

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

**GUIDELINES FOR MOTIONS, FINAL PRETRIAL CONFERENCE, AND TRIAL
IN CRIMINAL CASES BEFORE THE HONORABLE JEFFREY S. WHITE**

MOTIONS

1. All motions, except those pertaining to sentencing, shall be filed at least thirty-five (35) days in advance of the hearing date. Opposition briefs shall be filed and served not more than fourteen (14) days after the motion is filed and served. Reply briefs shall be filed and served not more than seven (7) days after the opposition is filed and served.

Motions for or relating to sentencing shall be filed at least seven (7) calendar days before the date on which Judgment and Sentencing is scheduled. Responses or objections to motions relating to sentencing shall be filed at least five (5) calendar days before the date on which Judgment and Sentencing is scheduled.

Although the parties are not required to file a Sentencing Memorandum, except as set forth in Criminal Local Rule 32-5(b), the Court encourages the parties to do so. If a party chooses to submit a Sentencing Memorandum to the Court, it must be filed at least seven (7) calendar days before the date on which Judgment and Sentencing is scheduled. Responses to Sentencing Memoranda shall be filed at least five (5) calendar days before the date on which Judgment and Sentencing is scheduled.

Courtesy copies of all briefs shall be delivered to the Clerk’s Office in an envelope clearly marked with the case number and “JSW Chamber’s Copy.” All chambers copies must be securely bound at the top or on the side, either with staples, “ACCO” fasteners, velo-

1 binding or shall be submitted in binders. Binder clips, paper clips, and rubber bands will not
2 satisfy this requirement. If a particular motion, declaration or other submission is more than two
3 inches thick, the parties should submit the chambers copies of the document in multiple volumes
4 that do not exceed two inches. When a declaration or other document includes exhibits, parties
5 shall submit chambers copies of the documents which include tabs that separate each exhibit.

6 2. Motions or Stipulations to Continue any proceeding on the Court’s criminal
7 calendar, except a trial, shall be submitted to the Court no later than 2:00 p.m. the day before the
8 proceeding is to be heard. Motions to continue a trial date shall be filed no later than seven (7)
9 calendar days prior to the trial date. Any opposition to a motion to continue trial shall be filed
10 no later than (5) days prior to the trial date. Such motions will only be granted in extraordinary
11 cases involving unforeseen circumstances and extremely good cause.

12 3. All motions and oppositions to motions shall comply with Criminal Local Rule 47-
13 2(b), which requires that motions “presenting issues of fact ... be supported by affidavits or
14 declarations which comply with the requirements of Civil Local Rule 7-5.” Civil Local Rule 7-
15 5, in turn, requires that “[f]actual contentions made in support of or in opposition to any motion
16 must be supported by an affidavit or declaration and by appropriate references to the record.”
17 Moreover, other evidence in support of or in opposition to any motion “must be appropriately
18 authenticated by an affidavit or declaration.” That rule further requires that affidavits and
19 declarations contain factual contentions only, avoiding conclusions and legal argument, and
20 “conform as much as possible to the requirements of Federal Rule of Civil Procedure 56(e).”

21 In accordance with Civil Local Rule 7-5, made applicable by Criminal Local Rule 47-
22 2(b), any declaration or affidavit that does not comply with these requirements may be stricken.

23 4. Ex Parte Rule 17(c) Subpoena Requests: Before a defendant’s ex parte application
24 for document subpoena(s), made pursuant to Federal Rule of Criminal Procedure 17(c) may be
25 granted, defendant is required to demonstrate that proceeding ex parte is “necessary to preserve
26 the defendant’s overriding constitutional rights” because to do otherwise would “reveal[] his trial
27 strategy.” See *United States v. Tomison*, 969 F. Supp. 587, 595 (E.D. Cal. 1997). In addition,
28 defendant is required to show that the information sought is: (1) relevant; (2) admissible; and (3)

1 specifically identified. *United States v. Nixon*, 418 U.S. 683, 700 (1974). If the defendant seeks
2 production in advance of trial, he or she is required to demonstrate good cause for advance
3 production. *See id.*

4 If the defendant is able to make the requisite showing above, Rule 17(c) requires
5 production of the documents to the Court, not to the defendant. The Court will review the
6 materials to determine whether they are responsive to the subpoena(s). Following the Court's
7 determination, both parties will be entitled to inspect the responsive materials unless defendant is
8 able to demonstrate an overriding need for confidentiality. *See Tomison*, 969 F. Supp. at 597.

