

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

IN RE: ALL CRIMINAL MATTERS ASSIGNED
TO DISTRICT JUDGE MARGARET I.
STRICKLAND

STANDING ORDER: DEADLINES FOR CRIMINAL TRIALS

The following procedures shall be followed in all criminal trials unless otherwise ordered by the Court.

A. Call of the Calendar

Trial counsel must plan to appear on behalf of client. If unable to appear, please advise the Court no less than 24 hours before Call of the Calendar and arrange for substitute counsel.

Please be prepared to address (1) the number of days needed for trial and (2) availability of counsel, client, and witnesses.

B. Motions to Continue

All motions to continue trial shall be filed *no later than 24 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). **Motions to Continue filed after the Court's deadline or without stating the necessary legal grounds will be summarily denied.**

Counsel shall specify the number of motions to continue that have been filed in the underlying case and shall specify the facts and circumstances giving rise to a continuance of trial setting.

If the case is a multiple defendant case, counsel is to state in the motion each defendant's position on the motion and preferably file a joint motion to continue.

Counsel shall provide chambers with a proposed Order. See sample Order on Judge Strickland's webpage under "Resources."

C. Pretrial Deadlines

Counsel must seek leave of the Court in the form of a written motion to extend any pretrial deadline. Where a submission deadline falls on a Saturday, Sunday, or a holiday, the deadline becomes the next business day.

(1) **Disclosure of opinion evidence and Rule 404(b) evidence to opposing party**

(a) Deadlines:

(i) Government: 30 days after indictment

(ii) Defendant(s): 45 days after indictment

(b) The opinion notice “must describe the witness’s opinions, the bases and reasons for those opinions, and the witness’s qualifications.” Fed. R. Crim. P. 16(a)(1)(G). Vague statements describing the topic of testimony are insufficient.

(c) Rule 404(b) notice must “articulate . . . the permitted purpose for which the prosecutor intends to offer the evidence and the reasoning that supports the purpose.” Fed. R. Evid. 404(b)(3)(B).

(d) Counsel must also file a list briefly outlining (1) each opinion; (2) the witness who will offer the opinion; and (3) the date and manner in which the opinion was disclosed to opposing counsel.

(2) **Motions regarding opinion testimony, including under *Daubert* and Fed. R. Evid. 702**

(a) Deadline: 21 days before trial (unless otherwise set earlier by the Court)

(3) **Motions in Limine and other admissibility issues**

(a) Deadline: 21 days before trial

(b) Responses are due 10 days before trial. Replies to motions in limine will not be entertained unless specifically requested and allowed.

(4) **Jury Instructions**

(a) Deadline: 14 days before trial

(b) Please refer to detailed requirements for jury instructions set out on Judge Strickland’s [webpage](#).

(5) **Witness Lists**

(a) Deadline: 14 days before trial

(b) Counsel shall furnish a complete list of witnesses, in the order to be called,

to opposing counsel and file it with the Court. This list shall indicate any witness who will give expert testimony.

(6) Exhibit Lists

- (a) Deadline: 14 days before trial (JERS deadline: 7 days before trial)
- (b) Counsel shall file a proposed exhibit list(s)—a joint stipulated list (if possible) and separate lists if there are disputes. See detailed instructions below.

(7) Deposition Testimony

- (a) Deadline: 14 days before trial
- (b) See additional details below.

(8) Notice to Court of Need to Use Courtroom Technology

- (a) Deadline: 14 days before trial
- (b) See additional details below.

