

**PREPARATION FOR TRIAL
BEFORE THE HONORABLE LAURA FASHING**

Trial Counsel, your compliance with the following is required:

A. GENERAL TRIAL PREPARATION

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 handling these matters.
2. A multi-day trial will recess at about 5:00 p.m. each day.
3. No recess to locate a missing witness will be allowed unless the witness has been timely subpoenaed. Clients and witnesses must be on time.
4. Stand when you speak. Do not refer to any party or attorney by his or her 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 or 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. Speaking objections will not be allowed. Cite the Rule of Evidence or common designation for your objection (e.g., “hearsay”). Do not argue the merits of your objection 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. The Courtroom is equipped with a Digital Evidence Presentation System (DEPS). You are responsible for operating the DEPS. For training on use of the DEPS, please contact Judge Fashing’s CRD, Natalie Maestas, at 505-348-2071 at least two weeks before trial to schedule training. Please visit www.nmd.uscourts.gov/courtroom-technology for more information on DEPS and other technology available in the Courtroom.
9. Throughout these instructions, the term “trial” refers to the initial jury selection date. **Counsel must seek leave of the Court in the form of a written motion to extend any pretrial deadline.**
10. Where a submission deadline falls on a weekend or holiday, the deadline becomes the next working day after the weekend or holiday.

Exhibits

1. **TWENTY-ONE (21)** calendar days before the pretrial conference, counsel for each party will exchange exhibits and proposed exhibit lists, provide hard copies of exhibits to the Court pursuant to these instructions, and file the proposed exhibit lists with the Court. **TO MAINTAIN EFFICIENCY AND ORGANIZATION OF THE COURT’S RECORD OF TRIAL EXHIBITS, PARTIES WILL USE THE FORMAT ATTACHED AT THE END OF THIS DOCUMENT WHEN FILING THEIR FINAL EXHIBIT LISTS WITH THE COURT.** Charts, plats, diagrams, etc. should be marked and ready as to measurements, landmarks, and other identifying factual material before the pretrial conference.

2. The Court strongly encourages counsel to stipulate to the admissibility of exhibits wherever possible, particularly regarding their authenticity. **FOURTEEN (14)** calendar days before the pretrial conference, the parties, together, must file a consolidated exhibit list identifying all exhibits that the parties have stipulated are admissible.
3. Mark exhibits for identification prior to the pretrial conference (Plaintiff's on *yellow* labels by *numbers* and Defendant's on *blue* labels by *letters*, e.g., A, B, C, . . . AA, AB, AC, . . .). The identification number or letter will remain the same whether the exhibit is admitted or not.
4. The Court requires parties to use courtroom technology to display exhibits to the jurors, if possible. However, each party must provide exhibit binder(s) **and** an electronic copy of exhibits to the Court **TWENTY-ONE (21)** calendar days before the pretrial conference.
5. **FOURTEEN (14)** calendar days before the pretrial conference, counsel for each party will file with the Clerk a complete list of all objections to the exhibits offered by the other party, specifying the Rule of Evidence or other legal authority upon which an objection is based.

Witnesses

1. Furnish a complete list of witnesses in the order to be called to opposing counsel and file with the Court no later than **TWENTY-ONE (21)** calendar days before the pretrial conference, in conformance with the Proposed Pretrial Order. This list must include the name of any witness whose testimony will be presented by deposition, and must indicate that the testimony will be by deposition.
2. Clients and witnesses must be on time, and counsel always should have witnesses available to fill a full trial day (i.e., 9:00 a.m. to 5:00 p.m.). The Court may penalize counsel who do not have a witness available to testify.
3. Counsel must exchange all expert reports in advance in accordance with Rule 26(a)(2) of the Federal Rules of Civil Procedure. As in other areas, the Court will not permit cumulative expert testimony. **Parties must file any *Daubert* motions no later than the date designated as the dispositive motions deadline.**

Depositions

1. Consistent with the Federal Rules of Civil Procedure, the parties may introduce depositions into evidence. The parties must provide designations of deposition testimony to be read at trial to opposing counsel and provide a copy to the Court no later than **TWENTY-ONE (21)** calendar days before the pretrial conference, together with the parties' witness lists.
2. Objections to the use of deposition testimony are due **FOURTEEN (14)** calendar days before the pretrial conference. The parties must confer about any disputes and, if unable to resolve their differences, must notify the Court in writing at least **SEVEN (7)** calendar days before the pretrial conference.
3. If a deposition is used in part, counsel will mark the parts to be used for opposing counsel. The parties also should mark the Court's copy. Plaintiff will use *yellow* highlighting and Defendant will use *blue* highlighting. This does not apply to cross-examination or rebuttal.

4. Counsel may not simply read the deposition transcript at trial. Counsel must provide a person to assist in reading the deposition transcript on the witness stand.

Memoranda of Law

The parties may file, but are not required to file, trial briefs outlining the basic legal theories, anticipated evidence in support of such theories, and the legal basis of any anticipated evidentiary disputes at least **SEVEN (7)** calendar days before the pretrial conference. The Court will not accept trial briefs filed less than seven days before the pretrial conference.

Non-Jury Trials: Proposed Findings of Fact and Conclusions of Law

The parties must file proposed Findings of Fact and Conclusions of Law at least **FOURTEEN (14)** calendar days before the pretrial conference, with references to exhibits and expected testimony.

