

DISTRICT COURT, EL PASO COUNTY, COLORADO 270 S Tejon St Colorado Springs, CO 80903 (719) 452-5259	^ COURT USE ONLY ^ <hr/> Division: 17 Courtroom: S406
The People of the State of Colorado Vs. Defendant	
CRIMINAL CASE MANAGEMENT ORDER	

The following Case Management Order applies to all criminal cases in Division 17, El Paso District Court, Colorado.

1. SCHEDULING

a. Docket Day. The Court will hold criminal docket days on Mondays. If Monday is a holiday, the docket shall begin on Tuesday.

b. Docket Days. Docket days shall be generally scheduled as follows:

- i.** 8:30 a.m.—First appearances, Appearances of Counsel, Appearance on Bond, Appearance on Arrest Warrants, SDT Returns, Reviews, and any other simple appearance the parties believe requires five minutes or less.
- ii.** 9:00 a.m.—Pre-Trial Readiness Conferences
- iii.** 9:30 a.m.—Dispositional Hearings and Arraignments
- iv.** 10:00 a.m.—Plea Hearings and Simple Sentencing Hearings
- v.** 11:00 a.m.—Revocation Hearings and Miscellaneous Hearings
- vi.** 1:30 p.m.—Preliminary Hearings, Complex Sentencings, Motions Hearings, and Competency Review Hearings

c. Normal Hearings. Each case shall have a first appearance, a disposition date, and an arraignment date. The defense may plead not guilty at any appearance. At the arraignment, the defendant shall enter a plea, or the Court will enter a not guilty plea on the defendant's behalf. In the Court's discretion, the Court may continue the arraignment for good cause shown.

d. Diversified Docket. Division 17 alternates weeks between criminal and domestic dockets. The Court expects most trials to take three days or less. AT THE ENTRY OF A NOT GUILTY PLEA, IF EITHER SIDE BELIEVES THE TRIAL WILL TAKE MORE THAN THREE DAYS, THAT PARTY SHALL INFORM THE COURT. Failure to alert the Court to the anticipated trial length (if greater than three days) may result in a continuance of the trial.

e. Add-Ons. If a party wants to add a case to the docket, the party must confer with opposing counsel and obtain their position prior to contacting the Court's clerk.

2. **GUILTY PLEAS AND SENTENCING**

a. Plea Agreements in Writing. The parties shall tender all plea agreements to the Court in writing and include the written advisement of rights as well as all terms of the agreement. To the extent possible under the circumstances, the defense shall complete the written plea agreement and advisement prior to the Court appearance. The court discourages attorneys from completing paperwork in the courtroom and expects that it be done outside of court absent special circumstances.

b. Compliance with Crim. P. Rules 5 and 11. At all plea hearings, counsel shall represent to the Court they have complied with Rules 5 and 11 of the Colorado Rules of Criminal Procedure and have advised their clients in accord with those rules.

c. Bond Consent. Defense must provide a "Consent to Remain on Bond" to the Court upon completion of the plea. The Court will order the Defendant remanded into custody if the defendant fails to tender consent at that time.

d. Pre-Sentence Confinement Credit. At sentencing hearings, the defense attorney will advise the Court as to the amount of pre-sentence confinement credit, residential credit, non-residential credit and earned time to which the Defendant is entitled. The prosecution shall enter any objections at that time.

e. Immediate Sentencing. Immediate sentencing is possible in cases in which both sides agree to forego a presentence investigative report, however counsel should be aware that specialty court sentences typically require pre-screening.

f. Restitution. The prosecution shall provide any restitution requests at the time of sentencing. The prosecution may request an additional forty-two days to determine restitution. If the Court grants the request, the defense may challenge that request fourteen days after the prosecution files the request. If challenged, the court will set the matter for hearing.

g. No Plea Agreements the Morning of Trial. The Court hereby informs the parties that the Court will not accept plea agreements on the morning of trial unless the parties inform the Court they reached an agreement by noon the day before the trial. Failure to do so will result in the case proceeding to trial. *See People v. Jasper*, 17 P.3d 807 (Colorado 2001).

