

PRACTICE STANDARDS
(Criminal cases)

**JUDGE PHILIP A. BRIMMER
UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

**Courtroom A701
Alfred A. Arraj United States Courthouse**

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I. GENERAL PROCEDURES

A. Applicable Rules

Those appearing in the District Court must know and follow:

1. The Federal Rules of Criminal Procedure;
2. The Federal Rules of Evidence;
3. The Local Rules of Practice of the United States District Court for the District of Colorado;
4. The Electronic Case Filing Procedures (Criminal Version 3.0 or the most current version); and
5. These Practice Standards.

B. Access to Local Rules and Practice Standards

1. 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/Home.aspx>) under "Local Rules," and from the clerk of the court in **Room A105**.

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

C. Communications with Chambers

1. My judicial assistant is **Susan Shapiro**, at **303-335-2794**.

2. For information about the status of a motion or document, please contact the case administration specialist at **303-335-2113**.

3. For information about courtroom technology, trial preparation, or submission of trial exhibits, please contact my courtroom deputy clerk, **Kathy Preuitt-Parks**, at **303-335-2093**.

4. My court reporter is **Janet Coppock**, at **303-335-2106**.

5. Please do not contact the law clerks about procedural or scheduling matters.

D. Proposed Orders

You may be directed to transmit proposed orders by electronic mail to brimmer_chambers@cod.uscourts.gov. The proposed order or document should be submitted as an attachment in Word Perfect format (Word Perfect 12 or a later version) or in Word format. The e-mail message should identify the case number and the document attached. Do not send documents directly to chambers by facsimile or electronic mail unless asked to do so.

E. Motions to Continue

Motions to continue (including motions to vacate or reset) hearings and trials will be determined pursuant to *United States v. West*, 828 F.2d 1468, 1469-70 (10th Cir. 1987), unless a party seeks to continue a hearing or trial outside the Speedy Trial Act deadlines, in which case it will be decided pursuant to the Speedy Trial Act. Oral or written motions to continue should not be made at the time of a hearing or trial. 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.

F. Motions for Extensions of Time

1. Motions for extension of time require a showing of good cause, which must be established with particularity. 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 extension of time shall be filed no later than **three** business days before the date the motion, response, reply, or other paper is due.

II. COURTROOM PROCEDURES

A. Courtroom Protocol

1. Please observe traditional courtroom decorum: stand when addressing the court, address the court as "Your Honor," and request permission to approach the bench. It will not normally be necessary for counsel to approach a witness on the stand. The courtroom deputy, upon request of counsel, will hand a witness an exhibit.

2. If you have a question about courtroom protocol, please contact my courtroom deputy clerk, **Kathy Preuitt-Parks**, at **303-335-2093**.

B. Recording of Proceedings

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

2. The realtime reporter assigned to the court is **Janet Coppock, at 303-335-2106**. Transcripts of proceedings may be ordered from Ms. Coppock. Requests for realtime, daily, or hourly copy must be made at least **thirty days** before the trial or hearing. Further details can be obtained from Ms. Coppock.

C. Exhibits

1. When to File – For motions hearings, each party must provide a copy of its exhibit list and each exhibit to opposing counsel or any pro se party before the hearing. For trials, see Section IV.A concerning the Trial Preparation Conference.

2. Format of Exhibit List – Parties must use the form of exhibit list available on the District Court website at <http://www.cod.uscourts.gov/Judges/Judges.aspx>. For trial exhibit lists, please add at least ten additional blank rows at the end of the exhibit list to accommodate any additional exhibits that may be introduced.

3. Each party must pre-mark all exhibits that will be used or identified in a hearing or trial. Exhibits not timely pre-marked or exchanged before a hearing or trial may not be admitted.

4. Exhibit labels can be obtained from the clerk's office before trial. The Government's exhibits should be marked with yellow labels, using numbers. Defendant's exhibits should be marked with blue labels, using alphabetical letters for the first twenty-six exhibits. For example, if there are twenty-six or fewer exhibits, label them A through Z. If there are more than twenty-six exhibits, begin marking them as A-1 through A-99, then B-1 through B-99, etc. Do not use double or triple letters. The criminal action number should also be placed on each of the exhibit stickers.

5. Exhibits must be bound, e.g., in three-ring notebooks or folders, and the notebook or folder labeled with the following information: (i) caption, (ii) nature of proceeding, (iii) scheduled date and time, and (iv) "original" or "copy." If exhibits are not bound and labeled properly, the hearing or trial may be delayed or continued until they are. If a party has fewer than five exhibits, such exhibits need not be bound.

6. Number of Sets of Exhibits – For hearings and trials, each party should bring separate sets of bound exhibits for (a) the court, (b) the courtroom deputy clerk, (c) the court reporter, (d) opposing counsel, and (e) the witness stand.

7. Stipulated Facts – Any stipulation of fact should be formatted as a pleading and marked as an exhibit.

D. Witness Lists

1. When to File – For motions hearings, witness lists should be filed via CM-ECF two business days before the hearing. For trials, see Section IV.A. concerning the Trial Preparation Conference.

