

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
MAGISTRATE JUDGE HOWARD R. LLOYD

STANDING ORDER RE: PRETRIAL PREPARATION

Good cause appearing, IT IS HEREBY ORDERED that the following requirements and procedures shall apply in all cases scheduled for trial before the undersigned judge.

- A. **Not less than fifteen (15) days prior to the Pretrial Conference**, lead counsel (and all parties appearing pro se) shall meet and confer in person with respect to accomplishing the requirements and procedures outlined below.
- B. **Not less than ten (10) court days prior to the Pretrial Conference**, the parties shall serve and file (or lodge, as applicable):
1. **Trial Briefs (optional);**
 2. **Motions *In Limine*;**
 3. **Deposition and Discovery Responses.** One copy of any deposition transcript and any other discovery response either party intends to offer as evidence, other than solely for impeachment or rebuttal, shall be lodged with the court. The parties shall highlight the pertinent portions of the deposition transcripts and discovery responses;
 4. **Proposed Voir Dire Questions (Jury Trials Only).** Proposed voir dire questions shall be submitted to the court. The examination of trial jurors shall be conducted by the Judge. The court will also allow limited follow up voir dire by attorneys. Juror questionnaires are permitted in limited situations. If the parties wish to submit juror questionnaires, the parties must contact the court well in advance of the pretrial conference to discuss procedures;
 5. **Jury Instructions (Jury Trials Only).** The court has a standard set of preliminary instructions which will be given at the beginning of trial and standard closing instructions which will be given prior to closing argument based upon the MODEL JURY INSTRUCTIONS OF THE NINTH CIRCUIT. The parties should not submit preliminary or closing instructions.

The parties shall file a **joint** set of all proposed substantive instructions, unless specific leave to the contrary is granted by the Court.

The Court prefers parties to use the MODEL JURY INSTRUCTIONS OF THE NINTH CIRCUIT or CALIFORNIA JURY INSTRUCTIONS, modified and supplemented as necessary.

In the event parties are unable to agree on the language of a particular instruction, the objecting party shall submit an alternative instruction, placed immediately following the instruction to which an objection is being made, and a brief statement of the ground for the objection. Challenged instructions must be clearly marked and identified.

Each proposed instruction shall be written in plain language, comprehensible to jurors, concise and free from argument, cover only one subject which shall be indicated in the caption, and be written out in full on a separate page. On a separate page following each instruction, the parties must provide citation to the authority upon which each instruction is based;

6. **Form of Verdict (Jury Trials Only).** Each party shall serve and submit to the court its proposed form of verdict;
7. **Proposed Findings of Fact and Conclusions of Law (for Non-Jury Trials Only).** In actions tried to the court without a jury, each party shall file Proposed Findings of Facts and Conclusions of Law; and
8. **Joint Pretrial Statement.** The Joint Pretrial Statement shall include the following:
 - a. **Substance of the Action.** A brief description of the general nature of the action;
 - b. **Stipulations, Agreed Statement and Undisputed Facts.** A statement of: (i) any stipulations requested or proposed for pretrial or trial purposes; (ii) whether all or part of the action may be presented upon an agreed statement of facts; and (iii) all relevant facts not reasonably in dispute, as well as any facts to which the parties will stipulate for the trial record without the necessity of supporting testimony or exhibits;
 - c. **Disputed Factual Issues.** A plain and concise statement of all disputed factual issues which remain to be decided;
 - d. **Disputed Legal Issues.** Without extended legal argument, a plain and concise statement of each disputed point of law concerning liability, relief, procedure and/or evidence. (When appropriate, full legal argument with citations to statutes and case law should be

covered in a Trial Brief.);

- e. **Deposition Excerpts and Discovery Responses.** Pursuant to Fed. R. Civ. P. 26(a)(3), a list of any deposition testimony (by page and lines) or other discovery responses that each party may offer as evidence as trial, other than solely for impeachment or rebuttal;
- f. **Witnesses to be Called.** Pursuant to Fed. R. Civ. P. 26(a)(3), a list of the name of every witness each party expects to call at trial, other than solely for impeachment or rebuttal, together with a brief statement following each name describing the substance of the testimony to be given. Each party shall separately identify those witnesses the party intends to call and those the party may call if the need arises;
- g. **Exhibits, Schedules and Summaries.** Pursuant to Fed. R. Civ. P. 26(a)(3), a list of all documents and other items to be offered as exhibits at trial, other than solely for impeachment or rebuttal. Each item on the list shall be identified by an exhibit number, followed by a brief statement describing its substance or purpose, and the identity of the sponsoring witness. The parties must have agreed on an allocation of exhibit numbers which will avoid duplicate numbers. If possible, parties should stipulate to the authenticity and admissibility of exhibits prior to trial. **Any disputes regarding the authenticity and/or admissibility of any exhibits must be brought to the court's attention no later than the Pretrial Conference, or the objections will be deemed waived;**
- h. **Relief Prayed.** A detailed statement of all the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages;
- i. **Estimate of Trial Time.** A carefully reasoned estimate of the number of hours needed for the presentation of each party's case, including cross-examination of opposing witnesses;
- j. **Amendments, Dismissals.** A statement of any requested or proposed amendments to the pleadings or dismissals of parties, claims or defenses.
- k. **Settlement Discussion.** A statement indicating whether further settlement negotiations would likely be productive; and

- I. **Miscellaneous.** A statement describing any other subjects relevant to the trial of the action or material to its just, speedy, and inexpensive determination.
- C. **Not less than five (5) court days prior to the Pretrial Conference**, unless otherwise ordered, the parties shall serve and file (or lodge, as appropriate) the following:
1. **Oppositions to Motions *In Limine***;
 2. **Objections to the use of Deposition Excerpts or other Discovery Responses.** Unless otherwise ordered, any objections to excerpts from depositions or other discovery responses designated in the Joint Pretrial Statement shall be filed in writing, along with a certification that counsel conferred with opposing counsel regarding any such objections;
 3. **Counter-Designations.** In the event a party contends that a deposition excerpt or other discovery response is unacceptably incomplete, the party shall file a counter-designation listing any additional deposition testimony (by page and lines) or other discovery responses it contends are necessary for a complete and fair record. Any objections to the counter-designations shall be served (by fax and mail) and filed the day before the Pretrial Conference (the after-hours drop box may **not** be used for this filing); and
 4. **Objections to Voir Dire, Proposed Findings, Verdict Forms, or to the Authenticity or Admissibility of any Trial Exhibits.** Unless otherwise ordered, any objections to the use of proposed voir dire, proposed findings, verdict forms, or to the authenticity or admissibility of any trial exhibits shall be filed in writing, along with a certification that counsel conferred with opposing counsel regarding such objections.
- D. **At the Pretrial Conference**, lead counsel (and parties in pro se) will attend in person and be prepared to discuss all matters concerning Pretrial Preparation. The court will consider any trial management issue which is likely to promote a fair and efficient resolution of the case, including:
1. Entering the Pretrial Order;
 2. Ruling, to the extent practicable, on Motions *in Limine* and on any objections to voir dire, findings, verdict forms, jury instructions, and exhibits;
 3. Allocating a fixed number of hours for each side for the direct and cross-examination of witnesses;

4. Setting specific dates and times when trial will be in session; and
5. For jury trials, discussing the jury selection process.

Questions concerning the provisions of this order should be directed to the Administrative Law Clerk at (408) 535-5411.

Dated: July 8, 2002

HOWARD R. LLOYD
United States Magistrate Judge