

An abstract graphic featuring a teal wireframe mesh that forms a series of overlapping, flowing loops. The background is dark teal and filled with faint, scattered white numbers (0-9).

APPENDIX 2

SAMPLE ORDERS FOR CRIMINAL DISCOVERY

APPENDIX #2

LISTING OF SAMPLE ORDERS FOR CRIMINAL DISCOVERY

1. *DISCOVERY CONFERENCE, MEMORANDUM AND ORDER*—U.S. DISTRICT COURT—DISTRICT OF COLORADO
2. *SCHEDULING ORDER* - ELLIS COUNTY, TEXAS
3. *SCHEDULING ORDER*—U.S. DISTRICT COURT—WISCONSIN—WESTERN DISTRICT
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1. U.S. DISTRICT COURT—COLORADO DISTRICT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Criminal Action No.)	
)	JUDGE ASSIGNED:
UNITED STATES OF AMERICA,)	
)	ESTIMATED TRIAL
Plaintiff,)	TIME:
)	
v)	NUMBER OF
)	DEFENDANTS:
)	
)	DOCUMENT DISCLOSURE EXTENSIVE
Defendant.)	<input type="radio"/> Yes <input type="radio"/> No
)	(Please select one)
)	

DISCOVERY CONFERENCE MEMORANDUM AND ORDER

INTRODUCTION

Rule 16, Federal Rules of Criminal Procedure, is entitled Discovery and Inspection and provides for discovery by both defendant and the government. D.C.COLO.LCrR 17.1.1 requires a discovery conference memorandum and order be entered by a magistrate judge.

A defendant may discover certain material as a matter of right without any obligation to permit discovery by the government. However, if the defendant requests certain materials by discovery, namely, documents and tangible objects, as well as reports of examinations and tests, then the defendant is obligated to permit similar discovery by the government.

In addition to discovery we will take up the matter of notice, as required by Rules 12.1 and 12.2, Fed.R.Crim.P. if the defense of alibi or mental capacity is contemplated. Further, a date will be set for the filing of all motions.

At the conclusion of this hearing the report will be signed by defendant and/or his counsel, and government counsel, as well as the magistrate judge. The discovery hearing proceedings will be recorded.

I. DEFENDANT'S REQUEST FOR DISCOVERY AND NOTICE

(A) Request for Rule 16 Material

1. The defendant requests disclosure of the substance of any relevant oral statements made by the defendant, before or after arrest, in response to interrogation by any person the defendant knew to be a government agent if the government intends to use that statement at trial. Rule 16(a)(1)(A). The government states that it will disclose to the defendant and make available for inspection, copying, or photographing such statements in accordance with Rule 16(a)(1)(A).
2. The defendant requests disclosure of any relevant written or recorded statement made by the defendant within the government's possession, custody, or control, which the attorney for the government knows – or through due diligence could know – that the statement exists; the portion of any written record containing the substance of any relevant oral statement made before or after arrest if the defendant made the statement in response to interrogation by any person the defendant knew to be a government agent. Rule 16(a)(1)(B)(i) and (ii).
3. The defendant requests disclosure of any recorded testimony of the defendant before a grand jury which relates to the offense charged pursuant to Rule 16(a)(1)(B)(iii). The government states it will permit the defendant to inspect and copy such statements.
4. If government counsel knows of such statements he will so indicate by initialing here.

- 5 The defendant requests, if the defendant is an organization, the government's disclosure to the defendant of any statement described in Rule 16(a)(1)(A) and (B), if the government contends that the person making the statement; (i) was legally able to bind the defendant regarding the subject of the statement because of that person's position as the defendant's director, officer, employee, or agent; or (ii) was personally involved in the alleged conduct constituting the offense and was legally able to bind the defendant regarding that conduct because of that person's position as the defendant's director, officer, employee or agent. Rule 16(a)(1)(C).
- 6 The defendant requests a copy of his prior criminal record. The government states it will furnish to the defendant a copy of his prior criminal record, if any, in accordance with Rule 16(a)(1)(D).
- 7 The defendant, understanding his burden of reciprocal discovery as set forth in Rule 16(b)(1)(A), (requests) (does not request) disclosure of books, papers, documents, data, photographs, tangible objects, buildings or places, and copies or portions thereof, which are within the possession, custody, or control of the government, and which are material to the preparation of his defense, or are intended for use by the government as evidence in chief at the trial, or were obtained from or belong to the defendant.
- 8 The defendant, understanding his burden of reciprocal discovery as set forth in Rule 16(b)(1)(B), (requests) (does not request) disclosure of any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the government, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the

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government, and which are material to the preparation of the defense or are intended for use by the government as evidence in chief at the trial.

