

*PREPARATION FOR TRIAL*  
*BEFORE THE HONORABLE BRUCE D. BLACK*

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**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. Do not describe in detail what particular witnesses will say. Your opening statement should present a concise summary of the ultimate facts to be proved.
5. Stand within arm's length of the lectern when you question witnesses.
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. 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 at the first recess without waiving any rights by such delayed motion.
8. Do not argue with the ruling of the Court and refrain from thanking the Court following a ruling.
9. Each party will be responsible for securing the timely appearance of witnesses the party proposes to call.
10. Clients and witnesses are expected to be on time, and counsel should always have witnesses available to fill a full trial day (*i.e.*, 9:00 AM - 5:00 PM). Counsel who do not have a witness available may be penalized.
11. Those exhibits which are not stipulated to shall be identified in sufficient detail to allow the Court to anticipate significant evidentiary problems.
12. Any exhibits not admitted at the beginning of trial **may not** be shown to the jury or their contents disclosed unless and until they are admitted.
13. At least three (3) working days prior to trial, make arrangements with the Courtroom Deputy for instruction on courtroom technology. All exhibits may not be compatible with the technology.

14. Jury instructions shall be submitted to the Court in accordance with the section entitled **PREPARATION OF JURY INSTRUCTIONS** contained herein.
15. In the average case, each counsel will be permitted **fifteen (15) 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 error (*e.g.*, invocation of Defendant’s constitutional rights, co-defendant’s confession, Rules 404(b), 608 or 609 material, etc.), whether in opening or questioning witnesses, without prior Court notification, .

**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
<b>PERTAINING TO CIVIL CASES</b>		
<b>Exchange of Exhibits</b>	Fourteen (14) working 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.
<b>Objections to Exhibits</b>	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
<b>Expert Reports</b>	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.
<b>Motions in Limine and other admissibility issues</b>	Ten (10) working days before trial	Does <u>not</u> include <i>Daubert</i> or other Rule 26 motions. Such challenges shall be made prior to the dispositive motions deadline as set forth in the Scheduling Order; that is, <b>expert motions are to be fully briefed no later than the date designated as the dispositive motion deadline.</b>
<b>Witness Identification</b>	Fourteen (14) working days before trial	Potential witnesses shall be identified in accordance with the Pretrial Order, but in no event later than fourteen (14) working days before trial.
<b>Witness and Exhibit Lists</b>	Five (5) working days before trial	Complete lists of witnesses to be called at trial and of exhibits to be used shall be e-filed by the deadline. The order of the witnesses is not binding, but known witnesses not listed in accordance with this procedure may not be allowed to testify.
<b>Depositions</b>	Fourteen (14) working 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.

Event	Deadline	Comment
<b>Deposition Objections</b>	Ten (10) working days before trial	Opposing counsel shall e-filed objections to any material.
<b>Memoranda of Law</b>	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 e-filed.
<b>Non-jury Trials - Findings of Fact</b>	Ten (10) working days before the trailing docket is set to begin	Findings of fact and conclusions of law shall be e-filed, with references to exhibits and proposed testimony. <b>Each party shall also submit the proposed findings and conclusions in Word or WordPerfect format to: <a href="mailto:bbproposedtext@nmcourt.fed.us">bbproposedtext@nmcourt.fed.us</a>.</b>
<b>PERTAINING TO CIVIL <u>AND</u> CRIMINAL CASES</b>		
<b>Voir dire Exchange</b>	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. <b>Do not argue the case or cite legal principles in your voir dire.</b> 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.
<b>Objections to opponent's voir dire</b>	Two (2) working days before trial	A <b>simple, one-paragraph "statement of the case," without legal jargon, should be provided to the Court at least two (2) working days before trial.</b>

Event	Deadline	Comment
<b>PERTAINING TO CRIMINAL CASES</b>		
<b>Witness and Exhibit Lists</b>	Two (2) working days before trial	It will facilitate an orderly and efficient trial for counsel to exchange witness and exhibit lists two (2) working days prior to trial so that evidentiary problems can be anticipated and resolved promptly. 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.
<b>Gov't's Notice of Rule 404(b) or 609(b) Evidence</b>	Ten (10) working days before trial	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.)

## **PREPARATION OF JURY INSTRUCTIONS**

*Please prepare your proposed Jury Instructions in accordance with these directions. Proposed jury instructions shall be e-filed with citations in accordance with D.N.M. CM/ECF Administrative Procedures Manual at least **ONE WEEK** before trial is scheduled.*

1. Parties shall meet and confer in advance of the deadline to agree on as many instructions as possible. Indicate those to which there are no objections.
2. The instructions shall list authority at the bottom of each Instruction.
3. Plaintiff(s) shall submit a proposed set of instructions in Word or WordPerfect format to: [bbproposedtext@nmcourt.fed.us](mailto:bbproposedtext@nmcourt.fed.us).
4. Defendant(s) shall submit a proposed set of instructions in Word or WordPerfect format to: [bbproposedtext@nmcourt.fed.us](mailto:bbproposedtext@nmcourt.fed.us).
5. Parties shall submit not more than one instruction to a page.
6. Carefully PROOFREAD each instruction for errors in spelling, grammar, punctuation and citations, and for unintended deviations from pattern instructions used as sources.

7. IN CIVIL MATTERS, a copy of pattern civil instructions can be found at <http://www.nmcourt.fed.us/web/DCDOCS/Judges/black.html>.
8. IN CRIMINAL MATTERS, Judge Black uses the TENTH CIRCUIT CRIMINAL PATTERN JURY INSTRUCTIONS (Thomson West 2005). These instructions are available at <http://www.ca10.uscourts.gov>.
9. Attorneys need not include duplicates of the pattern instructions among those they submit but may simply designate such pattern instructions. When submitting pattern instructions, parties should offer suggestions for the “blanks” in pattern instructions. See, e.g., Tenth Circuit Criminal Pattern Jury Instruction No. 1.24.