

TRIAL PROCEDURES SUPPLEMENT TO LOCAL BANKRUPTCY RULES FOR JUDGE JULIA W. BRAND

I. TRIAL BRIEFS

Unless otherwise ordered by the court, trial briefs are required. Trial briefs must be filed at least seven (7) calendar days before trial. Judge's copies of the trial briefs should be delivered to Judge Brand's chambers on the same date.

The trial brief should contain (1) a concise statement of the facts of the case; (2) a short statement of any relevant procedural history; (3) a summary of the points of law involved with supporting authorities; (4) a summary of the disputed issues of fact and the testimony that such party plans to introduce in an effort to prove its version of the disputed facts, and (5) a brief discussion of any anticipated evidentiary issues or other problems that the party believes are likely to arise at trial. Unless specifically requested by the court, no additional trial briefs will be considered.

II. PRE-TRIAL ORDER

Unless otherwise ordered by the court, the parties must prepare and file a written joint pre-trial order pursuant to Local Bankruptcy Rule ("LBR") 7016-1(b) through (f) not later than seven (7) calendar days before trial. A judge's copy should be delivered to chambers the same day. The pre-trial order must contain the statements and information required by LBR 7016-1(b)(2).

In conjunction with the pre-trial order, the parties must meet and confer to attempt to stipulate to the authenticity and possible admissibility (without the necessity for live testimony) of the documents that have been exchanged. The court expects the parties to make good faith efforts to resolve all evidentiary issues.

III. PRESENTATION OF DIRECT TESTIMONY BY DECLARATION

The purpose of this procedure is to facilitate pre-trial preparation and to streamline the adducement of direct testimony in trial so as to reduce trial time without sacrificing due process and a fair trial.

A. Except as provided herein, each party **must present the direct testimony of all of its witnesses, including expert witnesses, through the declarations of said witnesses**, under penalty of perjury, otherwise admissible under the Federal Rules of Evidence. See, e.g., Lee-Benner v. Gergely (In re Gergely), 110 F.3d 1448, 1452 (9th Cir. 1997); Adair v. Sunwest Bank (In re Adair), 965 F.2d 777, 779-80 (9th Cir. 1992). Each declaration must set forth the direct testimony that the witness would give as though questions were propounded in the usual fashion. Each statement of fact or opinion must be separately, sequentially numbered and must contain only matters that are admissible under the Federal Rules of Evidence (e.g., avoiding redundancies, hearsay, and other objectionable statements).

B. All cross-examination, rebuttal, surrebuttal and appropriate impeachment evidence must be given by live testimony. The only oral testimony that may be offered at trial by a party through its own witnesses will be **STRICTLY** limited to rebuttal testimony or such additional testimony on matters relevant to the outcome of the proceeding as may be specifically requested by the court at the time of trial.

C. If a witness refers in the declaration to an exhibit to be admitted into evidence, the exhibit must be identified in the declaration by exhibit number or letter. The exhibit itself need not be attached to the witness's declaration, but must be included in the exhibit binder or notebook and properly marked for identification. Unless the parties stipulate to the admittance of an exhibit, the foundation for admittance of exhibits (other than for impeachment or rebuttal purposes) must be established in the declaration. Exhibits referenced in any declaration should be offered into evidence when the declaration is offered into evidence.

D. If a party is unable to obtain a declaration of a witness (such as, for example, in the case of a hostile witness), counsel for that party must file (by the applicable deadline for the filing of the witness' declaration) a declaration stating the name of the witness and a detailed summary of the expected testimony and why counsel was unable to obtain the witness' declaration. Failure to make every reasonable effort to obtain the declaration of any witness will result in the exclusion of any oral testimony of such witness by the party attempting to offer such testimony.

E. A party may present the direct testimony of a witness in the form of a transcript of a deposition of the witness, in which event the party must submit a declaration authenticating the excerpts from the transcript that contain the testimony that the party wishes to introduce (only the portions of the transcript that the party wishes to introduce should be attached to the declaration).

F. The declaration of a witness for a party will be admissible at trial, subject to timely objections, only if the declarant is present at trial and subject to cross-examination.

IV. EXHIBITS

A. Exhibit binders must be delivered to the court seven (7) business days prior to commencement of trial. All exhibits must be marked for identification prior to the commencement of the trial. Exhibit tags may be obtained from the courtroom deputy or the court recorder prior to trial. Each exhibit must be marked for identification at the bottom (right) of the first page of the exhibit. Unless the parties agree upon a unified, joint set of exhibits, the plaintiff's exhibits must be marked in numerical order, and the defendant's exhibits must be marked in alphabetical order (e.g., Plaintiff's Exhibit 1, etc., Defendant's Exhibit A, etc.). If the parties agree on a unified, joint set of exhibits, the exhibits must be marked in numerical order.