9 The defendant, understanding his burden of reciprocal discovery as set forth in Rule 16(b)(1)(C), (requests) (does not request) disclosure of a written summary of testimony the government intends to use under Rule 702, 703, or 705 of the Federal Rules of Evidence, relating to expert testimony and opinions of experts, during its case in chief at trial, as set forth in Rule 16(a)(1)(G).

10 The government acknowledges its continuing duty to disclose under Rule 16(c).

(B) Request for Exculpatory Evidence

The defendant requests disclosure of evidence favorable to the defendant on the issue of guilt and/or sentencing. The government states it will disclose material evidence which is favorable to the defendant as required by Brady v. Maryland, 373 U.S. 83 (1963); Giglio v. United States, 405 U.S. 150 (1972); and United States v. Bagley, 473 U.S. 667 (1985). The government acknowledges its continuing duty to make these disclosures. This request does not foreclose the defendant from filing a more specific motion requesting exculpatory evidence.

(C) Evidence of Other

The defendant requests notice of other crimes, wrongs or acts under Rule 404(b) of the Federal Rules of Evidence. The government states that if it intends to introduce such evidence at trial it will provide written notice to the defendant no later than 21 days before trial unless, for good cause shown, the court permits less notice in accordance with Rule 404(b).

(D) Request for Disclosure of the Identity of Confidential Informants

1. The government states there (was) (was not) a confidential informant who was a participant in or a witness to the crime charged and that the informant (may) (will) (will not) be called as a witness at trial. The government further states it (has supplied) (will claim privilege of non-disclosure of) the identity of the confidential informant. Rovario v. United States, 353 U.S. 53 (1957).

(E) The Government States There Have Been in this Case:

(Circle those which are applicable)

1. Telephone tape recordings;
2. Electronic surveillance of the defendant or his premises;
3. Leads obtained by electronic surveillance of defendant's person or premises; and
4. Photographic surveillance.

The government (may) (will) (will not) permit discovery of the foregoing items.

II. GOVERNMENT'S REQUEST FOR DISCLOSURE AND NOTICE(A) Request for Rule 16 Material

1. The government requests disclosure of books, papers, documents, data, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the defendant and which the defendant intends to introduce as evidence in chief at the trial. If the defendant made a similar request under Rule 16(a)(1)(E), the defendant states that upon compliance by the government with the defendant's request he will permit the government to inspect and copy or photograph such items in accordance with Rule 16(b)(1)(A).

2. The government requests disclosure of any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, or copies thereof, within the possession or control of the defendant as described in Rule 16(b)(1)(B). If the defendant made a similar request under Rule 16(a)(1)(F), the defendant states that upon compliance by the government with the defendant's request he will permit the government to inspect and copy or photograph such items in accordance with Rule 16(b)(1)(B).
- 3 The government requests disclosure of a written summary of testimony the defendant intends to use under Rules 702, 703 and 705, F.R.E. as evidence at trial. If the defendant made a similar request under Rule 16(a)(1)(G), the defendant states that upon compliance by the government with the defendant's request he will disclose such summaries in accordance with Rule 16(b)(1)(C).
- 4 The defendant acknowledges his continuing duty to disclose under Rule 16(c).

(B) Request for Notice of Alibi

- 1 The government hereby requests notice of the defendant's intent to rely on an alibi defense pursuant to Rule 12.1(a) of the Federal Rules of Criminal Procedure. The parties agree that the indictment/information and the discovery provided by the government give the defendant sufficient notice of the time, date, and place at which the alleged offense was committed and triggers the defendant's obligation under Rule 12(a) to serve upon the attorney for the government a written notice of alibi within 20 days from the date of this request, or at such different time as the court may direct. Should the defendant require additional information concerning the time, date, or place at which the alleged offense was committed, it is the defendant's obligation to file a request for additional information in the time provided for filing motions.

