

PREPARATION FOR TRIAL

BEFORE THE HONORABLE WILLIAM P. JOHNSON

A. GENERAL TRIAL PREPARATION:

Trial Counsel, your compliance with the following is required:

1. Trials will begin at 9:00 a.m. Be on time for each court session. Trial engagements take precedence over any other business. If you have matters in other courtrooms, make other arrangements in advance for the handling of such matters.
2. A multi-day jury trial will recess at about 5:00 p.m.
3. No recess to locate a missing witness will be allowed, unless the witness has been timely subpoenaed. Clients and witnesses are to be on time.
4. Stand when you speak. Do not refer to any party or attorney by their first name. Always use surnames. Do not argue with opposing counsel in the presence of the jury.
5. In opening statement, present a concise summary of the facts. Do not argue the facts nor discuss law. Do not describe in detail what particular witnesses will say. The time for opening statement will be limited.
6. When you object in the presence of the jury, make it short and to the point. Do not argue its merits in the presence of the jury. Do not argue the ruling in the presence of the jury.
7. Stand a respectful distance from the jury at all times.
8. In final argument, you may paraphrase an instruction but do not quote extensively from any instruction. Do not tell the jurors they can have the exhibits or instructions.
9. Parties should notify the Court at least two weeks in advance of trial if they require audio-visual or other special equipment. Parties are responsible for operating any of this equipment.
10. Throughout these instructions, the term "trial" refers to the initial jury selection date. **Counsel must seek leave of the Court in the form of a written motion to extend any pretrial deadline.**
11. Where a submission deadline falls on a holiday, the deadline becomes the next working day after the holiday.

B. PERTAINING TO CIVIL CASES:

Exhibits

1. On or before **TWENTY (20)** calendar days before trial, counsel for each party shall file with the Court and provide to opposing counsel, a proposed exhibit list. **IN ORDER TO MAINTAIN EFFICIENCY AND ORGANIZATION OF THE COURT'S RECORD OF THE PARTIES' NUMEROUS EXHIBITS DURING TRIAL, PARTIES SHALL USE THE FORMAT, INCLUDED AT THE END OF THIS DOCUMENT, WHEN FILING THEIR FINAL EXHIBIT LISTS WITH THE COURT PRIOR TO TRIAL.** Charts, plats, diagrams, etc., will be marked and ready as to measurements, landmarks, and other identifying factual material before trial. Counsel are strongly encouraged to stipulate to exhibits wherever possible, particularly regarding their authenticity.
2. Exhibits shall be marked and identified (Plaintiff's on *yellow* labels by *numbers* and Defendant's on *blue* labels by *letters*, e.g., A,B,C, . . . AA, AB, AC). Use of exhibit notebooks (Plaintiff's and Defendant's) are encouraged for those exhibits to which neither party has objections.
3. **TEN (10)** calendar days before trial, counsel for each party shall file with the Court a complete list of all objections to the exhibits offered, specifying the Rule of Evidence or other legal authority upon which an objection is based.

Witnesses

1. A complete list of witnesses in the order to be called must be filed with the Court no later than **TWENTY (20)** calendar days before trial, in conformance with the Pretrial Order. Counsel must also provide a list to opposing counsel.
2. Clients and witnesses are expected to be on time, and counsel should always have witnesses available to fill a full trial day (*i.e.*, 8:30 AM - 5:00 PM). Counsel who do not have a witness available may be penalized.
3. All expert reports must have been exchanged in advance in accordance with Rule 26(a)(2) of the Federal Rules of Civil Procedure. As in other areas, cumulative expert testimony will not be permitted. Challenged pursuant to *Daubert* shall be made prior to the dispositive motions deadline as set forth in the Initial Pretrial Report; that is, ***Daubert* motions are to be fully briefed no later than the date designated as the dispositive motion deadline.**

Depositions

1. Consistent with the Federal Rules of Civil Procedure, depositions may be introduced into evidence. Objections to use of deposition testimony are due within **FOURTEEN (14)** calendar days of service of the witness list. The parties must confer about any disputes and, if unable to resolve any differences, must notify the Court in writing at least **FIVE (5)** calendar days before trial.

2. If a deposition is used in part, counsel shall mark the parts to be used for opposing counsel. The court copy shall be marked. Plaintiff will use *yellow* marker and Defendant *blue* marker. This does not apply to cross-examination or rebuttal.

Memoranda of Law

Trial briefs outlining the basic legal theories, anticipated evidence in support of such theories, and the legal basis of any anticipated evidentiary disputes may be filed with the Court at least **SEVEN (7)** calendar days before trial.

Joint Statement of the Case

The parties shall submit a brief joint statement of the case **TWO WEEKS** prior to jury selection, to be submitted together with the JURY INSTRUCTIONS.