9 The Court will deny any application that does not meet the required showing, and it will
10 indicate if the ruling is with or without prejudice to renewing the request.

11 **FINAL PRETRIAL CONFERENCE**

12 Counsel shall not prepare a joint pretrial conference statement. Instead please follow the
13 following procedures:

14 5. In lieu of preparing a joint pretrial conference statement, the parties shall meet
15 and confer in person and prepare a jointly signed proposed final pretrial order fourteen (14) days
16 in advance of the Final Pretrial Conference. In addition to the matters set forth in Northern
17 District Criminal Local Rule 17.1-1(b), this joint pretrial conference order should contain: (i) a
18 brief description of the substance of the case; (ii) if appropriate, all stipulated facts; (iii) a joint
19 exhibit list in numerical order, including a brief description of the exhibit and Bates numbers, a
20 blank column for when it will be offered into evidence, a blank column for when it may be
21 received into evidence, and a blank column for any limitations on its use; and (iv) each party's
22 separate witness list for its case-in-chief witnesses (*see* N.D. Crim. L.R. 17.1-1(b)(9)); items (ii)
23 and (iii) should be appendices to the proposed order. The proposed order should also state which
24 issues, if any, are for the Court to decide, rather than the jury. The objective is to convert the
25 proposed order to a final order with the benefit of any discussion at the final pretrial conference.

26
27 6. In addition to the joint pretrial conference order, the parties shall file the
28 following:

1 (a) A joint set of proposed instructions on substantive issues of law arranged in a
2 logical sequence. If undisputed, an instruction shall be identified as “Stipulated Instruction No.
3 ____ Re ____.” The parties also must ensure that all modifications to form instructions
4 are submitted to the Court, *i.e.* if a model instruction includes bracketed language or blanks, the
5 parties must provide the Court with the appropriate language from the brackets and the blanks
6 shall be completed.

7 Even if stipulated, the instruction shall be supported by citation. If disputed, each version
8 of the instruction shall be inserted together, back to back, in their logical place in the overall
9 sequence. Each such disputed instruction shall be identified as, for example, “Disputed
10 Instruction No. ____ Re ____ Offered by _____,” with the blanks filled
11 in as appropriate. All disputed versions of the same basic instruction shall bear the same
12 number. Citations with pin cites are required. Any modifications to a form instruction must be
13 clearly identified, *i.e.* in bold or italics. If a party does not have a counter version and simply
14 contends that no such instruction in any version should be given, then that party should so state
15 (and explain why in the separate memoranda required by paragraph 2.b) on a separate page
16 inserted in lieu of an alternate version. With respect to form preliminary instructions, general
17 instructions, or concluding instructions, please simply cite to the numbers of the requested
18 instructions in the current edition of the *Ninth Circuit Manual of Model Jury Instructions*
19 (*Criminal*).

20 Other than citing the numbers, the parties shall not include preliminary, general or
21 concluding instructions in the packet, but shall include the full text of these instructions on the
22 CD-ROM required by this Order. Again, if the form instructions contain bracketed language or
23 blanks, the parties should provide the Court with the appropriate language from the brackets and
24 all blanks should be completed.

25 (b) The parties are encouraged to keep disputed instructions to a minimum. To the
26 extent they are unable to resolve their disputes, the court requires complete briefing on disputed
27 instructions. Thus, a party supporting an instruction must submit a separate memorandum of law
28 in support of its disputed instructions, organized by instruction number. Please quote exact,

1 controlling passages from the authorities, without ellipses, and give pin cites. The party
2 opposing a given instruction or instructions must include a responsive brief to the supporting
3 party's memorandum, organized by instruction number and also shall quote exact, controlling
4 passages from the authorities, without ellipses and with pin cites.