3 The parties acknowledge their continuing duty to disclose under Rule 12.1(c).

Testimon

III. LIKELIHOOD OF DISPOSITION OR TRIAL

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- (C) The defendant will receive a jury trial in accordance with F.R.Crim.P. 23(a). Waiver of jury can only be accomplished by filing a motion with the trial court.

IV. SPEEDY TRIAL

- (A) The speedy trial time limits of 18 U.S.C. § 3161 are as follows:

PNT period; 30 days

Trial clock; 70 days

Custody clock; 90 days

Date Signed

Defendant

Date Signed

Attorney for Defendant

Date Signed

Assistant United States Attorney

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V. DISCOVERY ORDER

(A) Effect of Report

The responses by the parties set forth in this Report shall have the effect of a binding discovery order. All requests for discovery will be considered continuing requests, and any discoverable information and/or material coming into the possession or knowledge of either party prior to or during the trial shall be made available to the opposing party promptly, consistent with the law and on an ongoing basis.

(B) U.S. Probation Office

Unless otherwise specified in this Discovery Order, at the time of the detention hearing or by [date], the U.S. Probation Office will disclose any criminal history information compiled on the defendant to both parties

(C) Disclosure by the Government

Unless otherwise specified in this Discovery Order, the government on or before [date] shall disclose those materials that are on that date within the possession of the attorney for the government and are subject to disclosure under the provisions of Rule 16. If additional material subject to the disclosure obligations of Rule 16 come into the possession of the attorney for the government, the attorney for the government shall promptly disclose the material to the defendant. The attorney for the government shall exercise due diligence as expressly required by provisions of Rule 16 to fulfill his or her discovery obligations under the provisions of Rule 16.

Written summaries of any testimony that the government intends to use under Rules 702, 703, or 705, Fed. R.Crim P. 16(a)(1)(G) shall be provided on such schedule as the District Court shall determine upon motion by either party.

(D) Disclosure by the Defendant

Unless otherwise specified in this Discovery Hearing Report, the defendant shall disclose its Rule

16 discovery material to counsel for the government on or before

Written summaries of any testimony that the defendant intends to use under Rules 702, 703, or 705, Fed.R.Crim P. 16(b)(1)(C) shall be provided on such schedule as the District Court shall determine upon motion by either party.

- (E) Any motion alleging a failure to comply with the time limits set forth in this report and order must be filed promptly.
- (F) Counsel is directed to obtain pretrial motion deadlines and a trial date from the presiding judge assigned to the case.

IT IS SO ORDERED

BY THE COURT

U.S. Magistrate Judge

Date

(Rev. 1/17/2019)

2. ELLIS COUNTY, TEXAS

NO.

Plaintiff(s),
V.

Defendant(s).

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IN THE COUNTY COURT

AT LAW NO. 1

ELLIS COUNTY, TEXAS

SCHEDULING ORDER
With Pretrial Instructions
& Final Pretrial Submission Form

1. An initial blank and unsigned copy of this Scheduling Order is prepared by the Court in anticipation of a trial and is circulated to the parties shortly after filing of the first responsive pleading in the case. The parties should provide the Court Coordinator with requested trial dates (more and earlier dates are available for a trial to the Court than for a trial to a jury) and the Court shall select the date, taking into account the parties' requests and the Court's schedule. The completed and signed Scheduling Order that will govern this case will then be provided to the parties without the necessity of a scheduling hearing. If within six months of the initial responsive pleading filed in the case the parties have not requested a trial date, the Court may place this case on the DWOP docket or set this case for trial at its discretion.

2. The following instructions, pretrial schedule and form must be utilized and observed by the parties. No changes or modifications may be made except by written order of this Court.

a. **WRITTEN DISCOVERY:** Objections to written discovery must have a legally arguable basis in law and fact or must be warranted by a good faith argument for the extension, modification, or reversal of existing law. Written discovery must be supplemented promptly by the parties as new information and/or documents are received.

b. **EXPERT DISCOVERY:** The name, address, telephone number, occupation and area of expertise of each and every expert retained by the party to provide expert testimony or opinions at the trial of the case or whose work product, opinions or impressions have been reviewed by any testifying expert, must be disclosed and a report prepared and served upon each opposing counsel and non-represented party as required by the

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pertinent T.R.C.P. If any conflict exists between this Order and a statute or rule, the statute or rule will apply.

