2. **Voir Dire:** After potential jurors are seated in the courtroom, the Court will give them a brief statement of the case and conduct initial voir dire. The parties will conduct the remainder of the voir dire examination. Unless ordered otherwise, each side shall be permitted voir dire examination of **thirty minutes** after voir dire examination by the Court.
- 3. Challenges pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), shall be made and considered at the time challenges for cause are made,

before the jury is sworn. A party that wants to preserve a *Batson* challenge should request the Court not to release any jurors subject to the challenge.

4. Jurors will be permitted to take notes during the trial.
5. The jury will be instructed before closing argument.
6. Each juror will be given a copy of the written jury instructions for use during deliberations.

I. Trials to Court

1. Trials to court will begin at 8:30 a.m. on the first day of trial.
2. For a trial to the court, a proper resume or curriculum vitae, marked as an exhibit, generally will suffice for the qualification of an expert witness.

J. Order and Mode of Presentation by Counsel in Trial

1. Where a party is represented by more than one attorney, only one attorney for that party will be permitted, per witness, to examine and/or cross-examine said witness. Only one attorney for such party may conduct voir dire (unless given leave of the Court to do otherwise) or give an opening statement.
2. If a party is entitled to two closing arguments, two attorneys may split closing arguments between counsel.

K. Glossary

1. Not later than **five business days** before trial, the parties shall **email to Chambers** a Glossary of any difficult, unusual, scientific, or technical words, names, terms, or phrases, along with the spellings of witnesses' names, names of persons or entities that will be frequently referenced, and acronyms or abbreviations that may be used in testimony or argument.
2. The parties shall submit to the Courtroom Deputy **three paper copies** of the Glossary and provide a copy of the Glossary to opposing counsel and any pro se party **on the day of trial**.

V. PLEA AGREEMENTS

A. Notices of Disposition

1. **When to File:** A disposition is the final settlement of a matter. Therefore, if counsel files a Notice of Disposition in a case, it is representing to the Court that: (1) defense counsel and Government have reached a **final agreement on all the terms of the plea agreement**; and (2) the defendant has agreed to those terms. **If this is not the case, do not file a Notice of Disposition.**
2. **Tolling Speedy Trial:** Any notice of disposition filed pursuant to D.C.COLO.LCrR 11.1(a) 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. **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. Therefore, parties reaching disposition on the eve of trial shall be prepared to proceed to a Change of Plea Hearing at the time scheduled for the Trial Preparation Conference or first day of trial. However, the filing requirements of the Criminal Practice Standards are tolled upon the filing of a Notice of Disposition.

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 continuance to exclude time from the speedy trial clock.

B. Change of Plea Hearing

1. 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.
2. **Courtesy Copy of Plea Agreement:** No less than **five business days** before the Change of Plea Hearing, the parties shall send **via email** a courtesy copy of the plea agreement (signed) to Chambers. Parties shall also provide any other necessary paperwork that shall be considered alongside the plea (e.g., information, waiver of indictment, supplemental agreement, etc.).
3. **Signed Plea Agreement:** Pursuant to D.C.COLO.LCrR 11.1(e), defense counsel shall submit 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 Deputy at the time of the hearing.

VI. SENTENCING

A. Motions or Statements.

1. **Motions:** Sentencing-related motions or statements must be filed no later than **fourteen days** before the Sentencing Hearing. Responses or objections to the opposing party’s filings **MUST** be filed no later than **seven days** before the scheduled Sentencing Hearing. The deadlines for filing such papers will be extended only upon the showing of good cause.

Additionally, failure to file a response to the opposing party’s sentencing statement or motion(s) may 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.

2. **Proceedings under seal.** 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 to D.C.COLO.LCr.R 32.1(e) will be summarily stricken. Failure to comply with this Practice Standard may result in a continuance of the Sentencing Hearing.

VII. SUPERVISED RELEASE VIOLATIONS

A. Supervised Release Violation Report

The Probation Officer shall file the Supervised Release Violation Report with the Court not later than **seven days** prior to the Final Hearing on Supervised Release.

B. Sentencing Statements

1. Not later than **seven days** before the Supervised Release Revocation Hearing, the defendant shall file a sentencing statement indicating whether the defendant intends to admit or deny the allegations and setting forth his/her/their sentencing position.
2. The Government’s response to the defendant’s sentencing statement must be filed not later than **five 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 with this Practice Standard may result in a continuance of the Supervised Release Revocation Hearing.

VIII. REMOTE APPEARANCE

A. General Rule

1. Counsel whose offices are outside the area where a hearing is being held or who cannot reasonably make a personal appearance (e.g., due to illness that prevents an in-person appearance but does not necessarily warrant a continuance), may appear remotely (via VTC) with prior approval by the Court. If counsel believes that a remote appearance is warranted, counsel shall file a motion with the Court at least **ten days** before the hearing.
2. For substantive hearings (detention, change of plea, sentencing, and supervised release proceedings) defense counsel is strongly encouraged to be present with their client to foster better communication between counsel and the defendant. For any remote appearance by a defendant or defense counsel, both client and counsel must consent to the remote appearance before the Court will allow it.
3. No remote appearance will be permitted for any trial and or for any substantive motion hearing (e.g., a motion to suppress).

B. Process

For VTC appearances, counsel are directed to contact Chambers via email at Gallagher_Chambers@cod.uscourts.gov at least **three days** before the scheduled hearing for instructions on how to proceed by VTC.

Table of Pretrial/Trial Deadlines

Note: This table is provided for the convenience of parties appearing before Judge Gallagher. It does not include all the dates and deadlines listed within the Judge’s Criminal Practice Standards and is not a substitute for knowledge of and familiarity with the text.

DEADLINE	DAYS PRIOR	CRIM. PRACTICE STANDARDS REF.
Motions Hearing		
Objections to Rule 404(b) notices	7 days after notice filed	III(D)
Objections to ends of justice continuance	7 days after motion filed	III(B)(2)(d)
Courtesy copy of plea agreement	5 business days prior	V(B)(2)
Exhibits and witness list	2 business days prior	IV(B)(2) & IV(C)(2)(a)
Prior to Trial Preparation Conference		
Motions in limine	14 days	III(G)(2)
Responses to motions in limine	7 days	III(G)(2)
Proposed jury instructions and verdict form	7 days	IV(F)(2)
Final exhibit list	7 days	IV(B)(2) & IV(F)(1)
Final witness lists	7 days	IV(C)(2)(b) & IV(F)(1)
Estimates for cross-examinations of opposing party’s witnesses	7 days	IV(C)(2)(b)
Prior to Trial		
Realtime, daily, or hourly proceeding transcript request	30 days	II(B)
Designations and objections regarding deposition designations	21 and 14 days	IV(D)(1)
Questions to Courtroom Deputy regarding courtroom technology	14 days	II(A)
Trial briefs	7 days	IV(G)(2)
Glossary	5 business days	IV(J)(1)
Exhibit notebooks (3) and USB flash drive (1)	2 business day	IV(B)(3)(b) & IV(B)(5)
Final witness list (4)	First day of trial	IV(C)(3)
Prior to Sentencing Hearing and Supervised Release Revocation Hearing		
Sentencing-related motions or statements	14 days	VI(A)(1)
Supervised release violation report	7 days	VII(A)
Sentencing statement and response	7 and 5 days	VII(B)(1)-(2)