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| DISTRICT COURTCITY & COUNTY OF DENVERLindsey-Flanigan Courthouse520 West Colfax AvenueDenver, CO 80204 | ▲ **COURT USE ONLY** ▲ |
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| Courtroom: 4G |
| **STANDING PRETRIAL AND PROCEDURAL ORDER (CRIMINAL)** |

**NOTICE TO ALL PARTIES**

**APPLICABILITY**

This Order applies to all cases assigned to Judge Johnson, regardless of whether the case was filed prior to or after the effective date of this Order.

**PLEAS AND MANDATORY DISPOSITION**

I reserve the right to not accept sentencing stipulations. If a sentencing stipulation is rejected after a plea has been taken, the defendant may be allowed to withdraw their plea if such is in the interests of justice.

Plea paperwork should be filed with the Court three days prior to the taking of the plea. If paperwork is tendered at the time of the plea, I may, in my discretion, either go forward with the taking of the plea or reschedule the matter for another day.

Unless otherwise noted by the Court, the Pre-Trial Conference will be the Court’s mandatory disposition deadline date. If no disposition is reached by that date, I will not accept any plea agreement that does not include open sentencing to the most serious charge. Of course, rare exceptions for good cause may be granted.

If a case that has been set for trial will not proceed to trial, Court staff must be informed by noon one business day before trial in order to call off prospective jurors. If the plea includes the top count, I won’t reject the plea even if it occurs on the morning of trial, but I make this request to you as a matter of courtesy to prospective jurors and accommodation to the Court.

**ADDITIONAL SETTINGS**

Counsel may, after consultation with opposing counsel, request additional pretrial settings from Court staff. No subpoena or subpoena duces tecum return date shall be set unless such date has been approved by the Court.

**EXPERT WITNESSES**

1. Reciprocal Discovery Order and Timelines.

In all cases in which a plea of “not guilty” is entered, the Court hereby orders reciprocal discovery pursuant to Crim. P. 16. The Court specifically orders the disclosure of expert, medical, and scientific reports or statements as set forth in Crim. P. 16 Part II(b)(1). The underlying facts or data supporting such opinion testimony shall also be disclosed pursuant to Crim. P. 16 Part II(b)(2). If an expert report has not been prepared, the party calling that expert shall provide a written summary of the testimony describing the witness’s opinions and the bases and reasons therefor, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

All disclosures pursuant to Crim. P. 16 Part II (a) – (d) shall be completed no later than thirty-five (35) days prior to trial. In the Court’s discretion, taking into consideration fundamental fairness, surprise, and the disclosures as a whole, experts may not be allowed to offer opinions that were not provided in the expert’s report or in the summary provided by counsel. Objections as to undisclosed opinion evidence should be made during the testimony, and parties soliciting the expert opinion should be prepared to show the Court where the opinion was disclosed.

Should medical or scientific reports or statements be introduced at an evidentiary hearing, the disclosures required by Crim. P. 16 Parts I, II, and this Order shall be completed no less than fourteen (14) days prior to the hearing.

1. Blind Experts.

Counsel presenting generalized expert testimony (“blind experts”) shall keep in mind the requirements of *People v. Cooper*, 2021 CO 69, *reh'g denied* (Oct. 25, 2021) (such testimony must be limited to that “which has a sufficient logical connection to the factual issues to be helpful to the jury while still clearing the ever-present CRE 403 admissibility bar”). Counsel is cautioned to be mindful of the reasons why the expert is being asked to educate the jury about certain concepts or principles and to specifically tailor endorsements and summaries of proposed testimony accordingly.

1. No “Tendering of Experts.”

All challenges to experts or their testimony will be litigated pre-trial. This eliminates the need to “tender,” voir dire expert qualifications, or object to their qualifications or testimony during trial.

**INSTRUCTIONS**

I have posted online the usual “[stock instructions](https://www.coloradojudicial.gov/contact/eric-m-johnson)”[[1]](#footnote-1) in the order and format I prefer. Seven days before trial, the District Attorney should file with the Court a set of instructions tailored to the case and include all elementals and special instructions (including those relating to any reasonably foreseeable lesser included offenses and anticipated affirmative defenses) along with proposed verdict forms.

Also seven days before trial, defense counsel is to file under seal any special instructions it is requesting (including those relating to any proposed lesser-included and non-included offenses and affirmative defenses as well as any proposed theory of the case). The Court needs these to prepare its voir dire and because it could affect what evidence the Court is listening for during the presentation of evidence.

All “non-COLJI” instructions should be clearly identified as such and submitted with authority supporting the proposed language and the giving of the instruction.

All proposed “modified-COLJI” instructions should be filed with changes highlighted so that I don’t have to guess what the proposed changes are and should include authority for the proposed modifications.

