

*Our bondage to law is the price we pay
for freedom.*
Judge Robert T. Mann

PRACTICE STANDARDS CRIMINAL ACTIONS

TO: Counsel and Parties
FROM: Judge Robert E. Blackburn, United States District Judge
RE: Practice Standards Criminal Actions

I. PURPOSE AND RELATION TO OTHER RULES

A. Purpose And Authority

1. Consistent with Fed. R. Crim. P. 2, these practice standards are adopted to secure the just determination of every criminal proceeding. These practice standards shall apply to all motions, petitions, applications, responses, replies, objections, orders, and all other papers filed on or after **December 1, 2014**, and to all hearings and trials conducted on or after **December 1, 2014**. They may be revised without notice and may be modified by orders entered in specific cases.

2. **These practice standards have the force and effect of the orders of this court.**

B. Relation To Local Rules

1. These practice standards supplement, not supplant or supersede, The Local Rules of Practice of the United States District Court for the District of Colorado - Criminal.

C. Access To Local Rules & Practice Standards

1. Copies of the local rules are **available [here](#)** or from the clerk of the court in **Room A105**.

2. Copies of these practice standards are available **[here](#)** or 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 - Criminal;
 - d. The Electronic Case Filing Procedures (~~Criminal Version 5.1 or the most current version~~); and
 - e. These practice standards.

2. Failure to comply with the foregoing rules or procedures or the practice standards of this court may result in the imposition of appropriate sanctions, including, but not limited to, striking noncomplying papers, punishing contempt of court, vacating hearings or trials, or dismissing the ~~action~~ **case**.

B. Communications with Chambers

1. Do not deliver, fax, or e-mail pleadings, motions, papers, or correspondence directly to chambers absent a specific order. Instead, file all such ~~materials~~ **pleadings or documents** via the CM/ECF system.

2. For information about the status of a motion or document, please utilize the CM/ECF system, available [here](#), or PACER, available [here](#).

3. For other information or assistance, please contact **Susan Schmitz the Judicial Assistant of the court** at 303- 335-2350. **Please do not contact the law clerks about procedural or scheduling matters. They may speak to counsel only pursuant to the specific instructions of the court.**

C. Citations

1. Citations shall be made pursuant to the most current edition of **THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION** (~~currently the 19th ed. 2010~~).

2. General references to cases, pleadings, depositions, or documents are insufficient if the paper or document is more than one page in length. Whenever possible, specific references in the form of pinpoint citations shall be used to identify relevant excerpts from cases, pleadings, depositions, or documents .

3. Whenever practicable, a citation to an unpublished opinion should include its Westlaw® citation.

4. These practice standards should be cited as REB Cr. Practice

Standard, Part, Section, Subsection, Paragraph, Subparagraph, and Sub-subparagraph (e.g., REB Cr. Practice Standard V.F.3.A.1.a.).

D. Typeface

1. All papers filed with the court by anyone other than a judicial officer shall be in an Arial 12 point font (exclusive of footnotes and endnotes). Noncomplying papers may be stricken.

E. Continuances of Hearings and Trials

1. Motions to continue (including motions to vacate or reset) hearings and trials shall be determined pursuant to D.C.COLO.LCivR 6.1 and 7.1, and **United States v. West**, 828 F.2d 1468, 1469-70 (10th Cir. 1987). Oral or written motions to continue made at the time of the hearing or trial ~~are unacceptable~~ **may not be entertained by the court**. Stipulations for continuance shall not be effective unless and until approved by the court.

III. COURTROOM PROCEDURES

A. Recording of Proceedings

1. The realtime reporter assigned to the court is Tracy Weir (**303-335-3358**). Transcripts of proceedings may be ordered from Ms. Weir. Requests for realtime, daily, or hourly copy must be made at least **thirty (30) days** before the trial or hearing. Further details can be obtained from Ms. Weir.