(9) Objections to Witness Lists, Exhibit Lists, and Deposition Testimony

- (a) Deadline: 5 days before Pretrial Conference
- (b) The parties must confer about any disputes and, if unable to resolve any differences, must notify the Court in writing.
- (c) Exhibits. Counsel shall file a complete list of all objections to the exhibits offered, specifying the Rule(s) of Evidence or other legal authority upon which an objection is based. This includes objections based on foundation. ***Failure to file objections by this deadline constitutes waiver of the objection.***

(10) Joint Pretrial Binder

- (a) Deadline: 5 days before Pretrial Conference
- (b) The Parties shall **JOINTLY** submit to the Court a three-ring binder that contains the following items, separately tabbed:
 - i. All pending Motions and Responses thereto
 - ii. Government's Notice(s) of Intent (re: 404(b) Evidence, death penalty, enhanced sentence, self-authenticating documents, etc.)
 - Defendant's Response(s)
 - iii. Joint Stipulated Exhibit List (discussed below, para. E(1))
 - iv. Government's Exhibit List (see Sample Exhibit List, Appendix A)
 - Defendant's Objections
 - v. Government's Witness List (see Sample Witness List, Appendix B)

- Defendant's Objections
- vi. Defendant's Exhibit List (see Sample Exhibit List, Appendix A)
 - Government's Objections
- vii. Defendant's Witness List (see Sample Witness List, Appendix B)
 - Government's Objections
- viii. Government's Expert Witness Notices (if any)
- ix. Defendant's Expert Witness Notices (if any)
- x. Government's Proposed Voir Dire
- xi. Defendant's Proposed Voir Dire
- xii. Government's Proposed Jury Instructions
- xiii. Defendant's Proposed Jury Instructions

The pretrial binders are considered **FINAL**. Once the binders are submitted, no additional or amended materials will be permitted without leave of the Court. If the Court grants leave to submit additional or amended materials, the responsible party shall submit an entirely new binder that includes all the required items, including the additional and/or amended materials.

D. Motions in Limine

Pretrial motions in limine rulings can save time and avoid interruption at trial; however, "most objections will prove to be dependent on trial context." *United States v. Mejia-Alarcon*, 995 F.2d 982, 988 (10th Cir. 1993).

Litigants may not raise non-evidentiary matters in limine. *Louzon v. Ford Motor Co.*, 718 F.3d 556, 561–62 (6th Cir. 2013).

A ruling on a motion in limine is "essentially an advisory opinion" and may be changed at trial. *United States v. Luce*, 713 F.2d 1236, 1239 (6th Cir. 1983) (citing *United States v. Oakes*, 565 F.2d 170, 171–72 (1st Cir. 1977); *Rouse v. United States*, 359 F.2d 1014 (D.C. Cir. 1966)).

E. Exhibits

- (1) Exhibit Lists: The parties shall **jointly** file a consolidated list of all stipulated exhibits. Each offering party must file a **separate** list of all contested exhibits. See Sample Exhibit List, Appendix A. The Court encourages the parties to resolve disputes over the authenticity and foundation of exhibits as soon as possible.

(2) Exhibit Binders: Within **three days** of submitting the exhibit lists, the parties shall deliver to Chambers two identical copies of a binder containing the stipulated exhibits. Additionally, each side must deliver to Chambers two identical copies of a binder containing its contested exhibits. All exhibits must be marked and shall be **labeled consecutively by number** (and by party, for contested exhibits).

(a) For example, if there are 50 stipulated exhibits, 20 contested plaintiff's exhibits, and 20 contested defendant's exhibits, the first set of binders shall contain stipulated exhibits numbered 1 to 50. The second set of binders shall contain the government's contested exhibits numbered 51 through 70 and defendant's contested exhibits numbered 71 through 90.

The exhibit binders are considered **FINAL**. Once the binders are submitted, no additional exhibits will be permitted without leave of the Court. If the Court grants leave to submit additional exhibits, the responsible party shall submit an entirely new binder that includes all the exhibits, including the new exhibit(s).

(3) Electronic Format: Exhibits must also be submitted in electronic format. Refer to the [Attorney Guide to JERS](#) for instructions on how to submit electronically formatted trial exhibits to the Court at **least 7 days before trial**.

(4) These instructions are to be followed to the extent feasible. The Court understands that in criminal cases, exhibits often need to be admitted during trial, and such is acceptable.

