

DIVISION E CASE MANAGEMENT ORDER FOR CRIMINAL CASES

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

SCHEDULING

- Parties will only receive 2 pretrial conference dates. Matters will be set for trial and not guilty pleas will be entered after 2 pretrial conference dates. **Very rare exceptions will be made to this rule. The Court will require an adequate oral offer of proof for why such an extension is warranted.**
- Once a not-guilty plea enters the matter will be set for a pre-trial readiness date and a trial date. With permission of the Court and based on an adequate oral offer of proof, the matter may be set for a motions date as well. Motions dates will be set 30 days prior to the trial date.
- All substantive motions (including 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) shall be filed within 15 days of entry of the not guilty plea. Motions seeking the admission of any C.R.E. 404 evidence are to be filed within 45 days of trial. The responses to motions filed must be filed within 10 days. The Court may refuse to hear any motion filed after those time periods, absent good cause.
- All criminal jury trials begin on the scheduled trial date at 8:30 a.m.
- 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.
- **There will be no pleas accepted on the date of trial.** If parties reach an agreement prior to trial, please contact the clerk to set the matter for a sentencing date.

MOTIONS

Brief *motions in limine* may be heard on the morning of trial, however, all such motions shall be in writing with a copy provided to the opposing party 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) must be raised by written motion and filed as noted above. 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.

DISCOVERY

Unless otherwise ordered by the Court, the parties must complete delivery of discovery prior to the pretrial readiness conference. All discovery related motions, including motions for sanctions based on a party's failure to provide discovery, shall be raised at the pre-trial readiness conference if such issue was known or should have been known at that point. Failing to raise such discovery issue will be deemed a waiver of the discovery challenge on that issue.

District Attorney

- Shall comply with Crim. P. Rule 16;
- Shall provide to the Defendant and file with the Court a good faith list of witnesses, and provide to the Defendant addresses and telephone numbers for the witnesses no later than 10 days prior to trial (late endorsements of witnesses will only be considered upon proper motion, notice, and hearing);
- Shall give notice to the defense of any C.R.E. 404(b) evidence and res gestae evidence by written motion, provide discovery related to the motion, and raise the issue at the motions hearing;
- 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;
- 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 witness statements; and
- Shall provide written notice to the defense of any benefit given to a civilian witness in exchange for his or her testimony.

Defendant

- Shall comply with Crim. P. Rule 16;
- Shall 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, and designation of affirmative defenses no later than 10 days prior to trial (late endorsements of witnesses will only be considered upon proper motion, notice, and hearing);
- Shall provide, if the defense is based on alibi, the information required by Crim. P. Rule 16, Part II(d) thirty-five days before trial;
- Shall provide notice, by written motion, of the intent to introduce any C.R.E. 404(a)(2) evidence and provide discovery related to that evidence as required above.

Experts

- Any witness called by other party as an expert will require additional disclosures. Expert witnesses shall be identified as an expert on the witness lists described above and their field of expertise shall be designated. Any party endorsing an expert shall provide a list of the expert's qualifications supporting their ability to testify as an expert. All statements and reports produced by the expert shall be disclosed to the adverse party no later than thirty days prior to trial. If the expert has not provided a written report, counsel shall provide a summary of the expert's expected testimony. 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.
- For all Div. E DUI/DUID cases involving HGN experts, the People are to provide to Defendant/defense counsel the following:
 1. The name of all witnesses of the prosecution intends to qualify as experts;
 2. All reports and statements of all expert witnesses;
 3. All documents, reports, and information on this case which the witness is considering in formulating the expert opinion;

4. The formal education, technical training, experience, certifications, and other factors which serve as a basis for the witness's qualifications as an expert, and;
5. The name and year of the manual(s) used to train the witness on the administration of the HGN test.

EXHIBITS AND JURY INSTRUCTIONS

- Counsel are required to provide an exhibit list to each other and the Court prior to the start of jury selection. Exhibits not timely disclosed may be excluded.
- Counsel shall tender jury instructions to the Court's clerk on the morning of trial in Microsoft Word format.

TRIAL PROCEDURES

Unless modified by the Court upon application of counsel at or before the pre-trial readiness conference, the following procedures shall apply:

Voir Dire

- On all cases, unless otherwise ordered, the parties will be permitted 20 minutes to *voir dire* the seated jury panel. A total of five extra minutes shall be allowed to conduct *voir dire* on any replacement jurors. Each party shall exercise three peremptory challenges of the seated twelve-member panel, with the remaining six jurors making up the panel.
- 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:
 - The court will read to the jury pool the instructions regarding the presumption of innocence, burden of proof, and the right to remain silent. Upon request, the Court may read additional instructions, including the elemental instructions. 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*.
 - Counsel may not ask hypothetical questions, such as asking the juror whether he or she could render a particular verdict based on certain facts.
 - Neither party shall mention that questioning may occur in private.

Opening

- Opening statements, absent court approval, shall be no longer than ten minutes per side.

Closings

- Closing statements, absent court approval, shall be no longer than fifteen minutes (including rebuttal by the prosecution) per side.

Witnesses

- The Court, if requested, will enter a sequestration order.
- Witnesses shall not be released absent court approval.
- At least one witness shall be prepared to testify before noon on the first day of trial.
- Witnesses shall be ready to testify one after another.

Miscellaneous

- ABSENT EXTRAORDINARY CIRCUMSTANCES, the Court will not grant continuance at the request of either party on the morning of trial.
- If there are multiple cases set for trial, the Court will decide which one will proceed based on the age of the case, speedy trial dates, the presence of identified victims, the defendant's custody status, and other factors, Attorneys shall be prepared to try any case they have announced as ready.
- 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.
- 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.

Failure to comply with 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.