B. All exhibits must be assembled in a binder or notebook. Each such binder or notebook must include as its first page an exhibit register on Form B-3024 "Exhibit Register and Notice Re Disposition of Exhibits" available on the court's website, www.cacb.uscourts.gov under "Other Forms."

C. Please provide one (1) original set (court recorder) and at least four (4) sets of copies (1/each counsel, 1/judge, 1/witness).

D. At the commencement of trial, the parties must be prepared to stipulate into evidence all exhibits that are admissible for at least one purpose. Bona-fide objections may be reserved, with the issue of admissibility deferred, until the exhibit is offered into evidence.

V. DEADLINES FOR SUBMISSION OF DECLARATION, EXHIBITS AND OBJECTIONS

A. Plaintiff must submit to opposing counsel all declarations and exhibits comprising the plaintiff's case in chief not later than thirty (30) days before the trial date.

B. Defendant must submit to opposing counsel all declarations and exhibits comprising the defendant's case, together with any written objections to the admission of any of Plaintiff's exhibits or to the testimony contained in any of Plaintiff's witness declarations, not later than twenty-one (21) days before the trial date.

C. Plaintiff must submit to opposing counsel any written objections to the admission of any of Defendant's exhibits or to the testimony contained in any of Defendant's witness declarations not later than fourteen (14) days before the trial date.

D. All witness declarations and exhibits, together with any written objections to the admission of any of the exhibits or to any of the declarations or any portion thereof, must be lodged with the Courtroom Deputy at least seven (7) days before the trial date. Each party must lodge sufficient copies of its exhibit binder, containing the exhibit register and all exhibits, for all parties, the witness stand, the court recorder, and the judge.

E. At trial, each party must also have copies of any exhibits used for impeachment or rebuttal for the opposing party, witnesses and the court.

F. Evidentiary objections will be adjudicated at the time a witness declaration or exhibit is offered into evidence. Any evidentiary objections to testimony contained in a written declaration that is not raised in a written objection filed within the applicable time limit set forth above shall be deemed waived.

G. NO OTHER DECLARATIONS WILL BE ALLOWED. The only additional evidence that a party may offer at trial is true rebuttal evidence. If the court concludes that testimony that a party seeks to offer should more accurately be characterized as direct testimony that as rebuttal evidence, that testimony will be excluded or, if already provided, such testimony will be stricken, if it was not set forth in a timely-filed declaration submitted by such party.

VI. EXCERPTS FROM DISCOVERY DOCUMENTS

A. **Deposition Transcripts.** Each party intending to offer any evidence by way of deposition testimony pursuant to Fed. R. Civ. P. 32, other than for impeachment or rebuttal, must lodge with the clerk the original deposition transcript, together with a copy of the transcript or pages from the transcript to be offered, marked to reflect the portions to be offered, pursuant to LBR 7030-1(b) not later than the applicable deadline for submission of declarations, exhibits and objections set forth in Section V. Transcripts may be bound on the left side and do not have to be hole-punched or blue-backed.

B. **Other Discovery Documents.** Excerpts from interrogatories, requests for admissions, or other discovery documents to be offered at trial, other than those to be used for impeachment or rebuttal, must be filed pursuant to LBR 7026-2(c) not later than the applicable deadline for submission of declarations, exhibits and objections set forth in Section V.

VII. CONTINUANCE/POSTPONEMENT OF TRIAL DATE

Trials will be commenced promptly at the scheduled date and time. Trial dates are **not** continued or vacated absent good cause, on noticed motion, supported by competent evidence. The parties will be contacted by either of Judge Brand's law clerks as to whether the continuance has been granted or denied.

Parties are further advised that during the week prior to trial, the court may move the starting time or day. The Courtroom Deputy will advise the parties of any such change by telephone. All parties are cautioned to adjust their schedules accordingly. The court expects counsel and witnesses to be available on 2-3 hours telephone notice for the remainder of the week.

VIII. SETTLEMENT/COMPLIANCE

Not later than five (5) calendar days before the trial date, counsel for Plaintiff must telephone the Courtroom Deputy at (213) 894-7341 to report (a) whether the parties intend to go forward with trial as scheduled; (b) if settlement is likely; (c) whether the time reserved for trial is realistic; and (d) any other relevant information.

Stipulations for settlement must be in writing, executed by each party or their counsel, and delivered to chambers before the date of trial. If time constraints prevent reducing a settlement to writing prior to trial, all the parties, or their counsel, must (a) advise chambers of the settlement; and (b) appear at the time set for trial to recite the stipulation on the record.

Failure to comply with these procedures may result in the imposition of sanctions, including but not limited to, removal from the trial calendar or the exclusion of evidence (*i.e.*, witnesses who were not timely identified or exhibits which were not timely submitted).