3. NOT GUILTY PLEAS

a. **Entry of Not Guilty Plea.** Once a not-guilty plea enters, the Court will set the matter for a motions date and a trial date. The Court will set the pre-trial readiness date at the motions hearing date, and that will generally be at least eight days in advance of the trial date for normal cases. Homicides and sex assault cases that the parties expect will require more time will have a readiness date further in advance of trial, given how their disruptive effect on the Court's docket.

b. **Number of Jurors.** If counsel believes there are issues in the case that will require more jurors than normal, they must inform the court at least one week before the motions hearing about that issue. That timeline is necessary so that the court may request more jurors from the jury commissioner. Some issues which may require an extended pool include, but are not limited to, significant pre-trial publicity, public figures as parties, trials of extended length, trials involving controversial issues or concerning matters of public interest, or similar issues.

4. MOTIONS

a. **Motions in Limine**

i. **Timing.** The Court may hear brief *motions in limine* the morning of trial, however, all such motions shall be in writing with a copy provided to the opposing party and the Court prior to the hearing. All other motions (including motions seeking the admission of C.R.E. 404(b) evidence, motions to suppress evidence, motions to suppress statements, motions challenging probable cause to administer standard field sobriety maneuvers, motions to dismiss, and all similar motions requiring testimony to resolve) must be raised by written motion and filed as noted above.

ii. **Failure to Comply.** Failing to file those substantive motions within the ordered time periods, absent good cause, will result in the Court finding the party has waived their right to address those motions.

b. **Substantive Motions.**

i. **Timing.** All substantive motions (including motions seeking the admission of any C.R.E. 404 evidence, motions to suppress evidence, motions to suppress statements, motions challenging probable cause, motions to dismiss, motions regarding the destruction of evidence, *Shreck* motions, and all similar motions requiring more than five minutes of argument or testimony) shall be filed at least 28 days before the motions hearing date. The Court may refuse to hear any motion filed after those time periods, absent good cause.

ii. **Contents.** Colorado is a notice pleading state. All motions shall be sufficient to put the other side on notice of the specific legal contentions at issue, provide sufficient notice for the other party to identify witnesses necessary to resolve such motions, and provide legal authority supporting the position. In the event counsel believe the motion

requires the Court to, in good faith, depart from existing law, counsel shall specifically identify the issue and supply the relevant contrary case law.

iii. Responses. The Court expects and requires both the defense and the prosecution to respond in writing to any motion they oppose that involves a “significantly non-standard” factual or legal dispute. The Court does not expect a written response to every “stock” or “standard” motion which arises with regularity and involves well settled legal principles. The Court is aware that there is ambiguity in the term “significantly non-standard.” The Court expects the parties to use good judgment and err on the side of providing legal authority for the Court to review prior to any motion hearing.

5. **DISCOVERY**

a. General Guidelines. Unless otherwise ordered by the Court, the parties must complete delivery of discovery prior to the pretrial readiness conference and comply with Crim. P. Rule 16.

b. No general discovery motions. Motions requesting discovery required by that rule are NOT to be filed. *See* Crim. P. Rule (Part V(a))

c. Timing of Discovery Motions. All permissible discovery related motions, including motions for sanctions based on a party’s failure to provide discovery, shall be raised at or before the pre-trial readiness conference if such issue was known or should have been known at that point. The Court may deem the failure to raise such a motion on time a waiver of the discovery challenge on that issue.

d. District Attorney

i. Shall comply with Crim. P. Rule 16;

ii. must provide to the Defendant and file with the Court a good faith list of witnesses, including addresses and telephone numbers, no later than 35 days before trial;

iii. shall provide to the Defendant and the Court a good faith list of witnesses and anticipated exhibits the morning of trial;

iv. shall give notice to the defense of any C.R.E. 404(b) evidence by written motion, provide discovery related to the motion, and raise the issue before the motions hearing;

v. shall provide to the defendant a list of any prior felony conviction, any juvenile adjudications, and any misdemeanor convictions related to credibility of the defendant and all witnesses to be called by the district attorney;

vi. shall provide to the defense any witness statements obtained by the District Attorney’s Office during trial preparation that are materially different from any prior statement from that statements;

vii. and shall provide written notice to the defense of any benefit given to a witness in exchange for his or her testimony.

e. **Defense**

i. Shall comply with Crim. P. Rule 16;

ii. Must provide to the District Attorney and file with the Court the Defendant's theory of defense, good faith list of witnesses, including addresses and telephone numbers, designation of affirmative defenses, and notice of alibi no later than 35 days before trial.

