



PREPARATION FOR TRIAL
BEFORE THE HONORABLE KAREN B. MOLZEN

DECORUM AND GENERAL INSTRUCTIONS

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. Court time may not be used for marking exhibits. This must be done in advance of the court session.
3. Under no circumstances are you to attempt to communicate in any manner with any member of the jury prior to or during trial. Your clients and witnesses should also be so instructed.
4. Do not argue the case or discuss law in your opening statement. Your opening statement should present a concise summary of the ultimate facts to be proved. Do not describe in detail what particular witnesses will say.
5. You may move from the lectern when you question witnesses so long as it is not unduly distracting or uncomfortable for trial participants.
6. If you intend to question a witness about a group of documents, avoid delay by having all the documents with you when you start the examination.
7. Commence your examination or cross-examination without unnecessary preliminary introductions.
8. When you object in the presence of the jury, make your objection 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 objection. Do not make substantive motions (*e.g.*, a motion for a mistrial or directed verdict) in the presence of the jury. Such matters may be raised at sidebar or, by request, at the first recess without waiving any rights by such delayed motion.
9. Do not argue with the ruling of the Court in the presence of the jury and refrain from thanking the Court following a ruling.
10. Each party will be responsible for securing the appearance of witnesses the party proposes to call.
11. 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.
12. Those exhibits which are not stipulated to shall be identified in sufficient detail to allow the Court to anticipate significant evidentiary problems.
13. 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.

14. Jury Instructions are to be prepared as described in a separate document which, along with Judge Molzen's stock jury instructions, are available on Judge Molzen's Chambers Page at www.nmcourt.fed.us or by request.
15. In the average case, each counsel will be permitted approximately **twenty (20) minutes** to voir dire the venire panel. **Do not argue the case or cite legal principles in your voir dire.**
16. 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.)

PRE-TRIAL TIME TABLE

1. Throughout these instructions, the term "trial" refers to commencement of the trailing docket. Therefore, all dates operate off of the initial jury selection date or date upon which the trailing docket begins. **Counsel must seek leave of the Court in the form of a written motion to extend any pretrial deadline.**
2. Where a submission deadline falls on a holiday, the deadline becomes the next working day after the holiday.

Event	Deadline	Comment
PERTAINING TO CIVIL CASES		
Exchange of Exhibits	Twenty (20) calendar days before trial	Charts, plats, diagrams, etc., shall be marked and ready as to measurements, landmarks, and other identifying factual material. Exhibits shall be marked and identified (plaintiff's on yellow labels by numbers and defendant's on blue labels by letters, <i>e.g.</i> , A, B, C, ..., AA, AB, AC, ...) prior to trial.
Objections to Exhibits	Ten (10) working days before trial	You should specify the Rule of Evidence or other legal authority upon which your objection is based. The Court will consider such objections, and most exhibits will be admitted, prior to trial.

Event	Deadline	Comment
Motions in Limine and other admissibility issues	Ten (10) working days before trial	Does <u>not</u> include <i>Daubert</i> motions. Challenges pursuant to <i>Daubert</i> shall be made prior to the dispositive motions deadline as set forth in the Initial Pretrial Report; that is, <i>Daubert</i> motions are to be filed no later than the date designated as the dispositive motion deadline.
Witness Identification	Twenty (20) calendar days before trial	Witnesses shall be identified in accordance with the Pretrial Order, but in no event later than twenty (20) calendar days before trial.
Witness and Exhibit Lists	Five (5) working days before trial	Complete lists of witnesses to be called at trial and of exhibits to be used and four (4) copies of each list shall be filed with the Clerk by the deadline. The order of the witnesses is not binding, but known witnesses not listed in accordance with this procedure will not be allowed to testify.
Expert Reports	In accordance with Rule 26(a)(2) of the Federal Rules of Civil Procedure	When calling an expert witness, it is the responsibility of counsel to establish his/her qualifications to express an opinion under Rule 702 after which counsel must move his/her acceptance by the Court as an expert. In that connection, counsel must inform the Court the particular field in which counsel offers the witness as an expert. As in other areas, cumulative expert testimony will not be permitted.
Depositions	Twenty (20) calendar days before trial	Notify opposing counsel and the Court of such intended use of depositions. If a deposition is used in part, counsel shall mark the parts to be used for the Court and opposing counsel. Plaintiff will use a yellow marker and defendant a blue marker. This does not apply to cross-examination or rebuttal.
Deposition Objections	Ten (10) working days before trial	Opposing counsel shall file with the Clerk objections to any material.

Event	Deadline	Comment
Memoranda of Law	Five (5) working days before trial	Trial briefs outlining the basic legal theories, anticipated evidence in support of such theories, and the legal basis of any anticipated evidentiary disputes are encouraged and should be filed with the Clerk.
Jury Instructions	Five (5) working days before trial	Jury Instructions are to be prepared as described in a separate document which, along with Judge' Molzen's stock jury instructions, are available on Judge Molzen's Chambers Page at www.nmcourt.fed.us or by request.
Non-jury Trials - Findings of Fact	Ten (10) working days before the trailing docket is set to begin	Findings of fact and conclusions of law shall be filed with the Clerk, with references to exhibits and proposed testimony. Each party shall also submit the proposed findings and conclusions to chambers as an attachment via e-mail. The attachment should be in WordPerfect format, if possible. The e-mail address for these submissions is kbmproposedtext@nmcourt.fed.us.
Voir dire Exchange	Five (5) working days before jury selection	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 at least five (5) working 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 two (2) working days prior to jury selection.
Objections to opponent's voir dire	Two (2) working days before trial	

TRIAL DEADLINES - CHECKLIST

! 20 calendar days before trial

- ? Mark and exchange exhibits
- ? Notify opposing counsel and Court of intended use of depositions under FRCP

! 10 working days before trial

- ? File the stipulated and contested “Exhibit Lists” (*using Judge Molzen’s form*)
- ? File objections to exhibits
- ? File motions in limine
- ? File objections to depositions noticed for trial
- ? If it will be a bench trial, file Finding of Fact and Conclusions of Law.
- ? Notify chambers if you intend to use particular equipment or courtroom technology

! 5 working days before trial

- ? File Witness List (*subject to earlier dates set by Pretrial Order*)
- ? If it will be a jury trial, file stipulated and contested jury instructions (*in following format*)
- ? Provide chambers with copy of instructions in electronic format
- ? File trial briefs
- ? Exchange requested voir dire questions

! 2 working days before jury selection

- ? Notify court of voir dire questions upon which parties cannot agree
- ? Provide the court with a Statement of the Case to be read at jury selection

NOTICE:

Counsel and parties are to appear before Judge Molzen one-half hour prior to the jury selection setting to discuss the trial and address any matters needing attention.

