

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, ex rel.,
MARCO WHITE, MARK MITCHELL,
and LESLIE LAKIND,

Plaintiffs,

vs.

Case No. D-101-CV-2022-00473

COUY GRIFFIN,

Defendant.

**PLAINTIFFS' MOTION *IN LIMINE* PURSUANT TO RULE 11-611 TO LIMIT SCOPE
OF DEFENDANT'S CROSS EXAMINATION**

In the interest of preserving time and reducing the Court's burden, Plaintiffs respectfully submit this motion *in limine* and hereby move that the Court enter an order to exclude certain evidence pursuant to Rule 11-611(B) NMRA. To the extent Plaintiffs call Defendant as a hostile witness in Plaintiffs' case-in-chief, Plaintiffs move the Court to limit the scope of Defendant's cross-examination to the subject matter of the Plaintiffs' direct examination.

I. Defendant's Cross-Examination of Himself Outside Scope of the Direct Examination Would Be Duplicative and Wasteful.

New Mexico Rule of Evidence 11-611(A) provides that "[t]he Court should exercise reasonable control over the mode and order of questioning witnesses so as to: (1) make those procedures effective for determining the truth, (2) avoid wasting time, and (3) protect witnesses from harassment or undue embarrassment." At the Court's discretion, "[c]ross examination should not go beyond the subject matter of the direct examination and matters affecting a witness's credibility." Rule 11-611(B). Courts have the discretionary authority to exercise reasonable control over cross-examination to "more effectively seek the truth and to avoid

needless consumption of time.” *Empire West Cos. v. Albuquerque Testing Labs, Inc.*, 1990-NMSC-096, ¶ 7, 110 N.M. 790, 800 P.2d 725.

To promote the orderly presentation of the case, the Court should exercise its discretion in this matter to limit Defendant’s cross-examination of himself, following Plaintiffs’ direct examination, to the scope of the direct examination. Plaintiffs understand Defendant is a pro se litigant and, if called as a hostile witness in Plaintiffs’ case-in-chief, will conduct his own cross-examination. His status as a pro se litigant may allow Defendant, potentially in the form of narrative testimony, to offer testimony duplicative of Defendant’s own case. To the extent Defendant plans to provide legal argument and evidence supporting his case that goes beyond the scope of his direct examination, the Defendant will have an opportunity when presenting his case.

The New Mexico Rules of Evidence make clear that, to be admissible, evidence must be relevant. Rule 11-402. Evidence, such as that likely to be presented by Defendant’s self cross-examination, if not expressly limited to the subject matter raised by Plaintiff’s direct examination, is likely to run afoul of this foundational concept. In particular, to allow Defendant to repeat evidence already presented or to stray from the subject matter raised on direct examination will be to permit evidence, the probative value of which “is substantially outweighed by a danger ... confusing the issues, ... undue delay, wasting time, [and] needlessly presenting cumulative evidence.” Rule 403. Plaintiffs ask that the Court enter an *in limine* order preventing such evidence.

In addition, the repetitive nature of Defendant’s pressing of his own case on cross-examination would be a poor use of the Court’s time. It would also be unfair for Defendant to go beyond the scope of the direct examination to present his defense in Plaintiffs’ case-in-chief.

Further, particularly if conducted in a narrative format, Defendant's cross-examination of himself may lead to an inefficient use of the Court's resources as Defendant may intentionally or unintentionally provide irrelevant or otherwise inadmissible testimony, requiring the Court's intervention.

In the interest of judicial economy, therefore, as well as to ensure only the presentation of relevant evidence at trial, Plaintiffs ask that this Court exclude testimony outside the scope of the direct examination pursuant to Rules 11-611(B) and 11-403.

CONCLUSION

Based on the forgoing, Plaintiffs respectfully request the Court to enter an order consistent with the New Mexico Rules of Evidence and exclude from evidence any testimony offered by the Defendant on cross-examination that is outside the scope of Plaintiffs' direct examination.

Date: July 22, 2022

FREEDMAN BOYD HOLLANDER
& GOLDBERG, P.A.

/s/ Joseph Goldberg

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CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2022, I filed the foregoing Motion in Limine Pursuant to Rule 11-611 to Limit Scope of Defendant's Cross Examination through the New Mexico Odyssey File & Serve system, which caused all counsel of record to be served by electronic means.

Defendant Griffin was served the foregoing via e-mail and 2 identical packages of the foregoing as indicated below:

1) by U.S. Postal First Class Mail and 2) by Federal Express, two-day delivery available to Tularosa, NM to the following address:

Couy Griffin



/s/ Joseph Goldberg
Joseph Goldberg