B. Exhibits

1. Each party must pre-mark all exhibits that will be used or identified for the record in a hearing or trial. Whenever possible, each party must provide a copy of each exhibit to opposing counsel or any pro se party before a hearing and before a trial pursuant to the **Trial Preparation Conference Order**. Exhibits not ~~timely~~ pre-marked or exchanged before a hearing or trial may not be admitted. Any stipulation of fact should be marked and marshaled as an exhibit.

2. Marking of Exhibits:

a. Numerically for a **single party plaintiff (i.e., the government), petitioner, movant, or appellant**: Government's, Petitioner's, Movant's, or Appellant's exhibit 1, 2, 3, etc.;

b. Numerically for **single or multiple party defendants, movants, and appellees** as follows: Defendant's, Movant's, or Appellee's surname exhibit 1, 2, 3, etc. (for example "Smith exhibit 57"); and

c. The case number shall appear on each exhibit sticker or label.

3. Exhibits must be bound, e.g., in three-ring notebooks or folders, and the notebook or folder must be labeled with the following information: (i) caption, (ii) nature of proceeding, (iii) scheduled date and time, (iv) party's name and designation, and (v) "original" or "copy." If exhibits are not bound and labeled properly, the hearing or trial may be delayed or continued until they are.

4. Number of Sets of Exhibits

a. For hearings, separate sets of bound exhibits must be brought to the hearing for the court, courtroom deputy clerk, and the witness stand; and

b. For trials, the **Trial Preparation Conference Order** will specify the number of sets of exhibits.

C. Witness & Exhibit Lists

1. Each party shall submit the Witness List and Exhibit List preferred by the court (forms are available in the clerk's office in **Room A105**, or online [here](#), to the courtroom deputy clerk before any hearing or trial or as provided in the order setting the hearing or the **Trial Preparation Conference Order**.

D. Glossary

1. Not later than **five (5) business days** before commencement of a hearing, a bench trial, a jury trial, or any other proceeding, counsel and any pro se party shall file and provide the court, the court reporter, the courtroom deputy clerk, opposing counsel, and any pro se party with a glossary of any difficult, unusual, scientific, technical, and/or medical jargon, words, names, terms and/or phrases.

IV. MOTION PRACTICE

A. Motions *In Limine* and Trial Briefs

1. Motions *in limine* are **strongly** discouraged, *a fortiori*, when the motion is evidence driven and cannot be resolved until evidence is presented at trial. In the extremely limited circumstances in which a motion *in limine* is necessary, it shall be filed and determined in the time and manner prescribed by D.C.COLO.LCivR 7.1(d), and REB Civ. Practice Standard IV.B.1.

2. Trial briefs are encouraged. Trial briefs shall not exceed **ten (10) pages** and shall be filed not later than **five (5) business days** before trial. Please flag evidentiary issues in a trial brief rather than by motion *in limine*. However, a trial brief may not be used as a spurious, belated substitute for a motion that must be filed as a motion.

V. TRIALS

A. Jury Trials

1. Jury trials will begin with jury selection at the time specified in the **Trial Preparation Conference Order**, with the trial commencing after jury selection. Commencing the second day of trial, the ~~normal~~ trial day will begin ~~at~~ **from 8:30 a.m., and continue until to 5:00 p.m., with noon, mid-morning, and mid-afternoon recesses.**

2. Unless ordered otherwise, jurors and alternate jurors shall be selected using the **Juror Selection Protocol** of the court that is available in the clerk's office or online [here](#).

3. Not less than **five (5) business days** before trial, the parties shall file the *voir dire* questions they propose to propound to the venire.

4. **Batson** challenges [*see Batson v. Kentucky*, 476 U.S. 79 (1986)] shall be made and considered at the conclusion of *voir dire* examination ~~by the court,~~ but before the jury is seated and sworn.

