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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) calendar days in advance of the hearing date. Opposition briefs shall be filed at least twenty-one (21) calendar days in advance of the hearing date. Reply briefs shall be filed at least fourteen (14) calendar days in advance of the hearing date.

Motions for or relating to sentencing (*e.g.* under *Blakely v. Washington*, 542 U.S. 296 (2004), or *United States v. Ameline*, 376 F.3d 967 (9th Cir. 2004)) 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 submit a Sentencing Memorandum. 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.”

1 2. **Motions or Stipulations to Continue** any proceeding on the Court’s criminal
2 calendar, except a trial, shall be submitted to the Court no later than 2:30 p.m. the day **before** the
3 proceeding is to be heard. Motions to continue a trial date shall be filed no later than seven (7)
4 calendar days prior to the trial date. Any opposition to a motion to continue trial shall be filed
5 no later than (5) days prior to the trial date. Such motions will only be granted in extraordinary
6 cases involving unforeseen circumstances and extremely good cause.

7 3. **Motions in Limine** shall be submitted as follows: At least thirty (30) calendar days
8 before the Final Pretrial Conference, the moving party shall serve, but not file, the opening brief.
9 At least twenty (20) calendar days before the Final Pretrial Conference, the responding party
10 shall serve the opposition. There will be no reply.

11 When the oppositions are received, the parties should collate the motions and the
12 oppositions together for inclusion in a binder, as set forth below, and then shall file the moving
13 papers and the opposition briefs no later than fourteen (14) calendar days before the conference.
14 Each motion should be presented in a separate memo and properly identified, for example,
15 “Defendant’s Motion in Limine No. 1 to Exclude” Please limit motions *in limine* to
16 circumstances that really need a ruling in advance. Usually five or fewer motions per side is
17 sufficient. Each motion should address a single, separate topic, and contain no more than seven
18 pages of briefing per side. Leave of Court will be required to file more than five motions or to
19 exceed the page limitations. A binder containing all motions in limine should be submitted to
20 the Clerk’s office in an envelope clearly marked with the case number and “JSW chambers
21 copy.”

22 4. All motions and oppositions to motions shall comply with Criminal Local Rule 47-
23 2(b), which requires that motions “presenting issues of fact ... be supported by affidavits or
24 declarations which comply with the requirements of Civil Local Rule 7-5.” Civil Local Rule 7-
25 5, in turn, requires that “[f]actual contentions made in support of or in opposition to any motion
26 must be supported by an affidavit or declaration and by appropriate references to the record.”
27 Moreover, other evidence in support of or in opposition to any motion “must be appropriately
28 authenticated by an affidavit or declaration.” That rule further requires that affidavits and

1 declarations contain factual contentions only, avoiding conclusions and legal argument, and
2 “conform as much as possible to the requirements of Federal Rule of Civil Procedure 56(e).”

3 In accordance with Civil Local Rule 7-5, made applicable by Criminal Local Rule 47-
4 2(b), any declaration or affidavit that does not comply with these requirements may be stricken.

5 5. Ex Parte Rule 17(c) Subpoena Requests: Before a defendant’s ex parte application
6 for document subpoena(s), made pursuant to Federal Rule of Criminal Procedure 17(c) may be
7 granted, defendant is required to demonstrate that proceeding ex parte is “necessary to preserve
8 the defendant’s overriding constitutional rights” because to do otherwise would “reveal[] his trial
9 strategy.” *See United States v. Tomison*, 969 F. Supp. 587, 595 (E.D. Cal. 1997). In addition,
10 defendant is required to show that the information sought is: (1) relevant; (2) admissible; and (3)
11 specifically identified. *United States v. Nixon*, 418 U.S. 683, 700 (1974). If the defendant seeks
12 production in advance of trial, he or she is required to demonstrate good cause for advance
13 production. *See id.*

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

19 Applications which do not include the above showing will be denied.

20 **FINAL PRETRIAL CONFERENCE**

21 6. Fourteen (14) days in advance of the Final Pretrial Conference, the parties shall file
22 a joint pretrial conference statement in accordance with Criminal Local Rule 17-1(b).

23 7. In addition to the joint pretrial conference statement, the parties shall file the
24 following:

25 (a) a joint exhibit list in numerical order, including a brief description of the exhibit
26 and Bates numbers, a blank column for when it will be offered into evidence, a blank column for
27 when it may be received into evidence, and a blank column for any limitations on its use;
28

1 (b) each party's separate witness list for its case-in-chief witnesses. For each
2 witness, state an hour/minute time estimate for the direct examination (only).

3 (c) a joint set of proposed instructions on substantive issues of law arranged in a
4 logical sequence. If undisputed, an instruction shall be identified as "Stipulated Instruction No.
5 ____ Re _____," with the blanks filled in as appropriate. Even if stipulated, the
6 instruction shall be supported by citation. If disputed, each version of the instruction shall be
7 inserted together, back to back, in their logical place in the overall sequence. Each such disputed
8 instruction shall be identified as, for example, "Disputed Instruction No. ____ Re _____
9 Offered by _____," with the blanks filled in as appropriate. All disputed versions
10 of the same basic instruction shall bear the same number. Citations with pin cites are required.
11 Any modifications to a form instruction must be clearly identified, *i.e.* in bold or italics. If a
12 party does not have a counter version and simply contends that no such instruction in any version
13 should be given, then that party should so state (and explain why) on a separate page inserted in
14 lieu of an alternate version. With respect to form preliminary instructions, general instructions,
15 or concluding instructions, please simply cite to the numbers of the requested instructions in the
16 current edition of the *Ninth Circuit Manual of Model Jury Instructions (Criminal)*. Other than
17 citing the numbers, the parties shall not include preliminary, general or concluding instructions
18 in the packet, but shall include the full text of these instructions on the disk required by
19 Paragraph 8.

