

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 In final argument, you may paraphrase an instruction but do not quote extensively from any instruction.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 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.**
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. 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 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 (an original and three copies) 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.
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 Clerk at least **SEVEN (7)** calendar days before trial.

Non-jury trials: Findings of fact

Parties are to submit 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. **Each party shall also submit the proposed findings and conclusions on a 3.5" WordPerfect diskette.**

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. Those exhibits which are not stipulated to shall be identified in sufficient detail to allow the Court to anticipate significant evidentiary problems.
4. 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.).
5. 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 Clerk's Office 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

*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 **TWO WEEKS** 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 to each instruction on which they don't agree.
2. Plaintiff and Defendant shall each file a numbered **original** set and two (2) copies of proposed instructions with the Clerk, in accordance with D.N.M. LR-Cv 5.1. The instructions shall list authority at the bottom of each Instruction. **(Fig.1)**.
3. Plaintiff and Defendant shall each submit a 3.5" WordPerfect diskette (compatible with WordPerfect 6.0 or higher) with a directory containing the party's proposed instructions.
4. Jury instructions without citations are no longer needed.
5. Do NOT submit stock instructions. Judge Johnson has approved and adopted a set of **stock instructions** for **civil** and **criminal** cases, both of which are available on the chambers website (<http://www.nmcourt.fed.us/dcdocs/judges/>) or from the U.S. District Court Clerk's office. In criminal matters, Judge Johnson generally uses **Fifth Circuit Pattern Instructions**. These instructions are intended for reference only.

6. Submit no more than one instruction per page.
7. Carefully proofread each instruction for errors in spelling, grammar, punctuation, and citations, and for unintended deviations from pattern instructions used as sources.
8. Submit a cover sheet on all sets of instructions.

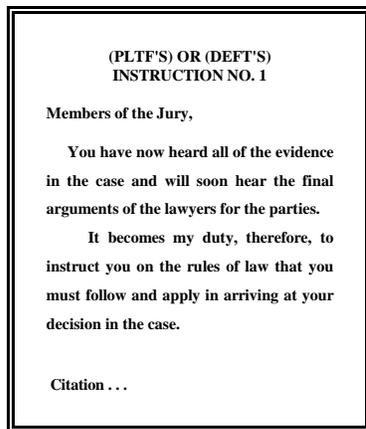


Fig.1 with Citation