

# CIVIL PRE-TRIAL AND TRIAL PROCEDURES & DEADLINES

in

## U.S. Magistrate Judge Stanley A. Boone's Courtroom

The purpose of this procedure is to give a general overview to the parties of general pre-trial and trial procedures for conducting trials (whether jury or bench) and to answer general questions as they prepare for trial (through a pretrial statement or otherwise) in Judge Boone's courtroom. These general procedures must be read in conjunction with Judge Boone's "Trial Conduct and Decorum" and "Jury Selection" Procedures also found on the Eastern District of California's website under Judge Boone. These procedures are of general applicability only and may change based upon the nature of the case, the parties and/or the length of trial.

**Accordingly, to the extent that these procedures conflict with or are inconsistent with a specific Pretrial Order or Order in an actual case, that Order shall always control.**

Therefore, the parties are advised that they must carefully review and understand all orders in their respective case.

As with the "Trial and Conduct and Decorum" procedures, these procedures are also intended to further efficient and orderly fact-finding and to ensure that each party who comes before the court has a right to a fair trial:

### *Motions in Limine:*

1. The Court imposes a meet and confer requirement on the parties in an attempt to come to an agreement on any issue before it is presented to the Court in a motion. If the Court surmises that the parties have filed motions in limine without meaningful, genuine attempts to meet and confer, this Court will strike the motions in limine and remove them from calendar. Most evidentiary issues can be resolved easily with a conference between counsel or with the Court.

2. Parties that wish to present multiple issues via a motion in limine shall file one motion subdivided into separate sections setting forth the legal analysis for each issue. The responding party shall file one opposition in response subdivided into separate sections addressing issue. Moving and opposition papers must be brief, succinct and well-organized.

3. The motion in limine hearing will generally be set **two to three (3) weeks** before the trial. The motion itself will usually be filed **three (3) weeks** before the motion hearing with opposition due **two (2) weeks** thereafter. Generally, the briefing schedule will not provide for reply briefing.

4. Motions in limine on abstract evidentiary issues or issues more appropriately addressed by the Court on a case-by-case basis (such as a motion in limine to exclude all irrelevant evidence) will be looked upon with disfavor.

### *Trial Witnesses*

5. Only witnesses who are listed in the Court's Pretrial Order may appear on the Final Trial Witness List filed with the court.

6. One (1) week before trial, the parties must file their Final Trial Witness List. The Final Trial Witness List shall include each witness along with the business address or city of

residence for each witness, to the extent known. The parties are to omit witnesses from the Final Trial Witness List that were listed in the Pretrial Order but the parties no longer intend to call.

7. Every witness a party intends to call must appear on their own Final Trial Witness List. The mere fact that a witness appears on the opposing party's Final Trial Witness List is not a guarantee that the witness will be called at trial or otherwise be available for questioning by other parties. Each party must undertake independent efforts to secure the attendance of every witness they intend to call at trial.

8. The parties may not call any witness that is not on their Final Trial Witness List unless (1) it is solely for impeachment or rebuttal purposes, (2) the parties stipulate, (3) additional witnesses are required in light of the Court's ruling on a motion in limine, or (4) it is necessary to prevent "manifest injustice."

9. Should a party find it necessary to add additional witnesses beyond those named in the Pretrial order or their Final Trial Witness List in light of the Court's ruling on a motion in limine, the party must file a notice, listing the witnesses' names and addresses, with the Court within two (2) days after the Court's order on the motion in limine.

10. During trial, the parties' counsel are obligated to provide opposing counsel, by the close of that trial day, the names of the witnesses the party intends to call on the next trial day. If evidentiary problems are anticipated, the parties' counsel shall immediately notify the Court that a hearing will be required.

### ***Trial Exhibits***

11. Only exhibits which are listed in the Court's Pretrial Order may appear on the Exhibit List. No exhibit, other than those listed in this section, may be admitted unless the parties stipulate or upon a showing that the Pretrial Order should be modified to prevent "manifest injustice." The parties should not rely on the manifest injustice standard since this standard is quite high.

12. **Four (4)** weeks prior to trial, the parties shall exchange their proposed exhibits. No later than **three (3)** weeks before trial, the parties' counsel shall meet and conduct an exhibit conference to pre-mark and examine trial exhibits and to prepare exhibit lists

13. **One (1) week** prior to trial, the parties must file their Exhibit List and submit their pre-marked exhibits in binders.