Jury Trials

1. **JURY INSTRUCTIONS:** Jury Instructions will be submitted to the Court **FOURTEEN (14)** days before the pretrial conference in accordance with the section below entitled “Preparation of Jury Instructions.”
2. **JOINT STATEMENT OF THE CASE:** The parties must confer and submit a brief joint statement of the case **FOURTEEN (14)** calendar days before the pretrial conference that will be read to the jury panel during jury selection. If the parties are unable to agree to a joint statement of the case, each party must submit a separate statement of the case. The parties must file the joint statement of the case on the docket and submit it to the Court in Microsoft Word format at fashingchambers@nmd.uscourts.gov.
3. **VOIR DIRE:** The Court will conduct the initial voir dire of the panel before counsel will be allowed to conduct voir dire. The Court’s standard voir dire is available on the chambers’ web page at www.nmd.uscourts.gov/content/honorable-laura-fashing. Counsel should review the Court’s voir dire prior to the pretrial conference and will have an opportunity to object to the Court’s voir dire at the pretrial conference. In the average case, each party will be permitted **TWENTY (20) minutes** to voir dire the venire panel. **Do not argue the case or cite legal principles in your voir dire.** Requested voir dire will be exchanged between counsel and filed with the Clerk’s Office at least **FOURTEEN (14)** calendar days before the pretrial conference. If counsel cannot agree on proposed voir dire, any objections must be brought to the Court’s attention at least **SEVEN (7)** calendar days prior to the pretrial conference.
4. **MOTIONS IN LIMINE:** Motions in Limine will be filed no later than **TWENTY-ONE (21)** calendar days before the pretrial conference for ruling. Responses are due **FOURTEEN (14)** calendar days before the pretrial conference. If a motion in limine is filed at least **TWENTY-EIGHT (28)** days before the pretrial conference, the response is due **FOURTEEN (14)** days after the motion is served. Replies to Motions in Limine will not be entertained unless specifically requested and allowed.

B. PREPARATION OF JURY INSTRUCTIONS

*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-Civ. 5.1 at least **FOURTEEN (14)** calendar days before the pretrial conference.*

1. Parties will meet and confer in advance of the deadline to agree on as many instructions as possible. **PARTIES WILL FILE A SET OF MUTUALLY ACCEPTABLE JURY INSTRUCTIONS ON THE SUBSTANTIVE CLAIMS OR BE PREPARED TO FILE A LEGAL BASIS FOR THEIR OBJECTIONS AS TO EACH INSTRUCTION ON WHICH THEY DO NOT AGREE.** To the extent counsel cannot agree, each party must file that party's proposed jury instructions as a separate document as directed in paragraph 2 of this section.
2. Plaintiff and Defendant will each file a numbered, annotated set of requested jury instructions to which the other party does not agree at least **FOURTEEN (14)** calendar days before the pretrial conference. The parties need not submit a "clean" set of jury instructions without annotations and citations.
3. Parties will file **written objections** to opposing party's submitted instructions. Objections are due **THREE (3)** working days after jury instructions are due.
4. A proposed **Verdict Form** should be filed at the same time as the jury instructions and may be filed together with the jury instructions. As with the jury instructions, the parties will meet and confer to reach a mutually agreeable verdict form or be prepared to file a legal basis for their objection to the opposing party's proposed verdict form. To the extent the parties cannot agree, each party shall submit its own version of the proposed verdict form.
5. **IN ADDITION TO ELECTRONICALLY FILING THEIR SUBMISSIONS REGARDING JURY INSTRUCTIONS,** Plaintiff and Defendant will submit the requested jury instructions (including the stipulated instructions) and proposed verdict forms to the Court's email address (fashingchambers@nmd.uscourts.gov) in Microsoft Word format.
6. Submit no more than one instruction per page. Each jury instruction should be numbered at the top of the 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 identifying that set of instructions. For example, "Plaintiff's Proposed Jury Instructions" or "Stipulated Jury Instructions."
9. **PARTIES SHOULD NOT SUBMIT STOCK INSTRUCTIONS.** Instead, refer to the Court's approved set of stock instructions, available on the chambers' web page at www.nmd.uscourts.gov/content/honorable-laura-fashing under the "Stock Jury Instructions" tab. Parties should include a separate page with a list of requested stock instructions as each is described on the web site. Any objections to the stock jury instructions will be addressed at the pretrial conference.

TRIAL DEADLINES - CHECKLIST

21 calendar days before the pretrial conference

- Exchange exhibits and proposed exhibit lists, provide exhibit binders and electronic copies of exhibits to the Court, and file proposed exhibit lists.
- Exchange complete list of witnesses in the order to be called and file copy with the Court. List should include witnesses testifying by deposition.
- Exchange depositions to be used at trial and provide copies to the Court.
- File motions in limine.

14 calendar days before the pretrial conference

- File joint list of the exhibits that the parties stipulate are admissible.
- File complete list of objections to exhibits offered, specifying Rule of Evidence or other legal authority on which each objection is based.
- File any objections to the opposing party's proposed use of deposition testimony.
- File mutually agreeable Joint Statement of the Case and submit in Word format to fashingchambers@nmd.uscourts.gov.
- For non-jury trials, file proposed Findings of Fact and Conclusions of Law, with references to exhibits and expected testimony.
- File proposed jury instructions, with annotations, and proposed verdict form, in accordance with section entitled "Preparation of Jury Instructions" within Judge Fashing's trial preparation materials. Jury instructions also should be submitted to fashingchambers@nmd.uscourts.gov. Written objections to submitted jury instructions are due **THREE (3)** working days after jury instructions are due.
- File responses to any motions in limine. Replies will not be entertained unless specifically requested and allowed.
- Exchange proposed voir dire with counsel and file same with the Court.

7 calendar days before the pretrial conference

- Notify the Court of any continuing disputes regarding the use of deposition testimony.
- File Memoranda of Law (optional).
- Notify the Court of any continuing disputes regarding voir dire.