

PREPARATION FOR CIVIL TRIAL
BEFORE THE HONORABLE M. CHRISTINA ARMIJO
UNITED STATES DISTRICT JUDGE

Revised and Effective as of August 1, 2002

TRIAL COUNSEL, your compliance with the following instructions is required:

I. GENERAL INSTRUCTIONS

- A. 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.
- B. Where a submission deadline falls on a weekend or holiday, the deadline becomes the next working day after the weekend or holiday, unless otherwise specified.
- C. The pretrial deadlines listed herein apply unless specifically modified by order of the Court at the pretrial conference. Counsel must seek leave of the Court in the form of a written motion to extend any pretrial deadline. Motions to extend deadlines shall also address the need, if any, to continue the pending trial date.

II. TRIAL CONDUCT

- A. 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.
- B. Court time may not be used for marking exhibits. This must be done in advance of the court session.
- C. 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.
- D. 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.
- E. Please stand at the lectern when you question witnesses. (Counsel with physical disabilities may be excused from this requirement.)
- F. 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.

- G. Commence your examination or cross-examination without unnecessary preliminary introductions.
- H. Refer to all parties and witnesses by their last names (e.g., Ms. Smith, Dr. Jones).
- I. 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.
- J. Do not argue with the ruling of the Court in the presence of the jury and refrain from thanking the Court following a ruling.
- K. The jury’s time is valuable. If you anticipate that oral argument will be required for an evidentiary ruling or to resolve some other issue during the trial, alert the Court as soon as possible so that the matter may be heard either before court or after court outside the presence of the jury.
- L. The Court will instruct the jury before closing arguments. You may refer to specific instructions in your closing argument.

III. PREPARATION FOR CIVIL TRIALS

- A. Exhibits
 - 1. Exhibits shall be exchanged at the earliest possible date, but not later than **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, e.g., A, B, C, ..., AA, AB, AC, ...) prior to trial.
 - 2. Not later than **TEN (10)** working days before trial, counsel shall file with the Clerk a complete list of all objections to the exhibits offered. You should specify the Rule of Evidence or other legal authority upon which your objection is based. The Court will consider such objections and in most cases will rule on the admissibility of exhibits prior to trial.
 - 3. Counsel shall complete a joint exhibit list using the Court’s “Exhibit List” form. (A blank form is appended to the end of these instructions and an electronic version may be downloaded from Judge Armijo’s chambers website at www.nmcourt.fed.us.) Counsel for Plaintiff shall: (1) identify the case

name and number and counsel's name at the top of the form; (2) list Plaintiff's exhibits in number order in the "Pltf No." column; (3) indicate with an "X" in the "Objection" column if either party objects to the exhibit; and (4) briefly describe the exhibit in the "Description of Exhibit" column. Once this is done, Plaintiff shall deliver the form to defense counsel who shall complete the Defendant's portion of the form in the same manner. Under the "Deft Ltr." column, list exhibits in letter order. The completed form and **four (4)** copies shall be filed with the Clerk not later than **TEN (10)** working days before trial. Court staff will complete the remaining columns of the form ("Date Offered," "Admitted," etc.) as needed during trial.

4. Please notify the Court at least ten (10) working days before trial if you intend to use audio-visual or other special equipment or courtroom technologies.

B. Motions in Limine and *Daubert* Motions

1. Challenges 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.
2. Motions in limine and all other motions regarding issues of admissibility of evidence which can be anticipated shall be filed with the Clerk not later than **TEN (10)** working days before trial.

C. Witnesses

1. Witnesses shall be identified in accordance with the Pretrial Order, but in no event later than **TWENTY (20)** calendar days before trial.
2. A complete list of witnesses to be called at trial and **four (4)** copies shall be filed with the Clerk not later than **FIVE (5)** working days before trial. The order of the witnesses is not binding but known witnesses not listed in accordance with this procedure will not be allowed to testify.
3. Each party will be responsible for securing the appearance of witnesses the party proposes to call.
4. 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.
5. All expert reports must have been exchanged in advance 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 of the particular field in which counsel offers the witness as an expert. As in other areas, cumulative expert testimony will not be permitted. As noted above, Daubert motions must be fully briefed before the dispositive motions deadline.

D. Use of Depositions

1. Consistent with the Federal Rules of Civil Procedure, depositions may also be introduced into evidence.
2. Notify opposing counsel and the Court of such intended use of depositions at least **TWENTY (20)** calendar days before trial. Opposing counsel shall file with the Clerk objections to any material at least **TEN (10)** working days before trial.
3. 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.

E. Trial Briefs

Trial briefs are mandatory in the case of bench trials. Trial briefs should outline the basic legal theories, anticipated evidence in support of such theories, and the legal basis of any anticipated evidentiary disputes, and should be filed with the Clerk at least **FIVE (5)** working days before trial.