- c. **MEDIATION:** Mediation is required prior to a contested final hearing. Parties may submit an agreed written order designating their own mediator within thirty days of receipt of this Scheduling Order. If an agreed order is not submitted within that time frame, the case shall be mediated with a mediator appointed by the Court.
- d. **FINAL PRETRIAL SUBMISSION (FPTS):** Every party must file a Final Pretrial Submission either jointly or separately no later than 10:00 o'clock a.m. on the deadline indicated in this Scheduling Order.
- e. **FINAL PRE-TRIAL CONFERENCE (FPTC):** A Final Pretrial Conference will be held on this case at the time indicated in the Scheduling Order. The Attorney in charge for each party must be in attendance, unless expressly excused by the Court, with full authority to make decisions on behalf of the client. Matters to be considered and ruled upon by the Court are set forth hereafter in paragraph i.
- f. **JURY SELECTION & TRIAL:** Jury selection for jury cases will begin at the time indicated in the Scheduling Order. The Court anticipates no delays in the process since all pretrial matters will have been disposed of in the Final Pretrial Conference. The parties must assume that this case will go to trial and be first on the docket.
- g. **SETTINGS & HEARINGS:** The Court Coordinator sets hearings in consultation with the Court. By agreement of the parties and the Court, hearings can be eliminated and rulings made solely upon the written records.
- h. **ATTORNEY CONFERENCE REQUIRED:** Motions requesting a hearing may only be set after reasonable attempt to confer with opposing counsel and a filing of a certificate of conference attesting to the attempt to resolve the matter without action by the Court. The Court may set hearings at any time *sua sponte*.

PRETRIAL PROCEEDINGS: All evidentiary matters will be ruled upon by the Court at pretrial. At Final Pretrial Conference all contested matters not previously disposed of will be considered and ruled upon. At that time the Court will also determine which witnesses the Court will permit to testify and the legal theories under which the case will be tried. These rulings will include all known evidentiary conflicts for which there are objections and any and all other matters called to the attention of the Court such as the Motion in Limine described in paragraph j.

MOTIONS IN LIMINE: Abusive and detailed Motions in Limine that seek rulings on common evidentiary matters that are controlled by clear and undisputed rules of evidence will not be considered by the Court. However, to prevent prejudicial matters from being placed before the jury without proper foundation, the Court urges the parties

to file limine motions aimed at deterring prejudicial actions that are unique to their case so that pretrial rulings can be made.

- k. **AMENDMENTS TO SCHEDULING ORDER:** This Scheduling Order may not be changed except by Order of this Court.
- l. **TIME LIMITS:** The Court may impose reasonable time limits upon the parties in all proceedings; any such time limits will be announced to the parties prior to the commencement of any hearing and at the Final Pretrial Conference for the trial itself.
- m. **THE TEXAS LAWYER'S CREED:** The mandates for professionalism set forth in the Texas Lawyer's Creed and all other disciplinary rules must be observed by all attorneys practicing before this Court in default of which disciplinary action may result either within this Court or within the State Bar or Texas.
- n. **JUSTICE:** The Court will amend the terms of this Scheduling Order as may be necessary in order to prevent manifest injustice.
- o. **PRETRIAL DEADLINE DATES:** The schedule and deadlines for pretrial procedures are as follows:

ON OR BEFORE	MATTER TO COMPLETED
Date:	I. JOINDER OF ALL PARTIES
Date:	II. EXPERTS DESIGNATED AND REPORTS FURNISHED
Date	III. DISCOVERY COMPLETE FINAL PLEADINGS FILED MOTIONS FOR SUMMARY JUDGMENT FILED
Date:	IV. MEDIATION DEADLINE

Date: V FINAL PRETRIAL SUBMISSION (FPTS)
FILED

Date: VI. OBJECTIONS TO EVIDENCE AND
WITNESSES FILED

Date: VII. FINAL PRE-TRIAL CONFERENCE
(FPTC)

Time: o'clock M.

Date VIII. TRIAL DATE (JURY OR TBC)

Time: o'clock M.

SIGNED AND ENTERED THIS THE OF 201

JUDGE PRESIDING



3. U.S. DISTRICT COURT—WISCONSIN—WESTERN

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff

v

JOHN DOE,

Defendant.