Non-jury trials: Findings of fact

Parties are to file proposed Findings of Fact and Conclusions of Law at least **TEN (10)** working days before the trailing docket is set to begin, with references to exhibits and proposed testimony.

C. PERTAINING TO CRIMINAL CASES:

1. The Government will provide Defendant notice of potential Rule 404(b) or Rule 609(b) evidence not less than **FOURTEEN (14)** calendar days in advance of trial.
2. It will facilitate an orderly and efficient trial for counsel to exchange and file with the Court witness and exhibit lists **TEN (10)** working days prior to trial so that evidentiary problems can be anticipated and resolved correctly. In the event this requirement poses a danger to potential witnesses or for other good cause, the parties should approach the Court to seek relief from this requirement prior to the deadline.
3. **IN ORDER TO MAINTAIN EFFICIENCY AND ORGANIZATION OF THE COURT'S RECORD OF THE PARTIES' NUMEROUS EXHIBITS DURING TRIAL, PARTIES SHALL USE THE FORMAT, INCLUDED AT THE END OF THIS DOCUMENT, WHEN FILING THEIR FINAL EXHIBIT LISTS WITH THE COURT PRIOR TO TRIAL.**
4. Those exhibits which are not stipulated to shall be identified in sufficient detail to allow the Court to anticipate significant evidentiary problems.
5. Counsel will not get into possible areas of reversible error without prior Court approval, whether in opening or questioning witnesses (e.g., comment on a defendant's silence, invocation of constitutional rights, Rules 404(b), 608 or 609 material, etc.).

6. Any exhibits not admitted at the beginning of trial may not be shown to the jury or testified to, regarding the contents of such exhibit, by the witness unless and until they are admitted.

D. PERTAINING TO CIVIL AND CRIMINAL CASES

1. JURY TRIALS: **Jury instructions** shall be submitted to the Court in accordance with the section entitled "Preparation of Jury Instructions" contained herein.
2. VOIR DIRE: In the average case, each counsel will be permitted **TEN (10)** minutes to voir dire the venire panel. **Do not argue the case or cite legal principles in your voir dire.** Requested voir dire shall be exchanged between counsel and shall be filed with the Court at least **TEN (10)** calendar days before the case is scheduled for jury selection. If counsel cannot agree on proposed voir dire, any objections must be brought to the Court's attention at least **FIVE (5)** calendar days prior to jury selection.
3. MOTIONS IN LIMINE: **Motions in Limine** shall be filed no later than **FOURTEEN (14)** calendar days before trial for ruling. Responses are due **TEN (10)** calendar days before trial. If a motion in limine is filed earlier than 14 days before trial, the response is due five (5) days after the motion is served. Replies to motions in limine will not be entertained unless specifically requested and allowed.

E. PREPARATION OF JURY INSTRUCTIONS - Civil and Criminal Cases

1. Proposed instructions shall be **numbered and annotated**. Refer to the Court's external website in order access Judge Johnson's trial preparation materials: www.nmcourt.fed.us. Submission of proposed instructions to the Court is a two-step process:
 - a. **File** the proposed jury instructions with citations with the Court in accordance with D.N.M. LR-Cv 5.1 at least **TWO WEEKS** before trial is scheduled.
 - b. **E-mail:** In addition to electronically filing their submissions regarding jury instructions, Plaintiff and Defendant shall submit to the Court through the email address (wpjproposedtext@nmcourt.fed.us) on the chambers web page for proposed orders, the following: (1) the requested jury instructions; (2) proposed special verdict forms and (3) the parties' Joint Statement of the Case. The requested instructions and Joint Statement of the Case must be submitted in Word format.
 - c. **For stock instructions:** Parties should refer to the Court's approved set of stock instructions, available on the chambers web page under "Stock Civil Jury Instructions." Parties are expected to agree on stock instructions. For **CRIMINAL** cases, parties should refer to Tenth Circuit Pattern instructions.
 - d. Submit no more than one instruction per page. Carefully proofread each instruction for errors in spelling, grammar, punctuation, and citations, and for unintended

deviations from pattern instructions used as sources.

2. Parties shall meet and confer in advance of the deadline to agree on as many instructions as possible. Parties shall be prepared to submit a legal basis for their objections to each instruction on which they don't agree.
3. Parties shall file **written objections** to opposing parties' submitted instructions. These objections are due **three working days** after jury instructions are due. This applies to civil cases only unless specifically requested by the Court in criminal cases.
4. The **Joint Statement of the Case** should be submitted at the same time the jury instructions are submitted, but should be filed separately. If parties cannot agree on a Joint Statement of the Case, parties should submit separate proposed Statements.