2. Format – Parties should use the form of witness list available on the District Court website at <http://www.cod.uscourts.gov/Judges/Judges.aspx>.

E. Depositions

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

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

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

3. For bench trials depositions will not usually be read in open court. Instead, the court will read them in chambers in any requested sequence. At the beginning of the trial, the offering party shall provide the courtroom deputy clerk with **two copies** of the relevant deposition transcript marked as an exhibit with government's designated portions highlighted in yellow and the defendant's in blue.

F. Videotaped Depositions

Together with Fed.R.Crim.P. 15, this practice standard governs the use of videotaped depositions in criminal proceedings. Objections to any portion of a proposed videotaped deposition shall be filed and determined pursuant to D.C.COLO.LCivR 7.1 and these Practice Standards. Objections may be resolved before trial to facilitate appropriate redaction.

G. Special Equipment (Audio/Video)

The court has audio-visual 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." Notify my courtroom deputy clerk, **Kathy Preuitt-Parks** at **303-335-2093**, no later than **seven days** before a hearing or trial concerning the date and time you need such equipment or need your own equipment to be brought through security for use in the courtroom.

III. MOTIONS PRACTICE

A. Page Limitations

All motions, objections, responses, and briefs shall not exceed **fifteen pages**. Replies shall not exceed **ten pages**. Motions and briefs shall be combined and will be considered one paper for purposes of computing page limitations. These page limitations include the cover page, statement of facts, procedural history, argument, authority, closing, signature block, and all other matters, except the certificate of service. The body of the text and all footnotes shall be no smaller than 12-point type.

Motions to exceed the page limitations set forth in these Practice Standards will be granted only upon a showing of good cause. Any such motion shall indicate the number of pages of the proposed document and the reason why the additional pages are necessary.

B. 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.

C. Motions *In Limine*

Motions *in limine* are discouraged when the motion is evidence driven and cannot be resolved until evidence is presented at trial. Instead, the issue can be flagged in a trial brief. If motions in limine are filed, they must be filed **seven days** before the trial preparation conference.

D. Trial Briefs

Trial briefs are encouraged, but not required absent specific court order. 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.

IV. TRIALS

A. Trial Preparation Conference

The Trial Preparation Conference will usually be held approximately **three to ten 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, confirm the Trial Preparation Conference date, and specify the tasks to be completed before the Trial Preparation Conference.

1. Jury Instructions and Verdict Forms

a. **Two business days** before the trial preparation conference, counsel and any pro se party shall submit proposed jury instructions and verdict forms. The jury instructions shall identify the source of the instruction and supporting authority, e.g. § 103, Fed. Jury Practice, O'Malley, Grenig, and Lee (5th ed.). The parties shall submit their instructions and verdict forms both via CM-ECF **and** by electronic mail to brimmer_chambers@cod.uscourts.gov in Word Perfect format (Word Perfect 12 or a later version) or 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.

b. Each instruction should be numbered (e.g., "Government's Instruction No. 1") for purposes of making a record at the jury instruction conference. The parties shall attempt to stipulate to the jury instructions, particularly "stock" instructions and verdict forms.

c. 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 <http://www.ck10.uscourts.gov/clerk/rulesandforms.php>.

2. Exhibit and Witness Lists: **Two business days** before the trial preparation conference, the parties shall file their proposed witness and exhibit lists via CM-ECF. Defendants do not need to be listed on defendants' witness lists. The forms of such lists are found at <http://www.cod.uscourts.gov/Judges/Judges.aspx>. For additional matters regarding exhibit and witness lists, see Sections II.C and II.D above.

3. Voir Dire: **Two business days** before the trial preparation conference, the parties shall file their proposed *voir dire* questions.

B. Jury Trials

1. Counsel and pro se parties shall be present on the first day of trial at 8:00 a.m. Jury selection will begin at 8:30 a.m. Commencing the second day of trial, the normal trial day will begin at 8:30 a.m. and continue until 5:00 p.m. The trial day will have morning and afternoon recesses of approximately fifteen minutes duration. A lunch break of approximately one hour and thirty minutes will be taken at approximately 12:00 p.m.

2. Unless ordered otherwise, jurors and alternate jurors shall be selected using the **Juror Selection Protocol** of the court found online at <http://www.cod.uscourts.gov/Judges/Judges.aspx>.

3. Unless ordered otherwise, each side shall be permitted *voir dire* examination of **fifteen minutes** after *voir dire* examination by the court.

4. 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.

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

6. The jury will be instructed before closing argument.

7. Each juror will be given a copy of the written jury instructions for use during deliberations.

C. Trials To Court

Trials to court will begin at 8:30 a.m. For a trial to the court, a resumé or *curriculum vitae*, marked as an exhibit, generally will suffice for the qualification of an expert witness.

V. PLEA AGREEMENTS

A. Treatment of Notice of Disposition

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.

B. Rule 11(c)(1)(C) Pleas

Any plea agreement pursuant to Fed. R. Crim P. 11(c)(1)(C) must be submitted to chambers no later than 14 days before the date set for trial.