



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
501 I Street  
Sacramento, California 95814

Daniel J. Calabretta  
United States District Judge

**JURY TRIAL PROCEDURES**

This document describes some of the general procedures that are typically used in civil and criminal jury trials before Judge Calabretta. The Court retains the authority to change these procedures at any time to conform to the needs of a particular case.

**I. Civil Trials**

**A. Voir Dire Procedures**

- The jury will consist of **8 jurors** with **no alternate jurors**. Any request to deviate from this format must be made by motion.
- The box will be filled with **16 potential jurors**.
- At the Court's discretion, each side will typically be given **20 minutes** to conduct additional voir dire after the Court performs an initial voir dire questioning.
- Following attorney voir dire, the Court will hear challenges for cause at sidebar or outside the presence of the jury. Further rehabilitation *may* be permitted at that time where necessary.
- If **fewer than 14 potential jurors** remain in the box after challenges for cause are finished, the Court will refill the box until it contains **14 potential jurors**. The Court will then inquire about the new potential jurors' responses to questions asked by the Court during initial voir dire. Attorneys for all parties will then be permitted to briefly conduct additional voir dire only as to any new jurors.
- Each party will be given **3 preemptory challenges**.
- When using preemptory challenges, parties may choose to strike one of the 8 potential jurors who would otherwise be empaneled or to pass to the other party. If a party passes and the opposing party

chooses to strike another juror, the party that passed may then resume using their strikes as to any of the 8 potential jurors who would otherwise be empaneled. Where one party has exercised all of its strikes and the other party has strikes remaining, the other party may only exercise two additional strikes. When all parties pass or no longer have strike available, voir dire is complete, and the jury will be empaneled.

## **B. Jury Instructions**

- Following the Final Pretrial Conference, parties will be ordered to file proposed jury instructions. Unless otherwise ordered, proposed jury instructions must be filed jointly in a single set. Where a party objects to an instruction, that instruction should be included in the proposed jury instructions with the opposing party's objection noted. Along with the contested proposed instruction, the opposing party may provide a brief statement of the legal basis for that objection and propose an alternate jury instruction, as appropriate.
- Unless otherwise indicated at the final status conference, the Court will give the following Ninth Circuit Model Civil Jury Instructions as preliminary instructions to the jury following voir dire:
  1. 1.3 - Duty of Jury
  2. 1.5 - Claims and Defenses
  3. 1.9 - What is Evidence
  4. 1.10 - What is Not Evidence
  5. 1.12 - Direct and Circumstantial Evidence
  6. 1.13 - Ruling on Objections
  7. 1.14 - Credibility of Witnesses
  8. 1.15 - Conduct of the Jury
  9. 1.16 - Publicity During Trial
  10. 1.17 - No Transcript Available to Jury
  11. 1.18 - Taking Notes
  12. 1.20 - Bench Conferences and Recesses
  13. 1.21 - Outline of Trial
- The above listed jury instructions need not be included in the proposed jury instructions except where parties are requesting a modified version of an instruction be used instead.
- The Court may also issue additional instructions as appropriate, including instructions that go to the element of the claims to provide

the jury with a roadmap of the proceedings. However, if parties wish specific preliminary instructions to be given beyond the above, such instructions must be included with their proposed jury instructions.

- Final jury instructions will be given at the close of evidence, before closing argument.
- Upon beginning their deliberations, each juror will be provided with a written copy of the final jury instructions.
- Parties should review the Final Pretrial Order issued in their case for further information on proposed jury instructions.

## II. Criminal Trials

### A. Voir Dire Procedures

- The jury will consist of **12 jurors**. Typically, there will be **2 alternate jurors** but this may be adjusted based on the penalty for the charges, the nature of the case, and any other relevant factor. Parties may request that the number of alternate jurors be altered by stipulation or by motion.
- The box will be filled with **22 potential jurors**.
- At the Court's discretion, each side will typically be given **20 minutes** to conduct additional voir dire after the court performs an initial voir dire questioning.
- Following attorney voir dire, the Court will hear challenges for cause at sidebar or outside the presence of the jury. Further rehabilitation *may* be permitted at that time where necessary.
- The number of preemptory challenges for trial jurors depends on the potential penalty for the charges and the number of defendants. Refer to Federal Rule of Criminal Procedure 24(b) for more information.
- The number of preemptory challenges for alternate jurors depends on the number of alternate jurors used. Refer to Federal Rule of Criminal Procedure 24(c)(4) for more information.

- When using preemptory challenges, parties may choose to strike one of the 12 potential jurors who would otherwise be empaneled or to pass to the other party. If a party passes and the opposing party chooses to strike another juror, the party that passed may then resume using their strikes as to any of the 12 potential jurors who would be empaneled.
- After **6 potential jurors** have been removed by either challenges for cause or preemptory challenges, the Court will consolidate the remaining jurors and refill the front row with 6 new potential jurors. The Court will then inquire about those jurors' responses to questions asked by the Court during initial voir dire. At the Court's discretion, attorneys for all parties will then be permitted to briefly conduct additional voir dire only as to any new jurors.

## **B. Jury Instructions**

- Following the Trial Confirmation Hearing, parties will be ordered to file proposed jury instructions. Unless otherwise ordered, proposed jury instructions must be filed jointly in a single set. Where a party objects to an instruction, that instruction should be included in the proposed jury instructions with the opposing party's objection noted. Along with the contested proposed instruction, the opposing party may provide a brief statement of the legal basis for that objection and propose an alternate jury instruction, as appropriate.
- Unless otherwise indicated at the final status conference, the Court will always give the following Ninth Circuit Model Criminal Jury Instructions as preliminary instructions to the jury following voir dire:
  1. 1.1 - Duty of Jury
  2. 1.2 - The Charge—Presumption of Innocence
  3. 1.3 - What is Evidence
  4. 1.4 - What is Not Evidence
  5. 1.5 - Direct and Circumstantial Evidence
  6. 1.6 - Ruling on Objections
  7. 1.7 - Credibility of Witnesses
  8. 1.8 - Conduct of the Jury
  9. 1.9 - No Transcript Available to Jury
  10. 1.10 - Taking Notes
  11. 1.11 - Outline of Trial
  12. 1.16 Bench Conferences and Recesses

- The above listed jury instructions need not be included in the proposed jury instructions except where parties are requesting a modified version of an instruction be used instead.
- The Court may also issue additional instructions as appropriate, including instructions that go to the element of the claims to provide the jury with a roadmap of the proceedings. However, if parties wish specific preliminary instructions to be given beyond the above, such instructions must be included with their proposed jury instructions.
- Final jury instructions will be given at the close of evidence, before closing argument.
- Upon beginning their deliberations, each juror will be provided with a written copy of the final jury instructions.
- Parties should review the Final Pretrial Order issued in their case for further information on proposed jury instructions.