14. Each party must prepare at least **three (3) complete, legible and identical sets of exhibits in binders**. The number of binders will vary based upon number of opposing parties' counsel. Within the binders, the pre-marked exhibits must be separately tabbed and assembled in sequential order. The binders shall be delivered as follows:

- a. **Two (2) binder sets** shall be delivered to Courtroom Deputy Victoria Gonzales (one for use by the Court and one for use by any witness at the witness stand); and
- b. **One (1) binder set** shall be provided for each opposing counsel's use.

15. All exhibits must be pre-marked with an exhibit sticker or other legible numbering/lettering. If the individual exhibit includes multiple pages and is not easily identified

as to each page (i.e., Bates stamp numbering), then the exhibit must be page numbered. All exhibits must be pre-marked, including both evidence that will be formally admitted into evidence as well as any other exhibits that will be presented in any manner during trial, such as “demonstrative” evidence. Each individual “original” exhibit that will be submitted to the jury must be stapled/fastened so that the exhibit does not become separated. Further, exhibits submitted to the jury must be pre-marked on the front page only in the manner described above. Impeachment or rebuttal evidence need not be pre-marked. However, evidence of bias, extrinsically introduced, must be pre-marked.

16. **Joint exhibits** are those exhibits which all parties agree may be admitted into evidence without the need for laying a proper foundation under the Federal Rules of Evidence. Joint exhibits must be pre-marked with the designation “J-[Number]” (e.g., J-1, J-2). Those exhibits may be introduced at any time during the course of the trial. However, unless the parties agree otherwise on the record, joint exhibits are not “automatically” admitted into evidence: at least one of the parties must admit a joint exhibit into evidence. If an exhibit is not admitted by any party, the exhibit will not be given to the jury despite its “joint” designation as an exhibit.

17. **Plaintiff’s exhibits** must be pre-marked using **numbers** beginning with 1 (e.g., 1, 2, etc.). If multiple parties with multiple counsel (to the extent they cannot agree on joint exhibits), then the party’s initials shall be added after the “number” and a dash (“-”) if there are multiple plaintiffs with separate counsel (e.g., 1-SMK, 2-SMK, 3-SMK and 1-MCD, 2-MCD, 3-MCD, etc.).

18. **Defendant’s exhibits** must be pre-marked using **letters** beginning with A (e.g., A, B, C...AA, BB, CC...AAA, BBB, CCC, etc.). This number/lettering is flexible and may change based upon parties and nature of case. The parties should be prepared to discuss this issue with the court at either the pre-trial or motion in limine hearing, not at the time the exhibits are to be filed.

19. The parties may admit responses to discovery requests into evidence. The parties shall file and serve a list of all responses to discovery requests intended to be used at trial no later than two weeks before trial. The list shall identify the responses to discovery requests by title and set number. If a party seeks to admit a physical copy of the discovery responses into evidence at trial, the discovery responses must be pre-marked as an exhibit in the same manner discussed above. Alternatively, if the party intends to read relevant portions of the discovery responses into evidence, a copy of the discovery responses must be lodged with the Court no later than two weeks prior to trial. The Court will address objections to discovery responses as they arise during trial or through a motion in limine.

20. If a party attempts to admit or use for any purpose evidence that (1) was not previously disclosed during discovery and (2) should have been disclosed as an initial disclosure under Rule 26(a) or as a supplemental disclosure under Rule 26(e), the Court will prohibit that party from admitting or using for any purpose that evidence at trial, unless the failure was substantially justified or was harmless.

21. Deposition testimony shall be designated by page and line number, with such designation to be filed and served no later than **three (3) weeks** before trial. Any counter-designation as to the same designation (also set out by page and line number) shall be filed and served no later than **two (2) weeks** before trial. The original certified transcript of any deposition identified in a designated or counter-designation shall be lodged with the clerk's office **no later than two weeks before trial**, if not previously lodged with the Court. If any party

intends to admit relevant portions of deposition testimony into evidence, the relevant deposition testimony must be pre-marked as an exhibit in the same manner discussed above. However, any party may request that deposition testimony offered for any purpose other than impeachment be presented in non-transcript form, if available. The Court will address objections to deposition testimony as they arise during trial or through a motion in limine.

### ***Trial Briefs***

22. **One (1) week** before trial, the parties shall file their trial briefs. The form and content of the trial brief must comply with Local Rule 285. Special attention should be given in the trial brief to address reasonably anticipated disputes concerning the substantive law, jury instructions and/or admissibility of evidence. The parties need not include in the trial brief any issue that is adequately addressed in a motion in limine or in an opposition brief to a motion in limine.

