

PRACTICE STANDARDS
(Criminal)

SENIOR JUDGE RAYMOND P. MOORE
UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

Chambers A273, Second Floor
Alfred A. Arraj United States Courthouse
901 19th Street
Denver, CO 80294

Telephone: 303-844-3433 (Courthouse)
Telephone: 303-335-2784 (Chambers)
E-mail: [Moore Chambers@cod.uscourts.gov](mailto:Moore_Chambers@cod.uscourts.gov)

Judicial Assistant: Deanne Bader / 303-335-2784
E-mail: [Deanne Bader@cod.uscourts.gov](mailto:Deanne_Bader@cod.uscourts.gov)

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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; and
5. These Practice Standards.

B. Access to Local Rules and Practice Standards

1. Copies of the local rules are available on the District Court's website (<http://www.cod.uscourts.gov/>) under "Local Rules," and from the Clerk of the Court in Room A105.
2. Copies of these practice standards are available on the District Court's website (<http://www.cod.uscourts.gov/>) under "Judicial Officers."

C. Communications with Chambers

1. My Judicial Assistant is Deanne Bader, at 303-335-2784.
2. For information about the status of a motion or document, please contact the Clerk's Office, at 303-844-3433.
3. For information about courtroom technology, trial preparation, or submission of trial exhibits, please contact Nick Richards, Court Operations Supervisor, at 303-335-2180.
4. To order a transcript or reach the Court Reporter who transcribed a trial or proceeding, please contact my Judicial Assistant.

D. Proposed Orders

You may be directed to transmit proposed orders by electronic mail to [Moore Chambers@cod.uscourts.gov](mailto:Moore_Chambers@cod.uscourts.gov). The proposed order or document should be submitted as an attachment 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.

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 Nick Richards, Court Operations Supervisor, at 303-335-2180.

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. Transcripts of proceedings may be ordered from the court reporter assigned to the hearing. Requests for realtime, daily, or hourly copy must be made at least thirty days before the trial or hearing. To order a transcript or reach the Court Reporter, please contact my Judicial Assistant.

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 two business days before the hearing. As for exhibits for trial, Government must provide a copy of its exhibits to Chambers no later than two business days prior to trial. This requirement applies to a defendant if he or she has identified exhibits for trial. As for exhibit lists for trial, 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 for Judge Moore. 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. 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) opposing counsel; and (c) the witness stand. In addition to the exhibit notebooks, two flash drives shall be delivered to Chambers two (2) business days before the hearing or trial.
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 (<http://www.cod.uscourts.gov/>)

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 as soon as practicable, but not later than the time of the Trial Preparation Conference. 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 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 as soon as practicable, but not later than the time of the Trial Preparation Conference. Objections may be resolved before trial to facilitate an 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 (<http://www.cod.uscourts.gov/>) under "Courtroom Technology Manual for Attorneys." Notify Nick Richards, Court Operations Supervisor, 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

1. 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.
2. 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. 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.

C. 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 Moore_Chambers@cod.uscourts.gov in 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 (<https://www.ca10.uscourts.gov/>).
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 defendant's witness lists. The forms of such lists are found at (<http://www.cod.uscourts.gov/>) . 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 via CM-ECF.

B. Jury Trials

1. Counsel and pro se parties shall be present on the first day of trial at 8:30 a.m. Jury selection will begin at 9:00 a.m. Commencing the second day of trial, the normal trial day will begin at 9:00 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, the procedure employed for selection of jurors and alternate jurors will be reviewed with the parties at the Trial Preparation Conference.

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 a potential juror is excused.
5. Jurors will be permitted to take notes during the trial.
6. The jury will be instructed after closing argument.
7. The jury will be given a copy of the indictment and written jury instructions for use during deliberations.

C. Trials To Court

Trials to Court will begin at 9:00 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 11.1A 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.

B. Plea Agreement Content Restriction

No plea agreement shall identify whether a defendant has agreed to cooperate with the United States or other jurisdiction with respect to the investigation or prosecution of others. Consequently, no plea agreement shall contain any reference to any cooperation agreement between the defendant and the government, to any potential for a motion under 5K.1.1 of the United States Sentencing Guidelines (“U.S.S.G.”), or to any other statutory or guideline calculation or adjustment predicated on such cooperation.

C. Plea Agreement Supplement

1. In all criminal cases resolved by plea agreement in which the defendant’s cooperation against others is part of the agreement, the parties shall prepare and provide to the Court, in addition to the Plea Agreement and Statement by Defendant in Advance of Plea provided for by D.C.COLO.LCrR 11.1(c) and (d), a Plea Agreement Supplement. At the conclusion of the change of plea hearing, the

courtroom deputy will file the Plea Agreement Supplement in the Electronic Case Filing (“ECF”) system as a Court only entry.

2. The Plea Agreement Supplement shall contain, in substance, the following statement: “The parties agree that the following additional terms and provisions are part of the Plea Agreement:” Thereafter, the Plea Agreement Supplement shall fully set forth all terms and provisions of the agreement between the parties that were omitted from the Plea Agreement because of the restriction required by Section V(B), *supra*, together with all U.S.S.G. computations and statutory implications of the additional plea agreement provisions.
3. The Plea Agreement Supplement shall be signed by all persons who sign the Plea Agreement.
4. A copy of the Plea Agreement Supplement shall be provided to Chambers together with the Plea Agreement in the same time and manner as provided for by D.C.COLO.LCrR 11.1(c).
5. The Plea Agreement Supplement shall be tendered to the courtroom deputy in the same time and manner as provided for by D.C.COLO.LCrR 11.1(e).

D. Safety Valve Cases

The parties may, but are not required to, adhere to the requirements of Sections B and C above in cases where the Defendant is eligible for safety valve relief under the U.S.S.G. and no other cooperator agreement is included as part of the disposition with the government. Where the disposition entails both safety valve relief and further benefit based on that or additional cooperation, Sections B and C above shall apply to both the safety valve and additional cooperation aspects of the plea agreement.

E. Sentencing Statements, Objections to Presentence Report and Motions for Departure or Variance and Related Documents

1. All Sentencing Statements, Objections and Responses to Presentence Reports, and Motions for Departure or Variance provided for by D.C.COLO.LCrR 32.1 shall, except as provided in ¶3 below, be filed as restricted documents subject to Restriction Level 2.
2. This requirement shall constitute a standing order for purposes of D.C.COLO.LCrR. 32.1(d) and 47.1(a).

3. The following are excluded from the requirement set forth in ¶1 that the matter be filed under restriction: (i) Sentencing Statements in cases resolved by trial, (ii) Motions pursuant to U.S.S.G. § 3E1.1(b), and (iii) Motions pursuant to U.S.S.G. § 5K3.1.
4. Motions to Dismiss are not covered by D.C.COLO.LCrR. 32.1 and, accordingly, need not be filed as restricted documents.

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

If a plea agreement is to be tendered pursuant to Fed. R. Crim P. 11(c)(1)(C), the notice of disposition must so state.