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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) 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.

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1 **Courtesy copies of all briefs shall be delivered to the Clerk’s Office in an envelope**
2 **clearly marked with the case number and “JSW Chamber’s Copy.”** All chambers copies
3 must be securely bound at the top or on the side, either with staples, “ACCO” fasteners, velo-
4 binding or shall be submitted in binders. Binder clips, paper clips, and rubber bands will not
5 satisfy this requirement. If a particular motion, declaration or other submission is more than two
6 inches thick, the parties should submit the chambers copies of the document in multiple volumes
7 that do not exceed two inches. When a declaration or other document includes exhibits, parties
8 shall submit chambers copies of the documents which include tabs that separate each exhibit.

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

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

24 In accordance with Civil Local Rule 7-5, made applicable by Criminal Local Rule 47-
25 2(b), any declaration or affidavit that does not comply with these requirements may be stricken.

26 4. Ex Parte Rule 17(c) Subpoena Requests: Before a defendant’s ex parte application
27 for document subpoena(s), made pursuant to Federal Rule of Criminal Procedure 17(c) may be
28 granted, defendant is required to demonstrate that proceeding ex parte is “necessary to preserve

1 the defendant's overriding constitutional rights" because to do otherwise would "reveal[] his trial
2 strategy." See *United States v. Tomison*, 969 F. Supp. 587, 595 (E.D. Cal. 1997). In addition,
3 defendant is required to show that the information sought is: (1) relevant; (2) admissible; and (3)
4 specifically identified. *United States v. Nixon*, 418 U.S. 683, 700 (1974). If the defendant seeks
5 production in advance of trial, he or she is required to demonstrate good cause for advance
6 production. See *id.*

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

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

14 **FINAL PRETRIAL CONFERENCE**

15 Counsel shall not prepare a joint pretrial conference statement. Instead counsel shall
16 follow the following procedures:

17 5. In lieu of preparing a joint pretrial conference statement, the parties shall meet
18 and confer in person and prepare a jointly signed proposed final pretrial order fourteen (14) days
19 in advance of the Final Pretrial Conference. In addition to the matters set forth in Northern
20 District Criminal Local Rule 17.1-1(b), this joint pretrial conference order should contain: (i) a
21 brief description of the substance of the case; (ii) if appropriate, all stipulated facts; (iii) a joint
22 exhibit list in numerical order, including a brief description of the exhibit and Bates numbers, a
23 blank column for when it will be offered into evidence, a blank column for when it may be
24 received into evidence, and a blank column for any limitations on its use; and (iv) each party's

1 separate witness list for its case-in-chief witnesses (*see* N.D. Crim. L.R. 17.1-1(b)(9)); items (ii)
2 and (iii) should be appendices to the proposed order. The proposed order should also state which
3 issues, if any, are for the Court to decide, rather than the jury. The objective is to convert the
4 proposed order to a final order with the benefit of any discussion at the final pretrial conference.

5
6 6. In addition to the joint pretrial conference order, the parties shall file the
7 following:

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

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

27 Other than citing the numbers, the parties shall not include preliminary, general or
28 concluding instructions in the packet, but shall include the full text of these instructions on the

1 CD-ROM required by this Order. Again, if the form instructions contain bracketed language or
2 blanks, the parties should provide the Court with the appropriate language from the brackets and
3 all blanks should be completed.

4 (b) The parties are encouraged to keep disputed instructions to a minimum. To the
5 extent they are unable to resolve their disputes, the court requires complete briefing on disputed
6 instructions. Thus, a party supporting an instruction must submit a separate memorandum of law
7 in support of its disputed instructions, organized by instruction number. Please quote exact,
8 controlling passages from the authorities. The party opposing a given instruction or instructions
9 must include a responsive brief to the supporting party's memorandum, organized by instruction
10 number and also shall quote exact, controlling passages from the authorities.

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

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

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

17 (f) A list of objections to each exhibit, in tabular form. The first column should
18 describe the exhibit, the second column should set briefly set forth the basis of the objection, and
19 the third column should set forth a brief response thereto. The parties shall meet and confer, in
20 person, in an attempt to resolve objections to the exhibits before this list is filed with the Court,
21 to consider exhibit numbers, and to eliminate duplicate exhibits and confusion over the precise
22 exhibit. If there are exhibits to which the parties' object, the parties shall submit to chambers,
23 but not file, a joint binder that contains the disputed exhibits and the list of objections.

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

28

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

3 The motions *in limine* and all oppositions thereto must be filed no later than fourteen (14)
4 calendar days prior to the Final Pretrial Conference, and shall be submitted to the Court collated
5 and in a binder, as set forth below. In order to ensure that motions *in limine* and oppositions are
6 timely filed, at least thirty (30) calendar days before the Final Pretrial Conference, the moving
7 party shall serve, but not file, the opening brief and at least twenty (20) calendar days before the
8 Final Pretrial Conference, the responding party shall serve, but not file, the opposition. The
9 Court does not permit reply briefs. Each motion should be presented in a separate memo and
10 properly identified, for example, "Plaintiff's Motion in Limine No. 1 to Exclude"

11 Please limit motions *in limine* to circumstances that require an advance ruling. No more
12 than five motions per side will be allowed. If a party seeks to file more than five motions *in*
13 *limine*, they must file an administrative motion at least fourteen (14) days before the motions *in*
14 *limine* are due to served on opposing counsel demonstrating extraordinarily good cause for
15 allowing the excess motions. The administrative motion should summarize the subject matter of
16 each proposed additional motion in limine.

