

District Court, El Paso County, State of Colorado Court Address: P.O. Box 2980 270 South Tejon Street Colorado Springs, CO 80903-22203 Phone Number: (719)452-5000	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number: Div.:16 Ctrm: S370
<hr/> <p>PEOPLE OF THE STATE OF COLORADO,</p> <p>Plaintiff,</p> <p>vs.</p> <p>Juvenile.</p>	
CASE MANAGEMENT ORDER FOR DELINQUENCY CASES	

ALL COUNSEL APPEARING IN DIVISION 16 ARE EXPECTED TO BE FAMILIAR WITH THIS CASE MANAGEMENT ORDER.

A. DISCOVERY

1. **GENERAL:** Unless otherwise agreed upon by the parties and approved by the Court, discovery shall be strictly controlled by C.R.Crim.P Rule 16. Motions requesting discovery required by that rule are NOT to be filed, C.R.Crim.P. In order to avoid unnecessary motions, the district attorney is ordered to provide the NCIC and CCIC information available on all its lay witnesses. The Court expects the district attorney to provide discovery not only of the information in its possession but also of any information relevant to the case in possession of the various investigative personnel and law enforcement, pursuant to C.R.Crim.P. 16(Part I) (b) (4).

2. **"BAD ACTS":** With the exception of rebuttal evidence, all evidence the People intend to introduce of "bad acts", "other transactions" and 404(b) acts shall be specifically identified with date, act, and offer of proof no later than 30 days prior to trial. A brief legal argument as to the theory of admissibility shall be included.

3. **EXPERT DISCLOSURES:** Both sides shall disclose the underlying facts or data supporting the opinion of any expert endorsed as a witness. Each party shall, no later than 30 days before court or jury trial, provide a written summary or report as discussed under Rule 16. Please bear in mind that if the expert chooses not to prepare a report, counsel must still provide their own summary of the expert's testimony in which the specific opinions to be

rendered are shared as well as the basis of the opinions and facts relied upon. Any rebuttal experts or opinions shall be similarly endorsed no later than 15 days before trial.

4. Notice of alibi and nature of defense disclosures pursuant to C.R. Crim.P. Rule 16 shall be filed no later than 40 days before both jury and court trials.

B. MOTIONS:

1. Counsel shall confer via phone call or email to determine if there is agreement on the motion before filing and shall indicate whether there is agreement or disagreement at the beginning of the motion. *See* C.R.C.P. Rule 121, Section 1-15, para. 8.

2. Motions and responses should be written so to advise the Court in the beginning of the motion concerning what specific relief is sought and the factual basis for the issue presented to the Court for determination. Separate motions should be addressed in separate pleadings. “Boiler plate” motions are strongly discouraged. In other words, please state the specific facts and circumstances in applying the law as it applies to this case. All motions shall include a citation to authority. Counsel shall provide proposed orders with all motions.

3. Motions (including motions *in limine*) are to be filed no later than 14 days prior to the motions hearing. Written responses from the opposing side are expected and shall be filed no less than seven days prior to the hearing date. The motions hearing date will be set at the time of arraignment, as well as the date for trial and pretrial readiness conference, all appearances are bond and/or mandatory return dates for the defendant. Additional motions hearings will be provided as appropriate to the case.

4. Counsel should advise the Court of any motions hearings that will require extended time prior to the scheduled hearing. Counsel shall also exchange a list of witnesses to be called at the motions hearing at least seven days before the hearing date.

5. The Court will make every effort to read any authority provided by counsel prior to the hearing. Citing authority for the first time during the motions hearing is discouraged. Please bring copies of all key cases you will be relying upon during argument.

C. PRELIMINARY HEARING:

On the date set for preliminary hearing, the hearing will occur or be waived. Parties should assume that a continuance of the preliminary hearing will not be granted unless good cause is shown.

D. MOTIONS ON BOND:

Motions to reduce bond will be heard only after proper notice to the District Attorney. Bond reduction hearings will only be held in conjunction with the disposition hearing or preliminary hearing, unless the bond has been set in excess of the standard bond amount. Written motions are not required.

E. PLEA HEARINGS AND SENTENCE HEARINGS:

1. All guilty pleas, including deferred sentences, will require written plea agreements. All plea agreements will be tendered to the Court in writing and include the written rights advisement as well as all terms of the agreement. Every effort should be made to have the written plea agreement and advisement completed prior to the case being called on the docket.

2. If the juvenile is on bond, a "Consent to Remain on Bond", will be tendered to the Court upon completion of the plea. Defendant will be remanded into custody if the consent is not tendered at that time. Court staff will not be responsible for obtaining the consent. The fax number for the Division 16 chambers is (719) 452-5017. Please make sure the power number is placed on the consent by the surety.

3. At the sentencing hearing, the defense attorney will advise the Court as to the itemization of pre-sentence confinement credit of which the juvenile is entitled, even if defendant's sentence does not include incarceration.

4. Counsel should be especially prepared for emotional and lengthy sentencings. Please advise the court of that fact at the time sentencing is set in order to provide for a special setting. Except for the defendant, all statements made to the court should be in writing and pre-reviewed by counsel for appropriateness and relevance. The witness may either submit the written statement to the court or read his/her written statement during the sentencing proceeding. Please ensure that statements have a specific point and are not rambling diatribes in which the person issuing it, either because of emotion or otherwise, wastes valuable court time. There shall be no threats or "burn in hell" type statements from victims or friends or relatives of the victims directed toward the defendant. All statements shall be addressed to the court and should not be directed by the witnesses towards the defendant or by the defendant towards the victim.

