

TRIAL PROCEDURES BEFORE DISTRICT JUDGE
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(Last Revised: 01/12/24)

1. **Trial Schedule:** Except for the day of jury selection, jury trial begins each day at 8:30 a.m. and runs until 2:00 p.m. every day unless otherwise announced. There is no lunch break taken during trial hours. Jurors and counsel are advised to bring a snack for consumption during a break. Short breaks are taken during the trial at various intervals. Certain days for jury trial may extend beyond 2:00 p.m. when the judge deems it necessary. For jury selection, the trial day starts at 9:00 a.m., has a lunch break from 12 noon to 1:30 p.m., and concludes by 4:00 p.m. Trial hours are sometimes longer for nonjury trials. Sanctions may be imposed on any party, attorney or witness for tardiness that delays the court proceedings.
2. **Bench Conferences:** Bench conferences or side bars are highly discouraged and not generally permitted. If a problem arises during examination, counsel should defer the matter and move to another line of questioning and the dispute will be resolved during a recess. In general, counsel will meet daily with the judge at 8:15 a.m. prior to trial, during recess or after the jury is dismissed for the day to discuss any anticipated disputes.
3. **Voir Dire:** The court conducts the general voir dire and will incorporate special voir dire based on questions that the parties may have submitted. Each side will then have ten to fifteen minutes for voir dire which shall include both general and individual questioning of the jurors.
4. **Juror note taking:** Jurors will be permitted to take notes during trial, if they desire to do so. The court will provide notebooks and pens. These notebooks will be left face-down on the jurors' chairs when they leave the courtroom. The jurors may, if they wish, take their notes into the jury deliberation room. After the conclusion of the trial, these notes will be destroyed.
5. **Motions in limine:** Motions in limine shall be filed in accordance with the deadlines set forth in the Rule 16 Scheduling Order. These motions will be decided without hearing and no later than the day before jury selection. If the parties want to request that these motions be heard at an earlier date, they should make this request at the Final Pretrial Conference.
6. **Use of demonstrative aids during opening statement, witness examination or closing argument:** During opening statements, demonstrative aids (such as exhibits, charts or other material) shall not be displayed to the jury without a stipulation by all parties. Agreements of the parties shall be sought prior to opening statement, and without delaying proceedings before the jury. In general, the court will not permit an exhibit to be passed among the jurors.
7. **Use of microphone:** Counsel shall use the microphone provided when addressing the court or the jury such as in any examination, objection, statement for the record, or argument. Counsel shall remain at the podium unless prior court permission is sought and granted.
8. **Exhibits:** Parties are required to meet and confer to agree upon a common set of exhibits. Counsel shall inform the court, no later than the hearing on the motions in limine, of the exhibits

that all counsel have agreed may be admitted into evidence and any disputed exhibits. Any party objecting to the admission of any exhibits listed shall inform the court of the exhibits in dispute by exhibit number. A party may seek, during trial or an evidentiary hearing, to add exhibits not previously listed by asking for leave of court. The party seeking to add exhibits shall provide the court and all of the parties with copies of the additional exhibits, mark the additional exhibits with appropriate exhibit numbers, and submit supplemental exhibit lists reflecting the additional exhibits.

a. **Exhibit Binders and Folders**: The parties are required to provide one set of exhibits to the court to be shown to witnesses during testimony, when necessary. Each exhibit must be placed in a separate manila folder that is labeled with the exhibit number. The parties are also required to provide two binders of exhibits, separated by tabs, to the court.

b. **Jury Evidence Recording System (“JERS”)**: The parties are also required to submit electronic versions of exhibits for display during trial and for the jury’s use during deliberation. The electronic exhibits must be submitted in accordance with the directions provided by the Clerk’s Office, and they must be submitted on the same day that the hard-copy exhibits are provided.

9. **Motions during trial**: Generally, motions should be in writing.

10. **Witnesses**: The next day’s witnesses shall be disclosed by the proffering counsel to other counsel by no later than the close of each day’s trial proceedings. Counsel should arrange for a sufficient number of witnesses for each day and there should not be any delay in trial proceedings caused by witness unavailability.

