

HONORABLE JOHN S. RHOADES
U.S. DISTRICT JUDGE
CIVIL RULES

The following rules address trial preparation and conduct for civil trials before Judge Rhoades. Some rules may not apply in particular cases. In other cases, additional rules may apply. The Court will issue an order before trial tailored to the specific case.

JURY INSTRUCTIONS:

Three weeks before trial, the parties shall submit a statement to be read to the jury to apprise the jury of the nature of the case. This statement shall not exceed one page in length.

The Court generally gives Ninth Circuit Model Preliminary Instructions numbers 1.1 through 1.12.1. See **Ninth Circuit Manual of Model Jury Instructions (Civil)** 3-14 (1997). If the parties wish to have additional preliminary instructions given, they jointly shall submit the proposed instructions **three weeks before trial**. In addition, because Model Instruction number 1.2 is highly case-specific, the parties jointly shall submit a version of Model Instruction number 1.2 for the Court to give.

Three weeks before trial, the parties shall submit proposed final jury instructions, in regards to which the parties shall abide by the following guidelines:

The parties shall serve their initial proposed instructions on each other **four weeks before trial**. The parties then should meet and confer to **agree on** the final set of proposed instructions. It is not enough for the parties to agree on general instructions, but not specific instructions. **The Court expects the parties also to agree on the specific instructions for the case.**

Counsel shall set forth the instructions they agree on in the following format:

1. There shall be two copies of each instruction;
2. The first copy shall indicate the number of the proposed instruction and the authority supporting the instruction;
3. The second copy shall contain only the proposed instruction -- there shall be no other marks or writings on the second copy except for a centered heading that reads "Instruction No.____", with the number left blank.

Counsel shall set forth the instructions they do not agree on by setting forth first, Plaintiff's proposed instructions to which Defendants objects; and second, Defendant's proposed instructions to which Plaintiff objects. There shall be no argument or citation to authority. There shall be two copies of these instructions in the same format as the instructions on which the parties agree.

Two weeks before trial, each party shall file its written objections to the other party's proposed instructions. Each objection shall set forth the proposed instruction in its entirety. The objection then should set forth specifically the objectionable material in the proposed instruction. The objection shall contain citation to authority and a **brief** argument explaining why the instruction is improper. Where applicable, the objecting party shall submit an alternative instruction that covers the same subject.

One week before trial, each party may file concise written responses to the other party's objections.

All instructions should be short, concise, understandable, and neutral statements of the law. Argumentative instructions are improper and should not be submitted.

Parties should note that the Court generally prefers Ninth Circuit Model Jury Instructions over Devitt and Blackmar.

The Court generally disfavors non-form instructions. Any modification of instructions from statutory authority, the Ninth Circuit Models, BAJI, or Devitt and Blackmar (or any other form instructions) must state specifically the modification and the authority supporting the modification.

When counsel submits the proposed instructions, counsel also shall submit a diskette in WordPerfect 6.1 format. There shall be no viruses on the diskette. The diskette shall contain the following files,¹ which shall be clearly identified on the label:

1. One file that sets forth the instructions the parties agree on with supporting authority.
2. One file that sets forth the instructions the parties agree on without supporting authority. Each of these instructions shall contain the heading: "Court's Instruction No. ___", with the number left blank.
3. One file that sets forth Plaintiff's instructions to which Defendants object, with authority.
4. One file that sets forth Plaintiff's instructions to which Defendants object, without authority. Each of these instructions shall contain the heading: "Court's Instruction No. ___," with the number left blank.
5. One file that sets forth Defendant's instructions to which Plaintiff objects, with authority.

¹ By "files," the Court means one WordPerfect 6.1 document. The Court does not mean one "folder" that contains one document per instruction.

6. One file that sets forth Defendant's instructions to which Plaintiff objects, without authority. Each of these instructions shall contain the heading: "Court's Instruction No. __," with the number left blank.

There shall be no typographical errors in any of the instructions. If an instruction is a form instruction, the language of the proposed instruction **shall conform exactly** to the form instruction, unless the parties deliberately modify the instruction.

The Court will not grant extensions of the above deadlines, absent an extraordinarily strong showing of need (e.g., a medical emergency). This is true even if counsel stipulate to an extension. Counsel's heavy caseload, other trials, etc., do not constitute an "extraordinarily strong showing of need."

The parties shall submit all of the above directly to chambers.

Failure to comply with any of the above guidelines, **including the deadlines**, may subject the noncomplying attorney to sanctions.

JURY SELECTION:

One week before trial, the parties shall submit suggested voir dire questions, if any, and the verdict forms.

EXHIBITS:

If possible, and if appropriate, counsel should develop glossaries and indices as joint exhibits. The glossaries and indices may include a list of important terms, names, dates, and other matters that may be confusing or difficult to remember for a person unfamiliar with the case. Counsel are encouraged to use charts, summaries, and other demonstrative aids to explain their positions in an understandable manner.

Counsel shall redact lengthy documents to eliminate irrelevant, cumulative, or unimportant portions. Where appropriate, counsel should highlight the important passages of a document.

Counsel should provide extra copies of introduced documents in order to avoid circulating one copy of an exhibit among numerous jurors. Counsel also should maintain "exhibit books" for the judge and jury in order to make admitted documents readily available.