F. Non-Jury Trials: Findings of Fact and Conclusions of Law

Findings of fact and conclusions of law shall be filed with the Clerk at least **TEN (10)** working days before the trailing docket is set to begin, with references to exhibits and proposed testimony. **Parties shall also submit their proposed findings and conclusions on 3.5" WordPerfect diskettes.**

G. Jury Trials: Voir Dire

The Court will conduct voir dire. In the average case, each counsel also 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 not less than **FIVE (5)** working days before the case is scheduled for jury selection. If counsel cannot agree on proposed voir dire, they shall notify the court of any objections not less than **TWO (2)** working days prior to jury selection.

H. Preparation of Jury Instructions

1. Your proposed Jury Instructions are due not less than **FIVE (5)** working days before trial. Please prepare your proposed jury instructions in accordance with the directions provided below.
2. Until they become available on Judge Armijo's chamber's website, parties shall use the set of civil standard instructions available on Chief Judge Parker's chambers website at www.nmcourt.fed.us for civil trials before Judge Armijo. These are primarily introductory instructions and instructions relating to burden of proof, credibility issues, duties of jurors, etc. Please do not submit instructions that are identical to these standard instructions.
3. Counsel must meet and confer prior to the deadline for submission of instructions and make a good faith effort to agree on the submission of all non-standard instructions (e.g., elements of the plaintiff's claims, special defenses, etc.) The parties must submit one set of non-standard instructions upon which they agree by the submission deadline. Requested non-standard instructions upon which the parties cannot agree must be submitted separately by each party by the submission deadline.
4. The parties must submit an original "dirty" copy of all requested non-standard instructions to the Clerk for filing. The instructions submitted to the Clerk must contain citations and a certificate of service on opposing counsel.
5. The parties must submit to Judge Armijo without filing:
 - a. One "dirty" copy of the original agreed upon instructions and of any non-agreed upon instructions with citations filed with the Clerk.
 - b. One "clean" copy of the agreed upon instructions and any non-agreed upon instructions with only the text of the instruction on the page—do not include a heading or citations.
 - c. One 3 ½ inch computer disk containing both a "clean" and a "dirty" copy of all requested instructions in WordPerfect format.
6. Parties must submit only one requested jury instruction per page. Instructions must be double-spaced.
7. Carefully PROOFREAD each Instruction for errors in spelling, grammar, punctuation and citations. When a proposed instruction is based on a specific case, include both the page on which the source begins and the page on which the specific material appears.

8. Submit a cover sheet on each set of Instructions.
9. If your proposed Jury Instructions do not comply with the above, they may be refused.

IV. PRETRIAL CONFERENCE

- A. A pretrial conference will be held approximately one or two months before trial. Parties shall be prepared to discuss all pending motions at the pre-trial conference. This means the Judge may ask you questions about the merits of your pending motions.
- B. The parties also shall be prepared to discuss scheduling issues at the pretrial conference, including:
 1. How long will it take to try the case?
 2. What motions are pending and what motions, if any, do you anticipate filing before trial?
 3. Are you ready to proceed to trial?
 4. Do you have any scheduling conflicts?
 5. What is the possibility of a settlement?
 6. Are there any anticipated problems that need to be resolved before commencement of trial?
- C. If the parties perceive any conflicts between these trial preparation instructions and the pretrial order, they shall be prepared to address them at the pretrial conference.

V. CALL OF THE CALENDAR

- A. A call of the calendar may be scheduled a few working days before trial or as specified in the notice of jury selection and trial. At the call of the calendar, the parties shall be prepared to address any issues that remain pending after the pretrial conference.
- B. After hearing from counsel, Judge Armijo will announce the date your trial will commence on the trailing docket (unless the trial has been given a definite setting).
- C. IF YOU HAVE NOT SUBMITTED PROPOSED VOIR DIRE QUESTIONS, WITNESS LISTS, OR OTHER REQUIRED MATERIALS BEFORE THE CALL OF THE CALENDAR, PLEASE BRING THEM WITH YOU FOR FILING.

VI. CHECKLIST OF DEADLINES FOR CIVIL TRIALS

A. Twenty (20) Calendar Days Before Trial:

- _____ Mark and exchange exhibits
- _____ Identify witnesses (*subject to earlier dates set by Pretrial Order*)
- _____ Notify opposing counsel and Court of intended use of depositions

B. Ten (10) Working Days Before Trial:

- _____ File objections to exhibits
- _____ File “Exhibit List” (*using Judge Armijo’ s form*)
- _____ File objections to depositions noticed for trial
- _____ File motions in limine
- _____ Notify chambers if you intend to use particular equipment or courtroom technology
- _____ *For bench trials only*, file proposed findings of fact and conclusions of law and provide chambers with a copy in electronic format

C. Five (5) Working Days Before Trial:

- _____ File complete list of witnesses to be called at trial
- _____ File trial briefs (*mandatory in bench trials*)
- _____ *For jury trials only*, exchange requested voir dire questions
- _____ *For jury trials only*, file stipulated and contested jury instructions and provide chambers with copies (in format required by Judge Armijo)

D. Two (2) Working Days Before Trial:

- _____ *For jury trials only*, notify court of voir dire upon which parties cannot agree

E. If the parties perceive any conflicts between these pretrial deadlines and the pretrial order, they shall be prepared to address them at the pretrial conference.

APPENDIX: A blank form of “exhibit list” follows these instructions.