11. **Deposition testimony**: Deadlines for the deposition testimony designations and objections are as set forth in the Rule 16 Scheduling Conference Order. If deposition testimony is to be published to the jury, the party offering this testimony should notify the other parties and the court in a timely manner so that the written or videotaped testimony can be edited in accordance with the court’s ruling on any objections without any delay in the trial proceedings. In general, such notification should be given no later than by noon of the day before the testimony is to be published to the jury.

a. **Procedure**: The party offering the testimony shall give a list of the precise designations that are in dispute to the court and the other parties no later than noon of the day before the testimony will be published to the jury. The offering party shall provide the court with two working copies of the complete deposition and shall indicate with highlighting the precise deposition designations in dispute. A condensed transcript is preferred for this purpose. After the court rules on the objections, the offering party shall file with the court and serve all parties (before the testimony is published to the jury) a declaration by the party or counsel and attach a redacted copy of the deposition transcript reflecting the testimony permitted into evidence (“Working Copy”). If the deposition testimony is published to the jury by reading testimony aloud, then the offering party shall provide a person to read the testimony.

b. **Final redacted transcript:** A final redacted deposition transcript may be filed as an exhibit after the deposition testimony is published to the jury but the declaration of counsel or the party with the Working Copy must be provided to the court and all parties before the testimony is published to the jury.

12. **Jury Instructions:** Proposed jury instructions and proposed special verdict forms shall be submitted both in writing and on computer disk or thumb drive in Word format or in Word format through email to kobayashi_orders@hid.uscourts.gov.

13. **Interpreters:** Counsel and the parties are responsible for hiring and arranging for any interpreters who may be necessary for witness testimony. These arrangements should be made well in advance of trial.

14. **Special equipment:** Permission to use special equipment (such as television monitors, overhead projectors, and easels) must be obtained in advance from the court. Counsel are responsible for obtaining, setting up and removing special equipment.

15. **Telephone numbers:** Counsel shall exchange telephone numbers through which counsel may be reached after court hours and shall provide this information to the courtroom manager before the start of trial so that notice may be given, if necessary, of any changes in schedule and for text-message notifications regarding the jury's status during deliberation.

16. **Faxes to the Court:** No material may be faxed to chambers without prior permission from chambers staff.

17. **Testimony for Non-Jury Trials and Additional Instructions:** Direct examination testimony shall be submitted by affidavit or declaration only, unless the witness is a hostile witness. The testimony is due three weeks before trial or by a date otherwise determined by the court. Each witness proffered by a party shall be made available in person in the courtroom for cross examination and redirect examination. A witness is not required to appear in person if the parties stipulate that no cross examination is required. An out-of-state witness may appear for cross-examination by video-teleconference with leave of court. A party may seek leave to present an in-state witness by video-teleconference, if the party calling the witness establishes that requiring the witness to appear in person would be an undue hardship for the witness.

a. **Objections:** The parties may orally raise appropriate objections to declaration testimony on the day the witness is to appear for cross-examination, but the parties are urged to try to resolve any objections by agreement.

b. **Civil Nonjury Evidentiary Hearings:** The foregoing procedures also apply to civil nonjury evidentiary hearing, such as a hearing on a motion for a preliminary injunction. Written testimony for an evidentiary hearing must be filed by no later than 4:30 p.m. on the working day before the witness will be called to testify.

c. **Written Submissions by Parties:** In a civil nonjury trial or a civil nonjury evidentiary hearing, no later than two working days before the proceeding begins, the parties will file a set of any facts to which they have stipulated.

d. **Hostile Witnesses:** If a party intends to call a witness in its case and contends that the witness is hostile or if the witness is a nonparty witness, the party seeking to call such a witness must attempt to obtain a declaration from that witness. Upon a showing by the party that it is unable to obtain a declaration, the court will permit deposition testimony to be designated in lieu of a declaration, unless the party calling the witness makes a showing as to why deposition testimony cannot be used for direct examination. Upon such a showing, examination may be live or by video-teleconference, as ordered by the court.

e. **Waiver:** The above requirements will be waived by the court only upon a showing of good cause. Any waiver must be sought in a written motion filed no later than ten working days before trial begins or three working days before the evidentiary hearing begins.

f. **Exhibits:** No exhibit will be deemed received in evidence unless expressly offered by a party and received by the court. That is, exhibits attached to deposition transcripts or declarations are not automatically received in evidence.

18. **Findings of Fact and Conclusions of Law:** The parties shall file trial briefs by the deadline set forth in the Rule 16 Scheduling Order, which shall include citations to case law and other authorities that the party asserts should be applied. After the non-jury trial, the court will issue its ruling and direct the prevailing party to prepare a draft of the Findings of Fact and Conclusions of Law (“FOF/COL”) consistent with the rulings and annotated, where appropriate, to the trial transcript. The opposing party thereafter will file any objections and propose revisions to the draft FOF/COL. The court will consider the submissions and issue its FOF/COL.