5. Jury Instructions

a. Whenever practicable, 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 [here](#).

b. Counsel and any pro se party shall confer well in advance of trial, and not less than **five (5) business days** before trial, shall file on CM/ECF and submit by electronic mail to blackburn_chambers@cod.uscourts.gov those jury instructions and verdict forms that the parties stipulate should be given to the jury. Otherwise, concerning special or disputed instructions or disputed verdict forms, not less than **five (5) business days** before trial, each party shall (i) file in CM/ECF and (ii) submit any special or disputed instruction or disputed verdict form as provided below in Subsections c, d, and e.

c. Proposed instructions and verdict forms **shall be** filed in CM/ECF **and** submitted by e-mail to blackburn_chambers@cod.uscourts.gov. Instructions and verdict forms submitted by e-mail must be tendered in preferably Word Perfect format (preferably Word Perfect 12 or a later version of Word Perfect) or Word, using an Arial 12 point font, double-spaced.

d. **Each instruction and verdict form submitted to chambers via e-mail must be in a separate document or file, so that the court can view each separate instruction and verdict form as a single document, as opposed to one of several instructions and/or verdict forms combined in a single document or file .**

e. Tendered instructions and verdict forms must be submitted as attachments to one or more e-mails as technology permits. The attachments must be organized into three groups: (1) Stipulated instructions; (2) Competing instructions; and (3) Non-stipulated instructions. When submitting proposed instructions and verdict forms, the instructions and verdict forms must be attached to one or more e-mails in the form and order specified below:

1. **Stipulated** – The file name and name for each stipulated instruction and verdict form must include a clear indication that the instruction or verdict form is stipulated, and a numerical designation. A name such as “Stip 01” is sufficient as the name for an individual instruction or verdict form. **All** stipulated instructions and verdict forms must appear as a first group of attachments in the e-mail, and the e-mail must clearly indicate the group of attachments that contains all stipulated instructions and verdict forms.

2. **Competing** – A competing instruction or verdict form is an instruction or verdict form addressing an issue about which the parties agree an instruction or verdict form is necessary, but disagree about its wording. **Competing instructions must address the same issue and be designated using the same number, i.e., Comp G 01 and Comp D 01 must address the same issue.** The file name and name for each competing instruction and verdict form must include a clear indication that the instruction or verdict form is competing, a designation of the party tendering the instruction, and a numerical designation. A name such as “Comp G 01” or “Comp D 01” is sufficient as the name for an individual instruction or verdict form. **All** competing instructions and verdict forms must appear as a second group of attachments in the e-mail, and the e-mail must clearly indicate the group of attachments that contains all competing instructions and verdict forms.

3. **Non-stipulated** – Non-stipulated instructions and verdict forms are those requested by an individual party to which any other party objects, but does not tender a competing instruction or verdict form. The file name and name for each non-stipulated instruction and verdict form must include a clear indication that the instruction or verdict form is non-stipulated, a designation of the party tendering the instruction, and a numerical designation. A name

such as "Non-stip G 01" or "Non-stip D 01" is sufficient as the name for an individual instruction or verdict form. **All** non-stipulated instructions and verdict forms must appear as a third group of attachments in the e-mail, and the e-mail must clearly indicate the group of attachments that contains all non-stipulated instructions and verdict forms.

f. Not less than **five (5) business days** before trial, each party shall file a brief or memorandum addressing – either in support of or opposition to – the proposed instructions and verdict forms that are competing or non-stipulated.

g. **At the jury instruction conference (charging conference) after the close of evidence, or any prior jury instruction conference, the court, in its discretion, may consider only those instructions and verdict forms managed in conformity with the foregoing sections or that address unanticipated matters raised during trial.**

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

7. The jury will be instructed before closing argument.

8. Each juror will be given copies of the written jury instructions and verdict forms for use and consideration during deliberations.

VI. PLEA AGREEMENTS

A. Treatment Of Notice Of Disposition

1. A notice of disposition filed pursuant to D.C.COLO.LCrR 11.1(a), shall be considered to be a delay resulting from consideration by the court of 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 of 1974, 18 U.S.C. § 3161. A defendant contesting this characterization shall state his objection in the notice of disposition or shall be deemed to have forfeited the objection.