SCHEDULING ORDER

18-cr-999-wmc

At the November 30, 2018 arraignment, this court set the following schedule:

1) In response to the defendant's Rule 16 demand, the government will provide its required disclosures not later than December 7, 2018 and it has a continuing disclosure obligation throughout this case. The government and its agents are ordered to preserve rough notes and similar data compilations for possible disclosure later in this case. Pursuant to Rule 12, the government reports that it intends to use all disclosed evidence in its case-in-chief at trial.

2) Defendant must file and serve any pretrial motions and discovery requests not later than noon, January 11, 2019. Pursuant to 18 U.S.C. § 3161(h)(7), time from the arraignment until the deadline to file pretrial motions is excluded from the speedy trial clock regardless whether motions are filed. The ends of justice and the Sixth Amendment require that defendant and defense counsel receive adequate time to review the government's disclosures, investigate this case, then make tactical decisions whether to file motions and which motions to file. Briefs need not accompany motions. To obtain an evidentiary hearing on a motion, defendant must ask for it in the caption of each such motion and must submit admissible facts establishing a prima facie entitlement to the relief requested. *See U.S. v. Edgeworth*, 889 F.3d 350, 353-54 (7th Cir. 2018).

3) The pretrial motion hearing and any evidentiary hearing shall be January 18, 2019 at 9:00 a.m. The court will rule on each motion or set it for briefing in consultation with the parties. Unless the court is taking evidence on a dispositive motion, defendant may waive his presence at the preliminary pretrial conference.

4) Deadlines to disclose expert witnesses: Government: February 8, 2019

Defendant: February 22, 2019

5) Submissions for the final pretrial conference, namely proposed voir dire questions, jury instructions and motions in limine must be filed and served not later than March 5, 2019.

6) The final pretrial conference shall be March 7, 2019 at 1:00 p.m. Defendant may waive his presence at the final pretrial conference.

7) The final hearing before the trial judge shall be March 12, 2019 at 3:00 p.m. Defendant and trial counsel must attend this hearing.

8) Jury selection and trial shall begin March 18, 2019 at 9:00 a.m. The predicted trial length is one to two days. The parties are jointly responsible for alerting the clerk of court forthwith if a jury need not be called.

Entered this 30th day of November, 2018.

BY THE COURT

/s/

Magistrate Judge

4. U.S. DISTRICT COURT—MICHIGAN—EASTERN (SOUTHERN DIVISION)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 14-CR-XXXXX

v.

XXXXXXXXXX,

Defendant(s).

/

CRIMINAL TRIAL NOTICE AND SCHEDULING ORDER

This Order is intended to eliminate unnecessary discovery motions and to expedite the presentation of evidence and the examination of witnesses. To the extent it is in conflict with any administrative order in this District, this Order shall govern.

YOU WILL RECEIVE NO FURTHER NOTICE OF THESE DATES

Pretrial Motions (except motions in limine) due:

Plea Cut-Off/Hearing (Signed Rule 11 Plea Agreement must be submitted to the Court two days prior)

Witness Lists, Proposed Voir Dire, Proposed Jury Instructions and Proposed Verdict Form (submitted directly to chambers) due:

Motions in Limine due

Final Pretrial Conference

Trial Date

ATTORNEY CONFERENCE AND DISCLOSURE

Within ten (10) days of the date of arraignment, government and defense counsel shall meet and confer for the purpose of resolving or minimizing the issues in controversy.

Upon the request of defense counsel, government counsel shall:

- (A) provide defense counsel with the information described in Federal Rule of Criminal Procedure 16(a)(1); and

(B) permit defense counsel to inspect and copy or photograph any exculpatory/impeachment evidence within the meaning of *Brady v. Maryland*, 373 U.S. 83 (1963), *United States v. Agurs*, 427 U.S. 97 (1976), and *Giglio v. United States*, 405 U.S. 150 (1972).

A list of such evidence shall be prepared and signed by all counsel. Copies of the items which have been disclosed shall be initialed or otherwise marked.