I. CASES SET FOR TRIAL:

A. All jury instructions of the People and of the Defense, including case specific instructions, the joint list of witnesses, exhibits and definitions and supplemental jury questionnaires will be provided to opposing counsel and delivered to the division no later than noon the Friday before the jury trial is scheduled.

B. Jurors will be provided notebooks by the Division that will contain the joint list of witnesses, potential exhibit list and any definitions and instructions counsel request to be included. In document intensive cases counsel are strongly encouraged to prepare exhibit notebooks for each of the jurors, opposing counsel, the witness and the court.

C. The in-custody juveniles must have their civilian clothes to the jail before the trial date and defendants must be dressed appropriately before court begins the day of trial. Due to the unique configuration of the Division 16 jury deliberation room, special precautions will be required in order to avoid incidental contact between the in-custody juvenile and the jurors.

D. All exhibits are to be marked before the start of trial and a copy of the master exhibit list will be provided to the Court and Court Reporter before trial.

E. Counsel are to address matters prior to jury selection and during trial so that jurors will not be kept waiting. As an example, please try to avoid arguing issues during a break while the jury is expecting to return to the courtroom. Please advise the Court of the issue prior to the break so the argument can be built into the jury time.

F. VOIR DIRE: The modified civil jury selection method shall be used. The seating chart will be completed by the Court Judicial Assistant and distributed to both sides and all Division 16 staff. The Court will also provide any relevant instructions to the jury panel during voir dire, if requested by counsel at the pretrial readiness conference.

Unless additional time is granted at the pretrial readiness conference, each side will be allowed a total of the following for *voir dire*:

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|----|----------------------|------------|
| 1. | F-1 | 60 minutes |
| 2. | F-2 and Sex Assaults | 45 minutes |
| 3. | F-3 | 30 minutes |
| 4. | F-4, F-5 and F-6 | 20 minutes |

Any party requesting a special juror questionnaire shall present the proposed questionnaire to opposing counsel and the Court not later than the pretrial readiness conference.

G. OPENING/CLOSING: Each side shall have 20 minutes for opening statements and 30 minutes closing arguments, unless additional time is requested at the pretrial readiness conference. The Prosecution may reserve rebuttal out of its 30 minutes for closing.

H. SEQUESTRATION: Potential witnesses shall not be present in the courtroom for the testimony of other witnesses. Pursuant to C.R.E. 615. sequestration of witnesses is ordered for all testimony at trial. Counsel shall advise their witnesses of the

sequestration order, as well as any other limine orders or limine issues remaining to be ruled upon.

I. The trial day generally shall begin at 9:00 and end at 5:00, with a morning and afternoon recess of 15 minutes each and a lunch recess of either an hour or hour and a half. Counsel will schedule witnesses to ensure an orderly and timely presentation of evidence so the court or jury is not kept waiting.

II. SUBPOENAE DUCES TECUM:

1. When counsel issue subpoenas *duces tecum* to third-parties in criminal cases, the documents are produced to the Court. In no case should they be provided directly to counsel's office. When a party is seeking production of records, the party must notify the division clerk to obtain a SDT return date and provide a copy to the division and opposing counsel unless otherwise directed by the court. The SDT return date will not require appearance by the defendant.

2. **REQUEST FOR RECORDS RELATING TO THE DEFENDANT.** The party seeking production of records relating to the defendant may file a written request asking the Court to release the records and serve opposing counsel (or pro se party) with the request. The opposing party will have 5 business days in which to file any objection to production, specifying any individual records claimed to be shielded from production and the grounds for that claim. The opposing party may seek access to the records to facilitate preparing this objection with the required specificity. If no objection is filed, the requesting party may appear in chambers and obtain the records. If an objection is filed, the requesting party may file a response within 5 business days.

3. **REQUEST FOR RECORDS OF A THIRD PARTY (INCLUDING THE ALLEGED VICTIM).** When records relating to a third party are requested, the Court will assume the third party has some degree of privacy interest in the information contained in the records such that they are at least confidential if not privileged. In the absence of some showing by the party issuing the subpoena that (a) the records have some relevance that outweigh the third party's privacy interest and (b)(i) that the third party has been advised of the request that his or her records be produced so s/he can raise any objections **or** (ii) a justification for proceeding *ex parte*, the Court will not release the records to the party issuing the subpoena.

4. **REQUEST FOR RECORDS FROM THE DEPARTMENT OF HUMAN SERVICES.** Records will be produced in accordance with C.R.S. § 19-1-307. While the prosecution ordinarily will be permitted access to these records pursuant to C.R.S. § 19-1-307(2)(a), a request by the defense ordinarily must comply with the criteria enunciated in *People v. Jowell*, 199 P.3d 38 (Colo. 2008).

5. The Court will not conduct broad *in camera* reviews of records. The Court will resolve claims of privilege or confidentiality, to the extent possible, based on the specifics articulated by the interested parties. The parties are encouraged to review *Alcon*

v. Spicer, 113 P.3d 735, 742 (Colo. 2005) regarding the process to be followed when a party objects to production of records because of a claim of privilege. The parties may also find helpful the opinion in *Williams v. District Court*, 866 P.2d 908, 912 (Colo. 1993), regarding the balancing approach a court is to take and the relative burdens of parties when a confidentiality claim is made as to records sought to be discovered. Finally, the parties shall review the June 21, 2010 case of *People v. Spykstra* (No. 09SA91). There are five tests enunciated in *Spykstra* which puts the burden on the requesting party to demonstrate the likelihood that the requested materials exist, have evidentiary value or are relevant, may not be procured by other reasonable means, cannot properly prepare for trial in the absence of such records, and most important is not intended as a general fishing expedition. If counsel cannot establish this burden, the Court is not required to review the records and in fact, will not allow the subpoena to go forward.

BY THE COURT:



G. DAVID MILLER
District Court Judge