

PREPARATION FOR TRIAL
BEFORE THE HONORABLE KAREN B. MOLZEN

Trial Counsel, your compliance with the following is required:

A. GENERAL TRIAL PREPARATION

1. 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. "Speaking" objections will not be allowed. Cite the Rule of Evidence or common designation for your objection (e.g., "hearsay"). Do not argue the merits of your objection 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. 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.
9. 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.**
10. Where a submission deadline falls on a holiday, the deadline becomes the next working day after the holiday.

Exhibits

1. On or before **TWENTY (20)** calendar days before trial, counsel for each party shall exchange exhibits, with copies for the Court pursuant to these instructions, and provide to opposing counsel and file with the Court 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, AB, . . .)
3. Parties are encouraged to use courtroom technology to display exhibits to the jurors. However, two (2) sets of exhibit notebooks (Joint and/or Plaintiff's and Defendant's) should be provided for the Court. The Court's exhibits should be provided **TWENTY (20)** calendar days before trial.
4. **TEN (10)** calendar days before trial, counsel for each party shall file with the Clerk 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. Furnish a complete list of witnesses in the order to be called to opposing counsel and file with the Clerk no later than **TWENTY (20)** calendar days before trial, in conformance with the Pretrial Order. This list shall include designation of any depositions to be used at trial.
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 a.m. – 5:00 p.m.). 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. Challenges pursuant to *Daubert* shall be made prior to the dispositive motions deadline; that is: ***Daubert* motions are to be fully briefed no later than the date designated as the dispositive motions deadline.**

Depositions

1. Consistent with the Federal Rules of Civil Procedure, depositions may be introduced into evidence. Designations of deposition testimony to be read at trial shall be provided to opposing counsel and filed with the Court no later than **TWENTY (20)** calendar days before trial, together with the parties' witness lists.
2. Objections to the use of deposition testimony are due **FOURTEEN (14)** calendar days before trial. The parties must confer about any disputes and, if unable to resolve their differences, must notify the Court in writing at least **FIVE (5)** calendar days before trial.
3. 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* highlighting and Defendant shall use *blue* highlighting. 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 Clerk at least **SEVEN (7)** calendar days before trial.

Joint Statement of the Case

The parties shall submit a brief joint statement of the case **FOURTEEN (14)** calendar days before trial, to be submitted together with proposed jury instructions.

Non-Jury Trials: Proposed Findings of Fact and Conclusions of Law

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

Jury Trials

1. **JURY INSTRUCTIONS:** Jury Instructions shall be submitted to the Court **FOURTEEN (14)** days before trial in accordance with the section herein entitled "Preparation of Jury Instructions."
2. **VOIR DIRE:** In the average case, each counsel will be permitted **TWENTY (20) 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 filed with the Clerk's Office at least **TEN (10)** calendar days before trial. 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 **FOURTEEN (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.

B. PREPARATION OF JURY INSTRUCTIONS

*Prepare your proposed Jury Instructions in accordance with these directions. File the proposed jury instructions with citations with the Clerk's office in accordance with D.N.M. LR-Cv 5.1 at least **FOURTEEN (14)** days before trial is scheduled.*

1. Parties shall meet and confer in advance of the deadline to agree on as many instructions as possible. **PARTIES SHALL SUBMIT A SET OF MUTUALLY ACCEPTABLE JURY INSTRUCTIONS ON THE SUBSTANTIVE CLAIMS OR BE PREPARED TO SUBMIT A LEGAL BASIS FOR THEIR OBJECTIONS AS TO EACH INSTRUCTION ON WHICH THEY DO NOT AGREE.**
2. Parties shall file **written objections** to opposing party's submitted instructions. Objections are due **THREE (3)** working days after jury instructions are due.
3. The **Joint Statement of the Case** should be submitted at the same time the jury instructions are submitted, but should be filed separately.
4. A proposed **Verdict Form** should also be submitted at the same time as the jury instructions and may be filed together with the jury instructions. As with the jury instructions, the parties shall meet and confer to reach a mutually agreeable verdict form, or be prepared to submit a legal basis for their objection to the opposing party's submitted verdict form.

5. Plaintiff and Defendant shall each file a numbered, annotated set of requested jury instructions at least **FOURTEEN (14)** calendar days before trial.
6. **IN ADDITION TO ELECTRONICALLY FILING THEIR SUBMISSIONS REGARDING JURY INSTRUCTIONS**, Plaintiff and Defendant shall submit to the Court through its email address (kbmproposedtext@nmcourt.fed.us) the following: (1) the requested jury instructions; (2) proposed verdict forms; (3) the parties' Joint Statement of the Case; and (4) ALL objections to the aforementioned categories. The first three documents must be submitted in Microsoft Word format.
7. Jury instructions without citations are no longer needed.
8. **Parties should not submit stock instructions.** Instead, refer to the Court's approved set of stock instructions, available on the chambers web page under "Stock Civil Jury Instructions." Parties should include a separate page with a list of requested stock instructions as each is described on the web site.
9. Submit no more than one instruction per page.
10. Carefully proofread each instruction for errors in spelling, grammar, punctuation and citations, and for unintended deviations from pattern instructions used as sources.
11. Submit a cover sheet on all sets of instructions.

TRIAL DEADLINES - CHECKLIST

20 calendar days before trial

- Exchange exhibits, provide copies of exhibits to the Court, and file proposed exhibit lists.
- Furnish complete list of witnesses in the order to be called to opposing counsel and the Court. This list shall include designation of any depositions to be used at trial.

14 calendar days before trial

- File any objections to the opposing party's proposed use of deposition testimony.
- File complete list of all objections to exhibits offered, specifying Rule of Evidence or other legal authority on which each objection is based. This list should also be submitted to kbmproposedtext@nmcourt.fed.us.
- Submit mutually agreeable Joint Statement of the Case to kbmproposedtext@nmcourt.fed.us.
- File proposed jury instructions, with annotations, in accordance with section entitled "Preparation of Jury Instructions" within Judge Molzen's trial preparation materials. Jury instructions should also be submitted to kbmproposedtext@nmcourt.fed.us. Written objections to submitted jury instructions are due **THREE (3)** working days after jury instructions are due.
- Motions in Limine must be filed.

10 calendar days before trial

- File complete list of all objections to exhibits offered, specifying Rule of Evidence or other legal authority on which each objection is based.
- For non-jury trials: file proposed Findings of Fact and Conclusions of Law, with references to exhibits and expected testimony.
- Exchange proposed voir dire with counsel and file same with the Court.
- Responses to any Motions in Limine are due. Replies will not be entertained unless specifically requested or allowed.

7 calendar days before trial

- Counsel are permitted to file Memoranda of Law.

5 calendar days before trial

- Notify the Court of any continuing disputes regarding the use of deposition testimony.
- Notify the Court of any continuing disputes regarding voir dire.