Nothing in this Order shall be construed to require the disclosure of *Jencks* Act (18 U.S.C. § 3500) material prior to the time that its disclosure is required by law. Nevertheless, the Court urges the government to disclose *Jencks* Act materials well in advance of trial. In the event that some materials are not disclosed sufficiently in advance of a government witness' testimony, the Court will allow a reasonable amount of additional time during trial for the defense to prepare before proceeding.

DISCLOSURE DECLINED

If, in the judgment of government counsel, it would be detrimental to the government's interests to make any of the disclosures set forth in the paragraph above, the government shall file a motion within the ten-day period seeking relief from this Order and setting forth the specific reasons therefore.

CONTINUING DUTY

The duty to disclose is continuing, even throughout trial

DISCOVERY BY THE GOVERNMENT

Nothing in these procedures is designed to preclude discovery by the government under the Federal Rules of Criminal Procedure, nor to alter the Defendant's obligation, if any, under Rule 16(b).

E-FILING

ALL attorneys must become familiar with the Court's Local Rules, including the ECF Policies and Procures.

Courtesy copies of appendices submitted in support of motions that have been e-filed must be furnished to chambers where: (1) exhibits contain materials that cannot be understood adequately in copied form (e.g., color photographs, color graphs and charts); (2) the appendix exceeds 50 pages in length; or (3) there are more than three exhibits. Courtesy copies should be sent by regular mail, posted within (1) business day of the e-filing date. Copies should be directed to chambers, not filed with the Clerk's Office. Exhibits submitted in support of a motion must be tabbed.



PRE-TRIAL MOTIONSLocal Criminal Rule 12.1LR7.1

The deadline for filing pretrial motions is set forth in this Order

EXHIBITS

1. **Marking of Exhibits:** All exhibits must be marked in advance of trial using consecutive numbers (for the government) and letters (for the defendant).
2. **List of Exhibits:** A list of proposed exhibits shall be submitted directly to chambers by each of the parties by the deadline established in the Court's Criminal Trial Notice and Standing Order. However, no later than one (1) week before the Final Pretrial Conference, each party shall make available for inspection all exhibits which that party will introduce at trial. This provision shall not extend the time for disclosure and inspection of material previously ordered herein.
3. **Foundation Issues and Motions in Limine:** Motions in limine and any notices of intent to contest foundation, chain-of-custody, or scientific analysis shall be filed by the deadline for motions in limine, as set forth in the Court's Criminal Trial Notice and Standing Order. Any notice of intent to contest foundation, chain-of-custody, or scientific analysis shall set forth a good faith basis for the objection for each item or exhibit.

When defense counsel has inspected an exhibit which the government intends to introduce into evidence, the foundation for its receipt into evidence will be deemed established unless defense counsel files a notice with the Court at or before the Final Pretrial Conference that the foundation for admission into evidence of the exhibit will be contested.

4. **Objections to Exhibits:** This Order shall not affect the right of a party to object at the time of trial to the introduction of an exhibit other than on the basis of authentication and foundation.
5. **Custody and Record of Admitted Exhibits:** Counsel are required to maintain a record of all admitted exhibits during trial. Counsel for each party must keep custody of that party's admitted exhibits during trial. A party who objects to this provision must file a written objection prior to jury selection.
6. **Publication of Exhibits During Trial:** The Court encourages parties to use electronic projection to publish exhibits during trial in a manner that allows the

jury, court, attorneys, and parties to view the exhibit simultaneously. Parties are responsible for providing equipment for such purpose and should contact the Court's Case Manager, Richard Lory, to obtain permission to bring such equipment into the courthouse. If photographs and documentary exhibits are not published electronically, then the party must prepare exhibit books for the Court and each juror. Whether or not exhibits are published electronically, a separate exhibit book should be prepared and made available to a witness who is to be questioned about an exhibit.

- 7 **Preparing Exhibits For Jury Deliberation:** Counsel must confer and purge from one set of binders or files all exhibits not admitted during the course of trial. Originals of all exhibits admitted at trial should be ready to be turned over to the jury foreperson prior to closing jury instructions so that jury deliberations are not delayed.
- 8 **Filing Exhibits:** It is the responsibility of the parties to ensure that the record is complete. All trial exhibits, briefs, and proposed jury instructions are to be filed in the record within five business days of the verdict.
- 9 **Full Disclosure:** Computer generated visual or animated evidence, together with underlying data, must be disclosed to opposing counsel at least one week before the start of trial.
10. **Penalty:** A party who does not abide by these provisions may be subject to sanctions, including preclusion of the introduction of exhibits at trial by the offending party.

