

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CR 07-617 JH

DANUEL DEAN QUAINANCE, et al.,

Defendants.

ORDER GRANTING CONTINUANCE OF TRIAL

THIS MATTER is before the Court on the Defendants' Joint Motion to Vacate and Continue Calendar Call and Trial Settings [282], filed August 2, 2007.

The Court, having reviewed the motion and noting the U.S. Attorney does not oppose the motion, finds that the motion is well taken and will be granted. The Court specifically finds, pursuant to 18 U.S.C. § 3161 (h)(8)(A), that the ends of justice served in granting the continuance outweigh the best interest of the public and the defendant in a speedy trial. The Court further finds, pursuant to 18 U.S.C. § 3161(h)(8)(A), that good grounds exist for the continuance as additional time is needed for Defense counsel to conduct investigations.

IT IS THEREFORE ORDERED that the Defendants' Joint Motion to Vacate and Continue Calendar Call and Trial Settings [282], filed August 2, 2007 is granted, and the trial date of August 20, 2007 is vacated and rescheduled for **SEPTEMBER 25, 2007 at 9:00 a.m. on a trailing docket** before Judge Judith C. Herrera. Trial will be held at Brazos Courtroom--5th Floor, 333 Lomas Blvd. N.W., Albuquerque, New Mexico. The period of time from the entry of this order until the new trial date shall be excluded, pursuant to 18 U.S.C. § 3161 (h)(8)(A), from the time limitations set forth within 18 U.S.C. § 3161(c)(1).

IT IS FURTHER ORDERED that the Call of the Calender is rescheduled for
September 13, 2007, at 1:30 p.m., Brazos Courtroom, before Judge Judith C. Herrera.

FINALLY, IT IS ORDERED that counsel shall adhere to the attached "Pretrial
Deadlines and Instructions before the Hon. Judith C. Herrera."



UNITED STATES DISTRICT JUDGE

PRETRIAL DEADLINES AND INSTRUCTIONS

Before the Honorable Judith C. Herrera

PLEASE NOTE:

- 1) Throughout these instructions, the term “trial” refers to commencement of the trailing docket. Therefore, all dates operate off of the current jury selection date or date upon which the trailing docket begins. **Counsel must seek leave of Court in the form of a written motion to extend any pretrial deadlines.**
- 2) Where a submission deadline falls on a weekend or a federal holiday, the deadline will be the next working day after the weekend or holiday.

| EVENT | DEADLINE | COMMENT |
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| PERTAINING TO CIVIL CASES | | |
| Witness Identification | Fifteen (15) working days before trial | Witnesses shall be identified in accordance with the Pretrial Order but, in any event, no later than fifteen (15) working days before trial. |
| Exchange of Exhibits | Fifteen (15) working days before trial | Exhibits shall be marked and identified prior to trial, with plaintiff’s exhibits identified on yellow labels by number and defendant’s exhibits identified blue labels by letter. |
| Objections to Exhibits | Ten (10) working days before trial | You should specify the Rule of Evidence or other legal authority upon which your objection is based. In most cases, the Court will consider objections and admit exhibits prior to trial. |
| Motions in <i>Limine</i> and Other Admissibility Issues | Fifteen (15) working days before trial | Does <u>not</u> include <i>Daubert</i> motions. Challenges pursuant to <i>Daubert</i> shall be made by the <u>dispositive</u> motions deadline as set forth in the scheduling order. |
| Responses to Motions in <i>Limine</i> and Other Admissibility Issues | Eight (8) working days before trial | |

PRETRIAL DEADLINES AND INSTRUCTIONS

Before the Honorable Judith C. Herrera

| EVENT | DEADLINE | COMMENT |
|---------------------------|--|---|
| Witness and Exhibit Lists | Five (5) working days before trial | <p>Complete lists of witnesses to be called at trial with a brief summary of their testimony are to be filed. The order of the witnesses is not binding, but known witnesses not listed in accordance with this procedure will not be allowed to testify.</p> <p>An original plus three copies of the following shall be filed by the deadline: (a) a consolidated exhibit list identifying all exhibits the parties have stipulated to being admissible; (b) a consolidated exhibit list identifying all exhibits the parties have stipulated to being authentic, but to which there are other objections; and (c) a separate contested exhibit list on which the parties could not reach a stipulation.</p> |
| Statement of Case | Five (5) working days before trial | The parties must confer and submit an agreed statement of the case to the Court that will be read to the jury panel during jury selection. |
| Expert Reports | 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. |
| Depositions | Fifteen (15) working days before trial | Notify opposing counsel and the court of such intended use of deposition. If a deposition is used in part, counsel shall highlight the parts to be used for the Court. Plaintiff will use a yellow marker and defendant a blue marker. This does not apply to cross-examination or rebuttal. |
| Deposition Objections | Ten (10) working days before trial | Opposing counsel shall file with the Clerk objections to any material. |