5 (c) A simplified statement of the case to be read to the jury during voir dire and as
6 part of the proposed jury instructions. Unless the case is extremely complex, this statement
7 should not exceed one page.

8 (d) A joint set of proposed voir dire questions supplemented as necessary by separate
9 requests for good cause only. (Keep these to a minimum, please.)

10 (e) A trial brief not to exceed ten pages on any controlling issues of law.

11 (f) A list of objections to each exhibit, in tabular form. The first column should
12 describe the exhibit, the second column should set briefly set forth the basis of the objection, and
13 the third column should set forth a brief response thereto. The parties shall meet and confer, in
14 person, in an attempt to resolve objections to the exhibits before this list is filed with the Court,
15 to consider exhibit numbers, and to eliminate duplicate exhibits and confusion over the precise
16 exhibit. A binder containing each disputed exhibit should be submitted to the Clerk's office in
17 an envelope clearly marked with the case number and "JSW chambers copy."

18 Unless there is a genuine issue as to the authenticity of exhibits, a party that has produced
19 documents should not object to the other party offering those documents as exhibits on the basis
20 of authenticity or the best evidence rule. Finally, the Court normally will not entertain routine
21 objections to exhibits on the basis of a lack of foundation.

22 (g) Any motions *in limine*, as to which the parties should follow the following
23 procedure:

24 The motions *in limine* and all oppositions thereto must be filed no later than fourteen (14)
25 calendar days prior to the Final Pretrial Conference, and shall be submitted to the Court collated
26 and in a binder, as set forth below. Therefore, the parties must serve their motions *in limine* on
27 the opposing party reasonably in advance of the pretrial to permit the opposing party to prepare,
28 file serve its opposition brief. The Court strongly recommends that at least thirty (30) calendar

1 days before the Final Pretrial Conference, the moving party serve, but not file, the opening brief
2 and at least twenty (20) calendar days before the Final Pretrial Conference, the responding party
3 serve the opposition. The Court does not permit reply briefs. Each motion should be presented
4 in a separate memo and properly identified, for example, “Plaintiff’s Motion in Limine No. 1 to
5 Exclude”

6 Please limit motions *in limine* to circumstances that really need a ruling in advance. No
7 more than five motions per side will be allowed. If a party seeks to file more than five motions
8 *in limine*, they must file an administrative motion at least fourteen days before the motions *in*
9 *limine* are due to be filed with the Court demonstrating extraordinarily good cause for allowing
10 the excess motions. The administrative motion should summarize the subject matter of each
11 proposed additional motion in limine.

12 Each motion *in limine* should address a single, separate topic, and contain no more than
13 seven pages of briefing per side. Leave of Court will be required to exceed the page limitations.
14 A binder containing each party’s motions in limine and the opposition briefs, and any supporting
15 materials, should be submitted to the Clerk’s office in an envelope clearly marked with the case
16 number and “JSW chambers copy.”

17 (h) If the parties intend to use special verdict forms, they should meet and confer in
18 an effort to submit a joint proposed special verdict form. If the parties cannot agree on a
19 proposed special verdict form, they may submit separate proposals.

20 7. The joint proposed final pretrial order, the jury instructions, proposed voir dire,
21 the statement of the case, objections to exhibits, and any proposed special verdict forms, shall be
22 submitted on a CD-ROM, in either WordPerfect or Microsoft Word, as well as in hard copies.
23 All hard-copy submissions should be submitted in a binder to the Clerk’s office in an envelope
24 clearly marked with the case number and “JSW chambers copies”.

25 8. At the final pretrial conference, the above submissions shall be considered and
26 argued.

27
28

PRETRIAL ARRANGEMENTS

1
2 9. Should a daily transcript and/or real-time reporting be desired, the parties shall
3 make arrangements with the Supervisor of the Court Reporting Services, at (415) 522-2079, at
4 least ten calendar days prior to the trial date.

