

HONORABLE MARILYN L. HUFF
U.S. DISTRICT JUDGE
CRIMINAL PRETRIAL & TRIAL PROCEDURES

Please Note: The Court provides this information for general guidance to counsel. However, the Court may vary these procedures as appropriate in any case.

PRETRIAL MOTION PRACTICE:

The magistrate judge will set a date for pretrial motions. Any changes to that date and all other hearing dates for motions shall be obtained from the courtroom deputy clerk. Criminal Local Rule 47.1(a).

The original of all motions, including exhibits, on behalf of any defendant or any moving party, except the United States, shall be accompanied with two conformed copies and filed with the clerk at least 14 days prior to the date for which the motion is noticed unless the Court, for good cause and by order only, shortens such time. Criminal Local Rule 47.1(b). The Court discourages orders shortening time. Counsel should be prepared to file timely motions and adhere to the briefing schedule as set forth in the local rules.

Any time a case is calendared for motions and counsel for either side knows that a disposition is to take place, counsel has a duty to call the court clerk of the appropriate judge at the earliest available time to inform the court of the disposition.

Pursuant to Criminal Local Rule 16.1, all criminal discovery motions shall be made to the Court.

BAIL:

Bail determinations are made by the magistrate judge, subject to appeal to the district court. If there is an appeal, the Court will request transcripts of the bail hearing below.

SUBPOENAS:

Subpoenas shall be issued in accordance with Rule 17 of the Federal Rules of Criminal Procedure and Local Rule 17.1. Counsel requesting subpoenas pursuant to Rule 17(b) should make application to the Court as soon as practicable. Counsel should not wait until the eve of trial to make Rule 17(b) requests. Counsel must also make a satisfactory showing that the witness is necessary to an adequate defense.

MOTIONS IN LIMINE:

At the pretrial motions date, the Court will generally schedule a date for motions in limine at 9:00

a.m. the day before the trial. Motions in limine are due two weeks before the hearing with any opposition due one week before the hearing.

JURY INSTRUCTIONS:

The parties should each submit proposed jury instructions to the Court on the first day of trial, unless otherwise ordered by the Court. Supplemental instructions must be filed and served as soon as the need for them becomes apparent. If counsel requests the model Ninth Circuit jury instructions, counsel may list the number of the instruction and edition without citing the text.

The Court prefers to use the Ninth Circuit Criminal Jury Instructions when possible. The Court will accept other proposed jury instructions but counsel must cite the authority supporting the proposed instructions. Any proposed modifications of instructions from statutory authority or the Ninth Circuit Models must state specifically the modification and the authority supporting the modification.

All proposed instructions submitted by either party that the Court does not adopt will be deemed opposed.

Prior to the case being submitted to the jury, the Court will provide each party with the jury instructions the Court intends to use. It is each party's responsibility to carefully review these jury instructions and make suggestions to the Court if modifications appear necessary.

TRIAL BRIEFS, PROPOSED VOIR DIRE QUESTIONS, VERDICT FORMS:

Pursuant to the Criminal Local Rule 23.1, the parties may, no later than 5 days prior to the date of trial, serve and file briefs on all significant disputed issues of law, including foreseeable procedural and evidentiary issues. Counsel may serve and file proposed voir dire questions and forms of verdict on the day set for motions in limine.

JURY SELECTION:

The courtroom deputy will provide counsel with a list of the jury panel in random order at the start of the voir dire.

The Court will conduct the initial jury voir dire. On a case by case basis, the Court may consider requests for follow-up voir dire conducted by the attorneys, if specific questions are presented.

The Court generally uses the blind strike system regarding the exercise of peremptory challenges. Generally, challenges for cause/Batson issues will occur at sidebar, unless the Court requests otherwise.

TRIAL SCHEDULE:

Trial generally proceeds from 9:00 a.m. to 4:30 p.m., often beginning on a Tuesday, unless the Court schedules otherwise. Generally, trial does not proceed on Monday unless the jury is deliberating. Jury deliberations generally proceed from 9:00 a.m. to 4:30 p.m. The Court will notify the parties of deviations from this schedule.

OPENING STATEMENTS, EXAMINING WITNESSES, AND SUMMATION:

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

Please rise when addressing the Court. In jury cases, please rise when the jury enters or leaves the courtroom.

The Court uses a sound recording system for the record. Therefore, whenever counsel is speaking, counsel must use a microphone so that the Court's electronic recording system will contain a complete record. If counsel moves away from the lectern, counsel must speak into a microphone, hand-held or otherwise.

If an interpreter is used for the purpose of providing a translation, the interpreter must speak into a microphone to ensure the clarity of the record.

Counsel may approach the witness without seeking permission of the Court.

Counsel should confine opening and closing addresses to the jury to a reasonable length of time.

Where a party has more than one lawyer, only one lawyer may conduct the direct or cross-examination of a given witness.

In jury cases, counsel must avoid addressing any juror by name.

Counsel should not by facial expression, nodding or other conduct exhibit any opinion, adverse or favorable, concerning any testimony being given by a witness. Counsel should admonish counsel's own clients and witnesses to avoid such conduct.