f. **Expert Disclosures.** Any witness called by either party as an expert will require additional disclosures, including:

i. Expert witnesses shall be identified as an expert on the witness lists the party calling the expert shall designate their field of expertise;

ii. Any party endorsing an expert shall provide a list of the expert's qualifications supporting their ability to testify as an expert;

iii. All statements and reports produced by the expert shall be disclosed to the adverse party no later than thirty-five days prior to trial;

iv. If the expert has not provided a written report, counsel shall provide a summary of the expert's expected testimony; and

v. The expert's testimony will be limited to their report or the summary prepared by counsel and the reasonable inferences that may be drawn therefrom.

6. **EXHIBITS AND JURY INSTRUCTIONS**

a. **District Attorney.** Counsel must provide an exhibit list to each other and the Court prior to the start of jury selection.

i. Counsel shall tender jury instructions to the Court's clerk on the morning of trial in Microsoft Word format.

7. **TRIAL PROCEDURES**

a. **Voir Dire**

i. On all cases, unless otherwise ordered, the parties will be permitted 30 minutes to *voir dire* the seated jury panel.

ii. The purpose of *voir dire* is to determine whether any potential juror has opinions or beliefs that would cause them to be biased in a manner that would interfere with a party's right to receive a fair trial. The purpose of *voir dire* is not to instruct jurors on the law, but to determine whether they can conscientiously apply the law as given by the Court in its instructions. *People v. Harlan*, 8 P.3d 448 (Colo. 2000). Because of

the danger of confusion based on attorneys instructing jurors on their interpretation of the law and the danger of debating the law with jurors, *voir dire* will be conducted as follows:

iii. The Court will read to the jury pool the instructions regarding the presumption of innocence, burden of proof, and the right to remain silent. The Court will also read the complaint to the jury. Counsel's questioning shall be limited to determining whether the jurors understand the law as given by the Court and whether the jurors can apply the law to the facts as the jurors find them. There shall be no discussion of the facts of the case during *voir dire*.

iv. Counsel may not ask hypothetical questions where jurors commit to a particular finding, such as asking the juror whether he or she could render a particular verdict based on certain facts.

b. Openings

i. Opening statements, absent Court approval, shall be no longer than fifteen minutes per side.

c. Closings

i. Closing statements, absent Court approval, shall be no longer than twenty minutes (including rebuttal by the prosecution) per side.

d. Witnesses

i. The Court, if requested, will enter a sequestration order.

ii. Witnesses shall not be released absent Court approval.

iii. At least one witness shall be prepared to testify before noon on the first day of trial.

iv. Parties shall schedule witnesses so that they are available one after another without delay between witnesses. If there are scheduling issues, counsel must raise those issues at the pre-trial readiness conference.

e. Miscellaneous Issues

i. **No Continuances the morning of trial.** ABSENT EXTRAORDINARY CIRCUMSTANCES, the Court will not grant continuance at the request of either party on the morning of trial.

ii. **Multiple cases ready for trial.** If there are multiple cases set for trial, the Court will decide which one will proceed based on factors such as the age of the case, speedy trial dates, the presence of identified victims, the defendant's custody status, extraordinary travel arrangements for witnesses, and other factors. Attorneys shall be prepared to try any case in which they announced ready.


iii. **Motions and objections during trial.** Motions made during trial (except for routine evidentiary objections) must be made at the bench or outside the presence of the jury.

- Objections made at trial shall consist of “Objection” and identifying the name of the rule the objection is made under or the numerical cite to the rule of evidence. Responses, if necessary, will be sought by the Court.

iv. **Consent of surety following conviction.** Following entry of a guilty plea or a guilty verdict at trial, unless the district attorney consents to a personal recognizance bond, a defendant on bond must have written consent of surety to remain on bond pending sentencing.

v. **Pronouns.** In the event any witness, juror, or other participant in the process has a preferred gender identity or gender expression, the parties shall endeavor to use the person’s preferred terms. In the event counsel becomes aware that a defendant or witness uses a pronoun at odds with the pronouns attributed to them in Court documents, counsel shall inform the Court, so the Court may use that person’s preferred method of address.

Failure to follow this order may result in the imposition of sanctions. Continuances caused by failing to comply with this order will be charged to the offending party.



District Court Judge, Samuel A. Evig