17 Each motion *in limine* should address a single, separate topic, and contain no more than
18 seven pages of briefing per side. Leave of Court will be required to exceed the page limitations.
19 A binder containing all motions in limine should be submitted to the Clerk's office in an
20 envelope clearly marked with the case number and "JSW chambers copy."

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

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

THE JURY

12. The Court will conduct the voir dire.

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

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

15. The Court may permit the jury to pose written questions to the witnesses.

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.

1 experts who must be listed). Defense witnesses are considered case-in-chief witnesses, not
2 “rebuttal” witnesses.

3 24. Counsel shall stand at or near the podium to ask questions, straying only to point
4 out material on charts or overheads. If counsel wish to approach the witness or the bench, they
5 must request permission from the Court and clearly identify the reason for the request.

6 25. Counsel shall treat witnesses, including parties, with courtesy and respect, and not
7 become familiar with the witnesses, *e.g.*, they should avoid the use of first or nick-names.

8 26. Counsel shall pose brief, direct and simply stated questions, covering one point at
9 a time. Leading questions may be used for background, routine, or foundational matters.

10 27. Cross-examination similarly should consist of brief, simple questions. Cross-
11 examination should not be a restatement of the direct examination and should not be used for
12 discovery.

13 28. If the Court has made *in limine* rulings limiting testimony in a particular subject
14 area, counsel are encouraged to request a sidebar in the event they believe a particular line of
15 inquiry may implicate the Court’s prior ruling. In the event this is necessary, counsel should
16 request a sidebar and simply advise the Court that the request pertains to a pretrial ruling.

17 EXHIBITS

18 29. Prior to the Final Pretrial Conference, counsel must meet and confer in person to
19 consider all exhibit numbers and objections and to eliminate duplicate exhibits and confusion
20 over the precise exhibit.

21 30. Use numbers only, not letters, for exhibits. Blocks of numbers should be assigned
22 to fit the need of the case (*e.g.*, Government has 1 to 100, Defendant A has 101 to 200,
23 Defendant B has 201 to 300, etc.). A single exhibit should be marked only once. If one party
24 has marked an exhibit, then another party should not re-mark the exact document with another
25 number. Different *versions* of the same document, *e.g.*, a copy with additional handwriting,
26 must be treated as different exhibits with different numbers. To avoid any party claiming
27 “ownership” of an exhibit, all exhibits shall be marked and referred to as “Trial Exhibit
28 No. _____,” not as “Government’s Exhibit” or “Defendant’s Exhibit.” The jury should always

1 hear any given exhibit referred to by its unique number. There should be no competing versions
2 of the same exhibit number; any discrepancies must be brought to the Court's attention promptly.

3
4 31. The exhibit tag shall be in the following form:

5
6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA
8 **TRIAL EXHIBIT 100**
9 CASE NO. _____
10 DATE ENTERED _____
11 BY _____
12 DEPUTY CLERK
13

14 Counsel preferably will make the tag up in a color that will stand out (yet still allow for
15 photocopying) but that is not essential. Place the tag on or near the lower right-hand corner or, if
16 a photograph, on the back. Counsel should fill in the tag but leave the last two spaces blank.

17 The parties must jointly prepare a *single* set of all trial exhibits that will be the official record set
18 to be used with the witnesses and on appeal. Each exhibit must be tagged and in a separate
19 folder (not in notebooks). Deposit the exhibits with the deputy clerk on the first day of trial.

20 The tags can be adhesive or stapled on.

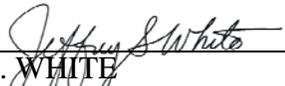
21 32. Counsel must consult with each other and with the deputy clerk at the end of each
22 trial day and compare notes as to which exhibits are in evidence and any limitations thereon. If
23 there are any differences, counsel should bring them promptly to the Court's attention.

24 33. In general, in addition to the official record exhibits, the Court requires two
25 copies of the joint set of bench binders that contain copies of the exhibits. Counsel shall provide
26 these binders to the Court on the first day of trial. Each exhibit must be separated with a label
27 divider (an exhibit tag is unnecessary for the bench set). In large letters, the labels should
28 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 proposed final instructions to the parties. After a
5 reasonable period for review, the Court may hold one, or more, charging conferences, at which
6 each party may object to any passage, ask for modifications, or ask for additions. If the Court
7 does not hold a formal charging conference, it will permit the parties to make any objections to
8 the jury instructions in writing or on the record. If a party wishes to request an instruction that
9 the Court has chosen to omit, it must affirmatively re-request it either on the record or in writing
10 in order to give the Court a fair opportunity to correct any error.

11 **IT IS SO ORDERED.**

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14 JEFFREY S. WHITE
15 UNITED STATES DISTRICT JUDGE

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