All instructions shall be in Bookman Old Style 12-point font, using 1.15 line spacing, and contain the heading “INSTRUCTION NO. \_\_\_\_\_” (the line is five units in length). Both counsel shall prepare verdict forms as necessary which track the proposed instructions, including verdict forms for lesser-included or non-included offenses.

By tendering such instructions, the attorney certifies that:

1. The instructions have been prepared under the attorney’s supervision.
2. The attorney has personally reviewed and proof-read the instructions and that they conform to the known facts of the case and the applicable law.
3. All necessary changes in form have been made to make the instructions grammatically correct and gender appropriate.

**EXHIBITS AND EXHIBIT LISTS**

1. General

To the extent consistent with Crim P. 16, counsel are ordered to arrange to view the opposing party’s exhibits prior to trial. Ordinarily the trial will not be interrupted for examination of exhibits.

A printout of all PowerPoint (or similar) presentations presented to the trier-of-fact during trial shall be uploaded (suppressed) to the e-file within 7 days of receiving the verdict in the case. A standard three slides per page printout, without lines for notes, is fine so long as the content is legible.

1. Motions

For motions hearings, each party must provide a good-faith witness list, a copy of its exhibit list, and each exhibit to opposing counsel five days before the hearing.

When multiple motions and exhibits are filed, it is often difficult to be sure which attachment/exhibit goes with which motion. Thus, it is ordered that all exhibits filed in support of motions will identify the motion the exhibit belongs to and include the case number as well as the alpha-numeric identifier of the exhibit (e.g. 22CR123, People’s Motion to Strike, Exhibit 1; 22CR123, D mtn supp ID, Ex. A; etc.).

1. Reverse Transfer Hearings

The Court has a separate standing order laying out specific procedures relating to reverse transfer hearings.

1. Trial
	1. Schedule

The daily trial schedule is designed to provide six hours of testimony per day. Counsel should use this benchmark when determining the number of days that will be necessary for trial. In the normal course, the parties should expect to present opening statements and one or two witnesses after voir dire on the first day of trial. The usual trial schedule is:

* 0830 - 0900 - 0.5 hour - Pretrial issues / bonus time to distribute\*\*
* 0900 - 1030 - 1.5 hours - Testimony
* 1030 - 1100 - 0.5 hour - Break\*
* 1100 - 1230 - 1.5 hours - Testimony

* 1230-1330 - 1.0 hour - Lunch

* 1330 - 1500 - 1.5 hours - Testimony
* 1500 - 1530 - 0.5 hour - Break\*
* 1530 - 1700 - 1.5 hours - Testimony

\*Breaks may be reduced to 20 minutes if needed to get back on schedule.

\*\*If we start before 0900, then extra time (up to 0.5 hour) can be meted out to extend breaks or lunch hour.

* 1. Exhibits

All exhibits shall be pre-marked before trial. People’s exhibits shall be marked in numerical sequence. Defendant’s exhibits shall be marked in alphabetical sequence. Prosecution and Defense shall not mix numbers and letters, even for related exhibits (e.g. 1(a), 1(b), 1(c), etc.). If there are more than 26 exhibits for the defendant, exhibits shall thereafter be marked as “AA”, “BB”, etc. The case number shall be placed on each of the exhibit labels. The defense should avoid submitting exhibits duplicative of the People’s.

Posters, photography enlargements, and large items may be used during trial. However, photographic copies shall be made of the above-mentioned items before trial; alternatively, posters may be prepared in a fashion in which the poster is removable from the poster board and is capable of being folded for storage. The original exhibits shall be withdrawn after the trial and the photographic copies and/or folded poster(s) shall be substituted for the originals within 14 days.

On the first day of trial, Counsel shall, to the extent consistent with Crim. P. 16, provide the Court (two copies), the court reporter (one copy), and opposing counsel (one copy) a list of exhibits which are expected to be offered in a format comparable to the example attached to this Order. Each exhibit, including exhibits to be admitted by stipulation, shall be included on the exhibit list. There is no requirement that exhibits be offered in sequence.

**WITNESSES AND WITNESS LISTS**

On the first day of trial, two (2) copies of the witness list shall be provided to the Court, one (1) copy shall be provided to the court reporter, and one (1) copy shall be provided to opposing counsel. Submission of the list of witnesses from the Complaint or Information is not sufficient. Witnesses should be listed in the proposed order of presentation and be accompanied by a good faith estimate of the time each witness is expected to testify. The time estimate for each witness will individually specify the time required for direct and cross.

Re-cross will generally not be permitted. Counsel are expected to confer regarding the time requirements for each witness, and the Court reserves the right to enforce the time limits if necessary. It is the obligation of counsel to have witnesses scheduled to prevent any delay in the presentation of testimony or running out of witnesses before the noon (12:00 P.M.) or evening (5:00 P.M.) recesses of any trial day.