PRETRIAL DEADLINES AND INSTRUCTIONS

Before the Honorable Judith C. Herrera

| EVENT | DEADLINE | COMMENT |
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| Memoranda of Law | 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 filed with the Clerk. |
| Non-Jury Trials - Findings of Fact | Ten (10) working days before trial | Findings of fact and conclusions of law shall be filed with the Clerk, with references to exhibits and proposed testimony. <u>Each party shall also submit the proposed findings and conclusions on a 3.5" WordPerfect diskette or shall transmit the Findings of Fact & Conclusions of Law by e-mail to jchproposedtext@nmcourt.fed.us</u> |
| PERTAINING TO CIVIL <u>and</u> CRIMINAL CASES | | |
| Jury Instructions | Ten (10) working days before jury selection | Please refer to the attached "Preparation of Jury Instructions". |
| <i>Voir Dire</i> Exchange | Five (5) working days before jury selection | In the average case, each counsel will be permitted ten (10) minutes to <i>voir dire</i> the venire panel. Do not argue the case or cite legal principles in your voir dire. Requested <i>voir dire</i> shall be exchanged between counsel and submitted to the Court by the deadline contained herein. If counsel cannot agree on proposed <i>voir dire</i> , any objections must be brought to the Court's attention at least two (2) working days prior to trial. |
| Objections to Opponent's <i>Voir Dire</i> | Two (2) working days before trial | |
| Courtesy Copies of Exhibits for the Court | Beginning of Trial | Parties shall submit two (2) courtesy copies of exhibits, in notebooks, to the Court at the beginning of the trial. |

PRETRIAL DEADLINES AND INSTRUCTIONS

Before the Honorable Judith C. Herrera

| PERTAINING TO CRIMINAL CASES | | |
|--|---|---|
| Witness and Exhibit Lists | Five (5) working days before trial | It will facilitate an orderly and efficient trial for counsel to exchange witness and exhibit lists five (5) 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. |
| Governments Notice of Rule 40(b) or 609(b) Evidence | Ten (10) working days before trial | Counsel will not get into possible areas of reversible error without prior Court approval, whether in opening statements or questioning witnesses. (e.g., commenting on a defendant's silence, invoking constitutional rights, raising Rule 404(b), 608 or 609 material, etc.) |
| Motions in <i>Limine</i> and Other Admissibility Issues | Ten (10) working days before trial | Does <u>not</u> include <i>Daubert</i> motions. Challenges pursuant to <i>Daubert</i> shall be made prior to the dispositive motions deadline usually established at arraignment. |
| Responses to Motions in <i>Limine</i> and Other Admissibility Issues | Five (5) working days before trial | |
| Motion(s) for Continuance | Motion(s) for continuance should be filed in accordance with 18 U.S.C. §3161(h)(8)(a), specifically setting forth the factual grounds justifying the continuance. | |

PRETRIAL DEADLINES AND INSTRUCTIONS

Before the Honorable Judith C. Herrera

PREPARATION OF JURY INSTRUCTIONS

Before the Honorable Judith C. Herrera

1. File a numbered original set of instructions with citations with the Clerk of Court. A copy should be submitted to chambers. The instructions shall list authority at the bottom of each instruction (Fig. 1.)
2. Submit an unnumbered original set of instructions without citations to chambers. (Fig. 2.)
3. Submit no more than one instruction per page.
4. Carefully proofread each instruction for errors in spelling, grammar, punctuation, citations, and for unintended deviations from pattern instructions used as sources.
5. Submit a cover sheet on all sets of instructions.
6. Submit a 3.5" diskette of all your instructions to chambers in a form compatible with WordPerfect 5.1 or higher.
7. If the New Mexico Uniform Jury Instructions are not applicable, Judge Herrera prefers that instructions, to the extent possible, follow the pattern jury instructions for the Tenth Circuit.

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| Instruction No. _____ |
| Members of the Jury: |
| In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to determine what evidence is proper for your consideration. It is also my duty . . . |
| Citation . . . |

Fig. 1: With Citation

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| Instruction No. _____ |
| Members of the Jury: |
| In any jury trial there are, in effect, two judges. I am one of the judges; the other is the jury. It is my duty to preside over the trial and to determine what evidence is proper for your consideration. It is also my duty . . . |

Fig. 2: Without Citation