SCIENTIFIC ANALYSIS

When a defendant has been made aware of the existence of scientific analysis of an exhibit (which analysis has been determined by an expert in the relevant field of science), the results of the scientific analysis of the exhibit and the opinion of the scientist will be admitted into evidence unless the defendant files a notice with the Court prior to the Final Pretrial Conference, indicating that the scientific analysis of the exhibit will be contested. Such notice shall state whether the expert is desired as a witness.

WITNESS LIST

By the deadline established in the scheduling order, and to enable the Court to better estimate the length of trial, each party shall submit directly to chambers a list of witnesses by name and agency (if appropriate), whom the party reasonably anticipates it will call to testify at trial, noting the approximate amount of time it anticipates will be needed for examination of each such witness. This list should NOT be electronically filed or otherwise submitted to the Clerk's Office. All witnesses, including law enforcement personnel, are to testify in plain clothes.

JURY INSTRUCTIONS

The parties must meet and confer prior to trial to discuss jury instructions. By the deadline established in this Order, the parties must submit directly to chambers a single set of proposed, stipulated jury instructions.

The Court has its own standard introductory and concluding instructions. Each party is responsible for submitting all instructions related to the specific charges or defenses, and special instructions relating to evidence. The Court will usually instruct the jury using the Sixth Circuit's pattern jury instructions when available.

All proposed instructions are to be submitted in typewritten form (double spaced) and on computer disk compatible with Microsoft Word 2010 or WordPerfect version X5. Each instruction shall contain references to authority (e.g., "Devitt and Blackmar, Section 11.08"), and shall be on a separate page. In addition, each party must submit separately to chambers all additional proposed instructions (in the same form) to which any other party objects. Nevertheless, the parties must make a concerted, good faith effort to narrow the areas of dispute and to discuss each instruction with a view to reaching agreement as to an acceptable form. The Court will resolve disputes at a hearing on the record.

The jury is charged before final argument.

J. JURY SELECTION

The Court uses a "struck jury" system for jury selection. In most cases, the government is allowed 6 peremptory challenges and the defendant is allowed 10 peremptory challenges. The Court will select twelve regular and two alternate jurors. Alternate jurors are not told they are alternates; they are dismissed by random draw at the conclusion of the proofs.

Voir dire will be conducted by the Court. Counsel should submit proposed voir dire questions in writing by the deadline set forth in the scheduling order. Attorneys may present follow up questions at a sidebar conference and, when appropriate, the Court will ask the requested follow up questions, as provided by Fed. R. Crim. P. 24(a).

K. NOTE-TAKING & JUROR INVOLVEMENT

Jurors will be allowed to take notes. The Court specifically instructs the jury in advance on this issue. Jurors who choose to take notes will be instructed that such notes are not themselves evidence, but are merely aids to the juror's memory of the evidence presented at trial. The Court will consider, on a case by case basis, whether jurors will be permitted to question witnesses, generally through submission of questions to be asked by the Court.

L. MULTI-DEFENDANT OR MEGA TRIALS

The Court does not have a general procedure for handling multi-defendant criminal "mega trials." For multi-defendant criminal trials the Court encourages attorneys to work out procedures for peremptory challenges among themselves. In such trials, if counsel cannot agree among themselves, the Court will allocate peremptory challenges depending on the circumstances of the case.

M. CONTINUANCES

Continuances of trial dates or continuances during trial will not be granted because of unavailability of witnesses. Please notify the Court if Court intervention is necessary to secure witness attendance. Otherwise, witnesses will be expected to be available when called.

N. BENCH TRIALS

Proposed findings of fact and conclusion of law must be submitted to chambers one week before the commencement of trial.

O. FINAL PRETRIAL CONFERENCE

At the Final Pretrial Conference, counsel must be prepared to discuss all matters that will promote a fair and expeditious trial, including but not limited to: (1) a potential summary of charges to be read to the jury; (2) anticipated evidentiary issues; (3) length of trial; (4) stipulations that may obviate the need for foundation witnesses; (5) stipulations that may obviate the need to prove facts that are uncontested; (6) stipulations that may obviate the need for certain exhibits; (7) peremptory challenges; and (8) special arrangements for the presentation of witnesses and other evidence (e.g., need for interpreters, A/V needs, etc.). The defendant(s) must be present at the conference.