### ***Jury Instructions***

23. **One (1) week** prior to trial, the parties shall file their joint proposed jury instructions with the Court. However, prior to that filing, **three (3) weeks** before trial, the parties shall serve their proposed jury instructions on each another. The parties must meet and confer in an effort to address their proposed jury instructions and shall reach agreement on the joint jury instructions to be given at trial.

24. In addition to being filed, the proposed jury instructions must also be e-mailed in Word® format to [saborders@caed.uscourts.gov](mailto:saborders@caed.uscourts.gov) no later than **one (1) week** before trial.

25. If any party proposes additional jury instructions that are not agreed upon by all parties, such proposed jury instructions shall be filed with the Court no later than one (1) week before trial. Each party may file up to ten (10) proposed jury instructions and identify such as jury instructions upon which all parties could not agree. Unless prior leave is granted, the Court will not consider additional proposed jury instructions beyond the first ten (10).

26. Proposed jury instructions shall (1) indicate the party submitting the instruction (i.e., joint/agreed-on, Plaintiff's or Defendants'), (2) be numbered sequentially, (3) include a brief title for the instruction describing the subject matter, (4) include the text of the instruction, and (5) cite the legal authority supporting the instruction. If the proposed jury instruction is based on the Ninth Circuit Model Jury Instructions, CACI, BAJI or other source of jury instructions, the proposed jury instruction shall also include a citation to that specific instruction. Ninth Circuit Model Jury Instructions **shall** be used where the subject of the instruction is covered by a model instruction. Otherwise CACI or BAJI instructions **shall** be used where the subject of the instruction is covered by CACI or BAJI. **All instructions shall be short, concise, understandable, and consist of neutral and accurate statements of the law. Argumentative or formula instructions will not be considered.**

27. If any party proposes a jury instruction that departs from the language used in the Ninth Circuit Model Jury Instructions, CACI, BAJI or other source of jury instructions, that party shall, by italics or underlining, highlight the differences in language and must cite the legal authority supporting the modification.

28. No later than the Thursday before trial, the parties shall file and serve written objections to any disputed jury instructions proposed by another party. All objections shall be in

writing and (1) shall set forth the proposed instruction objected to in its entirety, (2) shall specifically set forth the objectionable matter in the proposed instruction, and (3) shall include a citation to legal authority to explain the grounds for the objection and why the instruction is improper. A concise argument concerning the instruction may be included. Where applicable, the objecting party shall submit an alternative proposed instruction covering the subject or issue of law.

29. The Court will not accept a mere list of numbers associated with form instructions from the Ninth Circuit Model Jury Instructions, CACI, BAJI or other source of jury instructions. The proposed jury instructions must be in the form and sequence which the parties desire to be given to the jury. Any blank fields in the form instructions must be filled-in before they are submitted to the Court. Irrelevant or unnecessary portions of form instructions must be omitted.

### ***Verdict Form***

30. The parties shall serve their proposed verdict form on one another no later than three (3) weeks before trial and shall conduct a conference to address their proposed verdict forms. At the conference, the parties shall reach an agreement on the verdict form for use at trial. The parties shall file the joint proposed verdict form, **no later than one (1) week before trial**.

31. The joint proposed verdict form shall also be e-mailed as a Word® attachment to [saborders@caed.uscourts.gov](mailto:saborders@caed.uscourts.gov) no later than one (1) week before trial. **Joint proposed verdict forms will not be used unless they are so e-mailed to the Court.**

### ***Jury Voir Dire***

32. **One (1) week** before trial, the parties shall file their proposed voir dire questions, if any.

### ***Neutral Statement of the Case***

33. **One (1) week** before trial, the parties shall prepare a joint neutral statement of the case for use during jury voir dire and in the initial instructions given to the jury prior to opening statements. The joint neutral statement of the case shall briefly describe the case, including the relevant claims and defenses.

**GENERAL FILING DEADLINES FOR TRIALS BEFORE JUDGE BOONE**

<i>Filing</i>	<i>Deadline</i>	<i>Meet &amp; Confer Requirement</i>
Motion in Limine	<b>Hearing:</b> 2 to 3 weeks before trial <b>Filing of Motion:</b> 3 weeks before hearing <b>Opposition:</b> 2 weeks after motion filed <b>Reply:</b> No	<b>Yes</b>
Exhibit List & Binders	One (1) week before trial	<b>Yes</b>
Jury Instructions	One (1) week before trial	<b>Yes</b>
Neutral Statement of Case	One (1) week before trial	<b>Yes</b>
Trial Brief	One (1) week before trial	No
Verdict Form	One (1) week before trial	<b>Yes</b>
Voir Dire	One (1) week before trial	No
Final Trial Witness List	One (1) week before trial	No