F. Witnesses

(1) Clients and witnesses are expected to be on time, and counsel should always have witnesses available to fill a full trial day.

(2) Cumulative expert testimony will not be permitted.

(3) Objections to the admission of exhibits, including foundational/authenticity objections, will be heard and ruled upon at the **Pretrial Conference**; counsel should have any foundational and authenticating witness(es) available at the Pretrial Conference.

(a) Local witnesses are expected to attend court. Local witnesses are defined as those who, by car, are within an approximate three-hour driving radius from Las Cruces, to include those witnesses located

in Albuquerque, Roswell, and El Paso, Texas. Non-local witnesses, by a sufficient and timely (no less than three days before the witness is expected to testify) request by the proponent, may appear remotely at the Pretrial Conference; witnesses with other exceptional or emergency circumstances who can not attend court in person shall similarly, with as much advance as possible, request to appear remotely at the Pretrial Conference.

G. Deposition Testimony

- (1) Consistent with the Federal Rules of Criminal Procedure, deposition testimony may be introduced into evidence.
- (2) The parties shall file designations, and counter-designations, of deposition testimony that they intend to use at trial. The designations must state the pages and lines of the deposition to be used.
- (3) If a deposition is used in part, counsel shall highlight the parts to be used, for opposing counsel and the Court. This does not apply to cross-examination or rebuttal.

H. Affirmative Defenses

The Court will not permit the Defendant to elicit testimony supporting an affirmative defense from a Government witness during the Government's case-in-chief unless the Defendant first makes a prima facie evidentiary showing supporting the affirmative defense. The Defendant may make the prima facie evidentiary showing during the pretrial conference, subject to the Federal Rules of Evidence.

I. Guidelines for Trial

- (1) The Court may schedule a pre-trial conference to be held 1–3 days prior to trial. During this conference, counsel shall be prepared to address any unresolved issues prior to the commencement of trial. Counsel are to bring copies of all exhibits with them to the pre-trial conference.
- (2) Counsel shall be in the courtroom no later than 8:15 a.m. and be prepared to discuss any matter that should be addressed outside the presence of the jury. Be on time for each court session. Trial engagements take precedence over any other

business. If you have matters in other courts, make other arrangements in advance for the handling of such matters.

- (3) A multi-day jury trial generally will recess at about 5:00 p.m. The Court generally will recess each morning and afternoon for a 15-minute comfort break and a 60-minute lunch break for attorneys (75-minutes for the jury).
- (4) Stand when you speak. Do not refer to any party or attorney by their first name. Always address the Court only; do not address or argue with opposing counsel in the presence of the jury. If counsel must confer with one another, please request permission of the Court for a moment to do so privately and quietly.
- (5) Speaking objections are not allowed. You may ask to approach the bench to discuss an objection.
- (6) Parties should notify the Court at least **two** weeks in advance of trial if they require audio-visual or other special equipment. If parties are unfamiliar with the operation of courtroom technology, they shall make arrangements with my Court Room Deputy, Jessica Chavez at (575) 528-1683, to schedule a time to test and run the equipment. Parties are responsible for operating any of this equipment. Please bring physical copies of all exhibits to ensure their compatibility with the Court's equipment.

IT IS SO ORDERED.



MARGARET STRICKLAND
UNITED STATES DISTRICT JUDGE

SAMPLE EXHIBIT LIST

Case No. ___-cr-____-MIS

United States v. Defendant

GOVERNMENT’S/DEFENDANT’S EXHIBIT LIST

Exhibit No.	Description of Exhibit	Foundation	Off’d?	Obj?	Ruling	Notes
1 or A						
2 or B						
3 or C						
4 or D						
5 or E						
6 or F						
7 or G						

SAMPLE WITNESS LIST

Case No. __-cr-____-MIS

United States v. Defendant

GOVERNMENT'S/DEFENDANT'S WITNESS LIST

NAME	CALLED?