Counsel must not address or refer to witnesses or parties by first name alone, except for young witnesses under age 14.

OBJECTIONS:

When objecting, counsel must state the objection and state only that counsel objects and the legal ground of objection. Speaking objections are not permitted, unless the Court requests further information from counsel. Where a party has more than one lawyer, only one may object during the

direct or cross-examination of a given witness.

BENCH CONFERENCES:

During a jury trial, the Court wishes to maximize the jury's time and therefore strongly discourages sidebar conferences while the jury is in the jury box. If counsel wishes to speak to the Court outside the jury's presence, counsel may request to do so at the start of the recess or at the end of the day. The Court will not grant requests to see the Court outside the presence of the jury when the court is about to begin the day of trial or reconvene following a recess. These matters can generally await the next recess.

TRIAL PROCEDURE:

The Court expects promptness from counsel and witnesses. It is counsel's duty to tell the Court on the first day of trial of any commitments in any other court on a subsequent day that may result in absence or late arrival. Due to the Court's administrative duties as Chief, there may be times that the Court needs to attend to the business of the court.

It is defense counsel's responsibility to arrange for the criminal defendant to be dressed in appropriate clothing ahead of time, consistent with the appropriate procedures at the institution where the defendant is held.

Lawyers must make every effort to have their witnesses available all day on the day they are to testify. The Court attempts to accommodate witnesses' schedules and will permit counsel to put them on out of sequence. Counsel must anticipate any such possibility and discuss it with opposing counsel and the court. Counsel must promptly alert the Court to any scheduling problems involving witnesses.

EXHIBITS:

Government counsel must provide a list of exhibits and give it to the courtroom deputy clerk on the first day of trial. All exhibits must be premarked on the first day of trial. Exhibit stickers may be obtained from the Clerk of the Court or from the courtroom depute clerk, in advance of the start of trial.

Each counsel should keep counsel's own list of exhibits and should keep track when each has been admitted into evidence and should periodically check in with the courtroom deputy who has the official list. Once an exhibit is admitted it is the property of the Court and must remain in the courtroom, unless otherwise ordered by the Court.

Exhibits must be admitted in evidence before counsel may show them to the jury.

When referring to an exhibit, counsel should refer to its exhibit number whenever possible.

If a demonstrative exhibit is being used and counsel's view is obstructed, counsel may relocate for better viewing without requesting permission from the Court.

Pursuant to Local Criminal Rule 1.1(e) and Local Civil Rule 79.1, all exhibits will be returned to the party who produced them at the conclusion of the trial.

JURY:

Counsel must not speak or interact with any jurors in the proceeding until after a verdict has been rendered. Counsel must instruct witnesses, clients, and observers not to have any interaction with the jurors.

During deliberations, counsel must remain close to the courthouse and give the courtroom deputy clerk a phone number where they can be reached.

GENERAL DECORUM:

All persons, whether observers, witnesses, lawyers, or clients, must maintain proper decorum while in court.

Pursuant to Civil Local Rule 83.4, and incorporated by Criminal Local Rule 1.1(e)(21), lawyers must behave in a professional manner. Specifically lawyers must:

- (a) be courteous and civil in all communications, oral and written;
- (b) be a vigorous and zealous advocate on behalf of a client without acting in a manner detrimental to the proper functioning of the judicial system;
- (c) attempt to resolve litigation consistent with his or her clients' interests
- (d) attempt to informally resolve disputes with opposing counsel;
- (e) agree to reasonable scheduling changes, requests for extensions of time and waivers of procedural formalities, if the legitimate interests of a client will not be adversely affected;
- (f) communicate with opposing counsel in an attempt to establish a discovery plan and voluntary exchange of information; and
- (g) when possible, confer with opposing counsel before scheduling or rescheduling hearings, depositions, and meetings and notify all parties and the court, as early as possible when hearings or depositions must be canceled.

Counsel shall meet and confer to resolve any problems that might affect compliance with the above rules and instructions.

RULE 11:

Rule 11 guilty pleas may be taken by the magistrate judges on a report and recommendation, except for cases with mandatory minimum penalties. Because the magistrate judge may have a more flexible schedule, the Court encourages pleas before the magistrate judge assigned to the case. Rule 11 proceedings before the district judge may occur at the pretrial motion date or as scheduled by

obtaining a date from the courtroom deputy.

SENTENCING:

Sentencing procedures are set forth in Criminal Local Rule 32.1. The Court may, on its own motion, expedite the sentence date to seven or eight weeks after the Rule 11 guilty plea. If expedited, the objections are due no later than five days before the sentencing date. If the parties request immediate sentencing, the Court may elect to proceed with immediate sentencing in certain immigration cases but only where the Court had sufficient information in the record to perform the meaningful exercise of sentencing authority.

Sentencing summary charts are required in all cases no later than five days before the sentence. Sentencing summary charts may be faxed directly to chambers with court permission.

CRIMINAL JUSTICE ACT VOUCHERS:

Counsel must obtain prior approval for any request for extraordinary fees or extraordinary expenses over the limits set by the Court. Vouchers need to be timely submitted in accordance with the Court procedures for timely payment.