U.S. DISTRICT JUDGE

5. BERNALILLO COUNTY, NEW MEXICO

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

No. CR [CR #]

STATE OF NEW MEXICO,

Plaintiff,

VS.

[DEFENDANT],

Defendant.

SCHEDULING FOR TRACK CASE CALENDAR

THIS MATTER came before the Court for hearing on The State appeared by
and Defendant appeared personally, and
through

This case has been assigned to Track

IT IS THEREFORE ORDERED:

1. The parties have a continuing duty to disclose and make available supplemental discovery within five (5) days of the receipt of such information.
2. All parties shall produce the results of any scientific evidence by
3. All witness interviews shall be completed by
4. All pretrial motions shall be filed
5. Pretrial motion responses shall be filed by or within
days of the filing of the original motion, whichever occurs sooner. Failure to file a response to a pretrial motion shall result in presumed concurrence in the original motion.
6. The pretrial evidentiary hearing (where requested) is scheduled
Parties shall e-mail the appropriate TCAA at the time of filing their pretrial motion to confirm or cancel the evidentiary hearing.

7. All parties shall file notice with the court of any requirement for language access services by _____
8. The parties shall submit any plea agreement, in writing, to the Court by _____
9. The pretrial conference is scheduled for _____ . Defendant must be present for the final pretrial conference.
10. Parties shall file their final trial witness list _____
11. Trial is scheduled to commence _____ which is within [one hundred and eighty] [two hundred and seventy] [three hundred and sixty-five] days of the triggering event in this case.
12. Trial in this case is estimated to last _____ days. The parties shall notify the Court immediately if changes in the presentation of the case could impact the number of estimated days for trial.
13. Other _____

The Court will not accept a plea agreement after the plea deadline.

The Court may impose abbreviated deadlines within this scheduling order.

Unless otherwise noted, the number of days is based on calendar days rather than business days.

If a party fails to comply with the dates outlined in the Scheduling Order, the Court shall impose sanctions. Sanctions may include, but are not limited to, dismissal with or without prejudice, suppression or exclusion of evidence, a monetary fine imposed upon a party's attorney, or a monetary fine imposed on the attorney's employing office with appropriate notice to the office and opportunity to be heard.

A fifteen (15) day extension of the time limits imposed by this order may be granted by the Court for good cause, so long as the extension would not result in an extension of the trial date. It shall not be assumed that substitution of counsel alone constitutes good cause for an extension of time.

IT IS SO ORDERED.

DISTRICT COURT JUDGE

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

No. [CR #]

STATE OF NEW MEXICO,

Plaintiff,

VS.

[DEFENDANT],

Defendant.

CERTIFICATION OF READINESS

By filing this Certification of Readiness the State certifies to the Court it shall be fully ready for trial within the time limits found in LR2-400.

Counsel certifies this case has been investigated sufficiently to be reasonably certain that:

1. The case will reach a timely disposition by plea or trial within the case processing time limits set forth in this rule;
2. The Court will have sufficient information upon which to rely to assign this case to an appropriate track at the status hearing provided for in Paragraph G of LR2-400;
3. All discovery produced or relied upon in the investigation leading to the indictment or information has been provided to the defendant, and;
4. The State understands, absent extraordinary circumstances, the State's failure to comply with the case processing times set forth in LR2-400 will result in dismissal of the case.

Dated this ____ day of _____ 20____

District Attorney's Office

Attorney's printed name

**STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT**

No. CR [CR #]

STATE OF NEW MEXICO

Plaintiff,

VS.

[DEFENDANT],

Defendant.

MOTION TO IMPOSE SANCTIONS (NEW CALENDAR)

Pursuant to Rule LR2-400, [Plaintiff] [Defendant] requests the Court impose sanctions for [Plaintiff's] [Defendant's] failure to follow the rules contained therein. [Plaintiff] [Defendant] alleges the following violation(s) of the Rule:

A request for hearing is filed concurrently to this Motion.

Dated this ____ day of _____ 20__

Attorney for

Attorney's name printed