5 10. During trial, counsel may wish to use the technology available in the Courtroom.
6 If that is the case, the parties shall refer to the Court’s Website regarding Courtroom Technology
7 at: <http://cand.uscourts.gov/courtroomtech>. If the parties prefer to use the Court’s equipment
8 rather than their own, they shall contact the Court’s Courtroom Deputy to determine whether an
9 evidence cart is available. The parties may also consult with the Courtroom Deputy regarding
10 courtroom layout issues.

11 If the parties intend to use their own equipment, or intend to use equipment in addition to
12 the equipment available through the Court, it should be shared by all counsel to the maximum
13 extent possible. In addition, the United States Marshal requires a court order to allow equipment
14 into the courthouse. For electronic equipment, parties should be prepared to maintain the
15 equipment or have a technician handy at all times. For overhead projectors, the parties shall
16 provide a spare bulb. The parties shall tape extension cords to the carpet for safety. The parties
17 shall disassemble and store all equipment in the courtroom at the end of each court day.

SCHEDULING

18
19 11. Trial normally will be conducted from 8:00 a.m. to 1:30 p.m. (or slightly longer to
20 finish a witness) with two fifteen-minute breaks, Monday through Thursday, excluding holidays.
21 Counsel must arrive by 7:30 a.m., or earlier as needed for any matters to be heard out of the
22 presence of the jury. The jury will be called at 8:00 a.m. This schedule may be modified at the
23 discretion of the Court.

24 Subject to the Court’s availability, the jury shall be chosen the Wednesday preceding the
25 first day of trial, at 8:00 a.m.

THE JURY

26
27 12. The Court will conduct the voir dire.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

of the same exhibit number; any discrepancies must be brought to the Court’s attention promptly.

31. The exhibit tag shall be in the following form:

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA TRIAL EXHIBIT 100 CASE NO. _____ DATE ENTERED _____ BY _____ DEPUTY CLERK

Counsel preferably will make the tag up in a color that will stand out (yet still allow for photocopying) but that is not essential. Place the tag on or near the lower right-hand corner or, if a photograph, on the back. Counsel should fill in the tag but leave the last two spaces blank. The parties must jointly prepare a *single* set of all trial exhibits that will be the official record set to be used with the witnesses and on appeal. Each exhibit must be tagged and in a separate folder (not in notebooks). Deposit the exhibits with the deputy clerk on the first day of trial. The tags can be adhesive or stapled on.

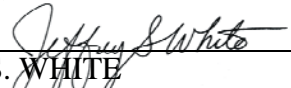
32. Counsel must consult with each other and with the deputy clerk at the end of each trial day and compare notes as to which exhibits are in evidence and any limitations thereon. If there are any differences, counsel should bring them promptly to the Court’s attention.

33. In addition to the official record exhibits, two copies of the joint set of bench binders containing a copy of the exhibits must be provided to the Court on the first day of trial. Each exhibit must be separated with a label divider (an exhibit tag is unnecessary for the bench set). In large letters, the labels should identify the range of exhibit numbers contained in a binder.

CHARGING CONFERENCE

1
2 41. As the trial progresses and the evidence is heard, the Court will fashion a
3 comprehensive set of jury instructions to cover all issues actually being tried. Prior to the close
4 of the evidence, the Court will provide a draft final charge to the parties. After a reasonable
5 period for review, one or more charging conferences will be held at which each party may object
6 to any passage, ask for modifications, or ask for additions. Any instruction request must be
7 renewed specifically at the conference or it will be deemed waived, whether or not it was
8 requested prior to trial. If, however, a party still wishes to request an omitted instruction after
9 reviewing the Court’s draft, then it must affirmatively re-request it at the charging conference in
10 order to give the Court a fair opportunity to correct any error. Otherwise, as stated, the request
11 will be deemed abandoned or waived.

12 **IT IS SO ORDERED.**

13
14 
15 JEFFREY S. WHITE
16 UNITED STATES DISTRICT JUDGE

17 4/2013 Rev.
18
19
20
21
22
23
24
25
26
27
28