20 (d) A separate memorandum of law in support of each party's disputed instructions,
21 organized by instruction number. Please quote exact, controlling passages from the authorities,
22 without ellipses, and give pin cites.

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

25 8. The jury instructions shall be submitted on a 3-3/4-inch disk in WordPerfect 10.0
26 format, as well as in hard copies. All hard-copy submissions should be submitted in a binder to
27 the Clerk's office in an envelope clearly marked with the case number and "JSW chambers
28 copies."

1 presence of the jury. The jury will be called at 8:30 a.m. This schedule may be modified at the
2 discretion of the Court.

3 **THE JURY**

4 13. No later than on the first day of trial, counsel shall jointly submit a simplified
5 statement of the case to be read to the jury during voir dire and as part of the proposed jury
6 instructions. Unless the case is extremely complex, this statement should not exceed one page.
7 The Court will usually conduct the voir dire.

8 14. In criminal cases, there are two alternate jurors and the jury is selected as follows:
9 The jurors will be given consecutive numbers and shall be seated by juror number. Jurors 1
10 through 18 are seated in the jury box. The remaining venire will be seated in the public benches.
11 Hardship excuses will usually be considered at this point. The Court will then ask questions to
12 the entire venire. The lawyers, at a side bar conference, will then advise if there are follow-up
13 questions. For good cause, counsel may also ask questions of jurors at side bar. Challenges for
14 cause will then be addressed. After a short recess, each side may exercise its allotment of
15 peremptory challenges. Challenges must be made simultaneously in writing by each side
16 (without knowing how the other side is exercising its challenges). The parties will write down
17 the names and numbers of the candidates to be stricken. The fourteen surviving the challenge
18 process with the lowest numbers become the final jury. For example, if the Government strikes
19 1, 5 and 7 and the defendant strikes 2, 4 and 9, then 3, 6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19,
20 and 20 become the final jury, including the alternates. If both sides strike one or more of the
21 same jurors, then the fourteen unstruck jurors with the lowest numbers will be seated. Once the
22 jury selection is completed, the jurors' names will be read again and they will be seated in the
23 jury box and sworn. The Court may alter the procedure in its discretion.

24 15. Jurors may take notes. Note pads will be distributed at the beginning of each
25 trial. The note pads will be collected at the end of each day and locked in the jury room. Jurors
26 will be instructed on the use of notes both in the preliminary and final jury instructions.
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GENERAL DECORUM

16. A trial is a rational and civilized inquiry to seek a just result. Counsel are expected to conduct themselves with dignity and decorum at all times. Disruptive tactics or appeals to prejudice are not acceptable.

17. Colloquy between counsel on the record is not permitted -- all remarks are to be addressed to the Court.

18. Vigorous advocacy does not preclude courtesy to opposing counsel and witnesses and respect for the Court. Addressing witnesses or parties by first names or the Court by "Judge" or "Sir" on the record is not appropriate.

19. Counsel shall not engage in activity at counsel table or move about the courtroom while opposing counsel is arguing or questioning witnesses, or in other ways cause distraction. Neither counsel nor client should indicate approval, disapproval or otherwise react to any testimony or argument.

OPENING STATEMENTS

20. Each side will have a predetermined time limit for its opening statement. Counsel must cooperate and meet and confer to exchange any visuals, graphics or exhibits to be used in the opening statements, allowing for time to work out objections and any reasonable revisions. Opening statements will commence as soon as the jury is sworn. Opening statements should be limited to an objective summary of what counsel expects the evidence to show; no argument or discussion of the law is permissible.

WITNESSES

21. At the close of each trial day, all counsel shall exchange a list of witnesses for the next two full court days and the exhibits that will be used during direct examination (other than for impeachment of an adverse witness). Within 24 hours of such notice, all other counsel shall provide any objections to such exhibits and shall provide a list of all exhibits to be used with the same witness on cross-examination (other than for impeachment). The first notice shall be exchanged prior to the first day of trial. All such notice should be provided in writing.

1 has marked an exhibit, then another party should not re-mark the exact document with another
2 number. Different *versions* of the same document, *e.g.*, a copy with additional handwriting,
3 must be treated as different exhibits with different numbers. To avoid any party claiming
4 “ownership” of an exhibit, all exhibits shall be marked and referred to as “Trial Exhibit
5 No. _____,” not as “Government’s Exhibit” or “Defendant’s Exhibit.” The jury should always
6 hear any given exhibit referred to by its unique number. There should be no competing versions
7 of the same exhibit number; any discrepancies must be brought to the Court’s attention promptly.

8
9 31. The exhibit tag shall be in the following form:

10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 TRIAL EXHIBIT 100
14 CASE NO. _____
15 DATE ENTERED _____
16 BY _____
17 DEPUTY CLERK
18

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

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

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39. To maximize jury time, counsel must alert the Court in advance of any problems that will require discussion outside the presence of the jury, so that the conference can be held before court begins or after the jury leaves for the day.

STIPULATIONS

40. You must read all stipulations to the jury (slowly) in order for them to become a part of the record.

CHARGING CONFERENCE

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

IT IS SO ORDERED.



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

6/07 Rev.