

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

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 17-965 JB

vs.

KIRBY CLEVELAND,

Defendant.

SCHEDULING ORDER

Defendant Kirby Cleveland, through the undersigned attorneys, proposes the following schedule to be adopted by this Court:

May 21, 2018: Completion of non-expert Fed. R. Crim. P. 16 discovery by the United States, including all material for which disclosure is mandated by *Brady v. Maryland*, 373 U.S. 83 (1963).¹

June 4, 2018: Defense discovery motions.

June 18, 2018: Responses to defense discovery motions.

July 2, 2018: Replies re: defense discovery motions.

July 16, 2018: Defense to provide reciprocal discovery pursuant to Fed. R. Crim. P. 16(b)(1).²

September 24, 2018: Government to file request for alibi disclosure

Motions alleging defects in indictment or institution of proceedings (Rule 12(b)(3)(A) and (B))

Facial challenges relating to capital punishment, including challenges to the Federal Death Penalty Act, and the death penalty *per se*.

October 22, 2018: Responses to motions filed Sept. 24, 2018

¹ This deadline is subject to the United States' continuing discovery obligations.

² This deadline is subject to the defense's continuing discovery obligations.

November 5, 2018: Replies to motions filed Sept. 24, 2018

Hearing on Constitutional claims – November 13-15, 2018 at 8:30 a.m.

November 30, 2018: Government's Non-Mental Health Expert Disclosures Pursuant to Fed. R. Crim. P. 16(a)(1)(G).

December 3, 2018: Pretrial motions due, including:

- Bill of Particulars
- Venue
- Selective Prosecution
- Challenges to Grand Jury
- Motions to Suppress

December 17, 2018: Responses to Pretrial Motions filed January 14, 2019.

December 31, 2018: Replies re. Pretrial Motions filed January 14, 2019.

Hearing on Pretrial Motions – February 4-8, 2019 at 8:30 a.m.

January 15, 2019: Defendant's Non-Mental Health Expert Disclosures Pursuant to Fed. R. Crim. P. 16(b)(1)(C) and Notice of Intent to Introduce Expert Evidence on a Mental Condition Bearing on the Issue of Guilt Pursuant to Fed. R. Crim. P. 12.2(b)(1).

Motions regarding procedures for implementation of rule 12.2 disclosures and evaluations

January 29, 2019: Responses to motions regarding procedures for implementation of rule 12.2 disclosures and evaluations

January 31, 2019: 1) *Daubert* Motions.

2) Government notice of intent to offer evidence under. Fed. R. Evid. 404(b), 609, and 807.

3) Motions attacking sufficiency of Notice of Intent to Seek the Death Penalty and/or validity of aggravating factors

February 12, 2019: Replies to motions regarding procedures for implementation of rule 12.2 disclosures and evaluations

February 25, 2019: 1) Responses to *Daubert* Motions.

2) Objections pursuant to Fed. R. Evid. 404(b), 609, 807.

3) Responses to motions attacking sufficiency of Notice of Intent to Seek the Death Penalty and/or validity of aggravating factors

March 11, 2019: 1) Replies re: *Daubert* Motions.

2) Replies re: Fed. R. Evid. 404(b), 609, and 807.

3) Replies re: Motions attacking sufficiency of Notice of Intent to Seek the Death Penalty and/or validity of aggravating factors

March 19, 2019: Written proposals for jury-selection procedures and schedule

April 2, 2019: Objections to proposed jury-selection procedures and schedule

July 8, 2019: Court/Jury Division will mail special questionnaires to all remaining potential jurors. Jurors will be asked to return special questionnaires no later than July 26, 2019.

August 2, 2019: Court will make completed jury questionnaires available to parties on a rolling basis beginning this date.

August 16, 2019: Proposed jury instructions due (guilt and penalty).

August 23, 2019: Parties to file lists of stipulated and non-stipulated strikes for cause. Parties shall file brief argument in support of non-stipulated strikes for cause.

Motions Hearing: 9/16/19 @ 8:30am

Trial Deadlines:

180 days before trial: Government informative outline due

120 days before trial: Evidentiary motions/Motions in limine

90 days before trial: Proposed jury instructions due (guilt phase only).

Responses to evidentiary motions/motions in limine

75 days before trial: Objections to proposed guilt phase jury instructions due

60 days before trial: Government *Jencks* deadline.

Government to file guilt phase witness and exhibit lists

Objections to proposed guilt phase jury instructions due

Replies to evidentiary motions/motions in limine

45 days before trial: Parties to file proposed voir dire

Defense guilt phase witness and exhibit lists due

Defense to file objections to government guilt phase witness and exhibit lists

30 days before trial: Government penalty phase witness and exhibit lists due

Objections to proposed voir dire

Government to respond to defense objections to exhibit and witness lists and to file any objections to defense witness and exhibit lists

15 days before trial: Defense to respond to government objections to defense witness and exhibit lists

April 6, 2020: Commence voir dire; trial to commence immediately after conclusion of jury selection process.

Penalty phase:

1 day after guilty verdict (if any): Defense to file list of proposed mitigating factors and proposed penalty phase witnesses

5 days after guilty verdict (if any): Proposed penalty phase instructions due


United States District Judge