If expert witnesses are to be called, and the testimony is of a technical nature, a typewritten list of technical terminology shall be provided to the court reporter at least one day prior to the expert’s testimony. Be prepared to provide copies of publications which are read from or referred to during trial.

**AUDIO-VISUAL EQUIPMENT**

The court has built-in audio-visual equipment that may be used by the parties. Notify my Division Clerk no later than seven days before a hearing or trial if you need time to learn to use the equipment or if you need your own equipment to be brought through security for use in the courtroom.

Any party intending to use the A/V system built into the courtroom is responsible to ensuring (1) that their computer is compatible with the court’s systems, and (2) that they know how to use their computer and the court’s systems.

Any party intending to bring their own equipment is responsible (1) for ensuring they know how to use the equipment, (2) making the necessary arrangements for the equipment to be set up, *tested*, and operational prior to the start of the evidence phase of the trial, (3) for informing opposing counsel at least 7 days prior to trial to make arrangements for sharing the equipment and IT professionals, and (4) for informing the Court’s Judicial Assistant to coordinate the setting up of the equipment. No modification or rearrangement of the courtroom is permitted without prior approval of the Court.

**WEBEX PROCEEDINGS**

Consistent with statutes and Chief Justice Directives, proceedings are to be livestreamed (audio and/or video) via WebEx. Objections to livestreaming should be made prior to the start of any hearing so that the Court may enter necessary findings. No person wishing to monitor a proceeding (including witness coordinators, victims, or family members) should rely on WebEx being available. The Court remains physically open to the public and any person wishing to guarantee their ability to view the proceedings should plan on attending in person.

**VOIR DIRE**

Beyond asking the jury basic background questions, the Court engages in substantial voir dire over relevant legal principles so that counsel may focus on case-specific issues. Upon request of counsel, the Court will address any case specific topics or “sensitive” issues present in the case (e.g., affirmative defenses, DV, sexual violence). The attorneys should make the Court aware of any topics/issues at the pre-trial conference.

It is the role of the court to instruct the jury on the law. The Court does not allow hypotheticals to be posed to the prospective jurors, especially when the hypothetical closely mirrors the facts of the case. The true purpose of voir dire is to attempt to ensure that the prospective jurors can be fair and impartial and follow the law given to the jurors by the Court. While the Court does not foreclose discussions involving general areas of law and the ability of the jury to follow instructions of law that are given in every case, such as circumstantial evidence, the burden of proof, and presumption of innocence, the Court will rarely allow voir dire questioning on areas of law that have yet to be determined by the court.

For guidance on your voir dire, I offer the following:

* Counsel should not fish for answers to legal questions before the applicable legal principles by which the juror should be guided have been read to the venire. Counsel should not “summarize” or “paraphrase” the law (e.g. the law of self defense).
* Counsel should not argue the case in any way while questioning the jurors.
* Counsel should not engage in efforts to indoctrinate, visit with or establish “rapport” with jurors.
* I do not allow “stake out” questions, e.g.: what kind of verdict they would render under certain named circumstances, what type or amount of evidence they would want/need before they believed a witness or reached a certain verdict.
* Finally, questions should be asked collectively of the entire panel whenever possible.

Counsel will be limited to 30 minutes on voir dire unless, upon request of counsel prior to trial, the Court deems that in the interests of justice additional time should be granted to counsel. Questionnaires will not be used with exceptions made for good cause shown.

**COMMUNICATION WITH COURT STAFF**

The best way to communicate with my staff is to send inquiries to 02Courtroom4G@judicial.state.co.us. Only ministerial matters such as scheduling shall be addressed informally via e-mail. All substantive matters will be addressed on the record and based upon written motion. Opposing counsel shall always be copied on any communications to the Court. My staff cannot give legal advice or grant informal requests not made via motion.

For questions about the Colorado Courts E-filing System (ICCES), please contact the helpdesk at efilingsupport@judicial.state.co.us or call 1-855-264-2237.

**COURTROOM ETIQUETTE**

Non-distracting food and drinks are allowed in the Courtroom insofar as they are necessary for one’s health, comfort, and ability to remain alert and engaged. However, steps should be taken to minimize potential mess to avoid overburdening Court cleaning staff.

No chewing gum is allowed.

Those requiring disability accommodation should contact the Courtroom 4G at 02Courtroom4G@judicial.state.co.us to make arrangements as soon as is practicable.

All parties are required to speak and act with respect towards all others. As such, parties are expected to learn and utilize the correct pronouns of every party to the case, witnesses, and all Court staff assisting with the trial.

BY THE COURT:

 

 Eric M. Johnson

 District Court Judge

**EXHIBIT LIST**

**People v. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Case No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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**WITNESS LIST**

**(WITH ORDER OF PROOF AND GOOD FAITH ESTIMATE OF TIME)**

**People v. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Case No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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1. https://www.coloradojudicial.gov/contact/eric-m-johnson [↑](#footnote-ref-1)