

**PRETRIAL INSTRUCTIONS FOR CRIMINAL CASES
BEFORE THE HONORABLE SARAH M. DAVENPORT
UNITED STATES DISTRICT JUDGE**

GENERAL INSTRUCTIONS

I. CALL OF THE CALENDAR

- A. Upon Indictment, Judge Davenport schedules a call of the calendar for all cases following the Notice of Arraignment. At the call of the calendar, Judge Davenport will set a specific trial date after hearing from counsel.
- B. At the call of the calendar, counsel must be prepared to address any pending issues, number of days anticipated for trial, and availability of counsel, defendant, and witnesses.
- C. All motions to continue trial should be filed no later than 48 hours prior to the call of the calendar and state the grounds for the motion in accordance with 18 U.S.C. § 3161(h)(7) and *United States v. Toombs*, 574 F.3d 1262 (10th Cir. 2009). If the case is a multi-defendant case, counsel is to state in the motion each defendant's position, and preferably file a joint motion.

II. AUDIO-VISUAL EQUIPMENT

- A. Counsel shall notify the Court at least **14 days before trial** if they require audio-visual or other special equipment. Counsel must contact and receive training from the Court's IS department before trial regarding any technology needs. Counsel are responsible for operating the equipment as needed.

III. JURY INSTRUCTION DEADLINES

- A. Counsel shall meet and confer in advance of the deadline to agree on as many instructions as possible. Parties are expected to agree on stock instructions.
- B. Judge Davenport has provided a *Praecipe* for counsel to complete when submitting Jury Instructions. Counsel need not submit the text of Judge Davenport's stock instructions – simply **indicate whether the parties accept the stock instructions or are proposing alternatives**.
 1. For any instructions on which counsel submit a non-stock instruction or do not agree, counsel shall separately submit, *at the same time that they submit proposed instructions*, a memoranda explaining their objections, their proposed alternative instructions, and authority in support of their arguments/proposed instructions.
- C. No later than **14 days before trial**, counsel shall file the *Praecipe* and Memoranda on CM/ECF and submit an e-mail attaching the proposed set of instructions in Word format to NMD-DavenportChambers@uscourts.gov.

IV. WITNESSES AND EXHIBITS

- A. The Court acknowledges that while the government is required to disclose evidence it intends to use at trial, neither the Federal Rules of Criminal Procedure nor Tenth Circuit precedent mandates that the government provide a detailed, formal exhibit list before trial in non-capital cases. *See United States v. Lewis*, 594 F.3d 1270, 1281 (10th Cir. 2010). Some provisions allow the government to withhold impeachment or witness identity until the time of testimony. *See* Federal Rule of Criminal Procedure 26.2 and the Jencks Act. However, the Court's Scheduling Orders seek to provide for a fair trial through the orderly and efficient disposition of pretrial matters, including suppression, without the defense filing unnecessary motions on discovery materials that the United States has no intention of offering as evidence in trial. As such, the Court expects that these lists will reflect a thoughtful determination that the included witnesses and exhibits constitute relevant, admissible evidence for trial, as best can be determined at the time of filing. The Court recognizes the government's continuing duty to disclose and the reality that these lists may be refined in the days leading up to trial. Further, trials can be unpredictable and a piece of evidence that did not appear relevant earlier, may become relevant during the presentation of evidence. So long as any additional exhibit tendered during trial has been properly disclosed and the foundational requirements met, the Court will not engage in presumptive suppression solely on the basis that it was not listed on a previously filed list. Furthermore, once an exhibit has been admitted, it may be used by any party, not only the party who admitted it and therefore, opposing counsel need not duplicate the admission of exhibits already in evidence.
- B. Parties shall notify the Court as soon as possible (but no later than **7 days before the call of the calendar**) regarding matters that will require additional preparation time, such as the intent to introduce expert or co-conspirator testimony, so that the Court may allow sufficient time to address potential *Daubert* challenges or to hold *James* hearings.
- C. In submitting electronic exhibits to the Court, refer to the Court's [Jury Evidence Recording System \(JERS\) guide](#) for instructions.
- D. Consistent with the Federal Rules of Criminal Procedure, deposition testimony may be introduced into evidence. If depositions are used in part, counsel shall mark the parts to be used (this does not apply to cross-examination or rebuttal).

V. PRETRIAL CONFERENCE

- A. The Court will schedule a pretrial conference one week before trial. During this conference, counsel shall be prepared to address any pending motions or other unresolved issues prior to the commencement of trial. Counsel shall bring copies of all exhibits with them to the pretrial conference.

VI. PRETRIAL DEADLINES

- A. A scheduling order will be issued in each criminal case near the time the Indictment is filed. When a submission deadline falls on a weekend or holiday, the deadline becomes

the following working day **Counsel must seek leave of the Court in the form of a written motion to extend any pretrial deadline.**

B. Counsel shall refer to the scheduling order entered in each case, but generally the deadlines will be as follows:

Seven weeks before trial:	Expert notices
Six weeks before trial:	Pretrial motions and notices, including: <ul style="list-style-type: none">○ Motions <i>in limine</i>○ <i>Daubert</i> motions○ Fed. R. Evid. 404(b) and 609 notices, and○ <i>James</i> motions
Four weeks before trial:	Exhibit and Witness Lists, Responses to pretrial motions and notices;
Three weeks before trial:	Objections to Exhibits;
Two weeks before trial:	Proposed <i>Voir Dire</i> , and Jury Instructions;
One week before trial:	Jury Evidence Recording System (JERS) device.

VII. GENERAL GUIDELINES FOR TRIAL

- A. Trial will begin at 9:00a.m. Counsel shall be in the courtroom no later than 8:30a.m. and be prepared to discuss any pretrial matters, unless the Court sets an earlier time.
- B. A multi-day jury trial typically will recess around 5:00p.m. The Court will allow regular breaks.
- C. Stand when you speak and use the microphone at the podium. Do not refer to any party or attorney by first name. Address the Court only; do not address or argue with opposing counsel in the presence of the jury. If opposing counsel must confer, please request permission of the Court to do so privately and quietly.
- D. Witnesses must be on time, and counsel should have witnesses available to fill a full trial day.