EVIDENCE:

Regarding deposition testimony that will be read into evidence, counsel shall abide by the following guidelines:

Counsel shall agree on and designate all depositions they will read into evidence. The Court suggests that the parties use a four-color system of designation. Plaintiff can use one color, e.g.,

green, to designate portions it desires to read. Defendant can use a second color, e.g., red, to indicate Plaintiff's portions to which Defendant objects, stating grounds. A third color can be used by Defendant to designate additional portions it wants to read, and Plaintiff can use a fourth color to indicate portions designated by Defendant to which Plaintiff objects, stating grounds.

The proponent of deposition testimony shall prepare a clean copy of the excerpts, which shall include the beginning and ending page and line numbers. This shall be given to the Court and placed in the record so that the court reporter does not have to transcribe the deposition testimony as the witness reads it.

The proponent of any audio or video presentation shall prepare a written transcript of it and the above procedures for depositions shall apply. The parties shall meet, confer, and agree on a stipulated transcript. If the parties cannot agree, each side shall prepare and produce its own version of the disputed portion of the audio or video presentation.

Each party that seeks monetary damages shall prepare a summary of the documentary evidence that supports monetary damages (e.g., medical bills, accounts, etc.).

CONDUCT AT TRIAL:

The Court will not hear motions that are brought for the first time in trial without a strong showing that counsel could not have filed them sooner. This includes evidentiary questions. Most issues can be anticipated before trial. If the Court determines that the attorney could not with reasonable diligence have anticipated the issue, the Court will rule on the motion at the next recess. The Court expects the attorneys to provide specific citations to the Federal Rules of Evidence, statutes, or case law.

Opening statements shall not include legal arguments. Opening statements shall state only the facts that each party believes will be presented at trial.

There will be no bench conferences while the jury is in the jury box. If a problem arises, the attorney shall advise the Court of the issue and the Court will rule after the jury is excused. Testimony that relates to the issue will wait until after the ruling.

The Court will not grant requests to see the Court outside the presence of the jury when the Court is about to reconvene following a recess. These matters can await the next recess.

Before a witness testifies, counsel shall tell the courtroom deputy which exhibits will be used during the testimony. The exhibits shall be placed before the witness prior to the witness' testimony and shall be clearly labeled.

Counsel shall have witnesses review reports before taking the stand. If a witness must review a report after taking the stand, the witness may review it at the next recess or the witness can be recalled after the report has been read.

The Court will only grant requests to approach the witness if necessary.

Counsel generally may not ask questions that exceed the scope of direct examination.

On direct examination, a witness shall not draw a diagram or mark an exhibit unless the attorney who called the witness explains why it should happen in front of the jury. The witness shall draw the diagram or mark the exhibit before taking the stand. The witness then can adopt and explain the diagram or markings.

If discovery material has not been delivered to opposing counsel or the material delivered during or just before trial requires further investigation, the attorney examining the witness shall complete the examination as much as possible and recall the witness to the stand after the investigation is complete.

Counsel shall meet and confer to resolve any problems that might affect compliance with this Order.

NON-UNANIMOUS JURY VERDICT:

Federal Rule of Civil Procedure 48 provides for a jury of not less than six jurors and states that “[u]nless the parties otherwise stipulate . . . the verdict shall be unanimous.” In order to avoid the risk of a hung jury,² the Court asks the parties to consider stipulating to a non-unanimous verdict. To this end, three weeks before trial each party shall inform the Court whether they will stipulate to the following:

1. There will be 10 jurors -- six regular jurors and four alternates;
2. At the end of the trial, all remaining jurors will be entitled to vote;
3. The verdict need not be unanimous. Instead, it may be decided thusly (parties choose one):

8 of 10 (80%)
7 of 9 (77%)
6 of 8 (75%)
5 of 7 (71%)
4 of 6 (66.67%).

² The risk of a hung jury is particularly great in complex trials. See Federal Judicial Center, Manual for Complex Litigation, Third 155 (1995) (“The potential for and consequences of mistrial, serious in all litigation, are aggravated in complex trials. The most obvious risk is the jury’s failure to reach a verdict. A stipulation permitting return of a less than unanimous verdict can reduce that risk.”).

TRIAL BRIEFS:

Two weeks before trial the parties shall file a "Joint Trial Brief" that sets forth:

1. any facts the parties no longer dispute;
2. copies of depositions to be offered into evidence, annotated with the four-color system of designation described above, along with any changes the deponent has made;
3. written waivers of claims or defenses, if any; and
4. an itemized statement of special damages, if applicable.

Two weeks before trial each party shall submit a "Plaintiff's (or Defendant's) Trial Brief" on all disputed issues of law, including foreseeable procedural and evidentiary issues, setting forth briefly the party's positions and the supporting arguments and authorities.

TRIAL SCHEDULE:

The trial generally will proceed from 8:00 a.m. to 1:30 p.m., Tuesday through Thursday. Before 1:30 p.m. of each day of trial, counsel shall give opposing counsel and the Court a list of the following day's witnesses and documents, along with the expected sequence in which the witnesses and documents will be presented.