

TRIAL PROCEDURES SUPPLEMENT TO LOCAL BANKRUPTCY RULES FOR THE HON. MARTIN R. BARASH

I. TRIAL BRIEFS

Unless otherwise ordered by the Court, trial briefs are required. Pursuant to Local Bankruptcy Rule ("LBR") 9013-2, trial briefs must be filed not later than seven days before the trial date. The Judge's copies of the trial briefs should be delivered to Judge Barash' chambers on the same date they are filed.

A party's trial brief should contain: (1) a concise statement of the facts of the case; (2) all admissions and stipulations; (3) a summary of any relevant procedural history; (4) a summary of the points of law involved with supporting authorities; (5) a summary of the disputed issues of fact and of the testimony that the party plans to introduce to prove its version of the disputed facts; and (6) 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 supplemental trial briefs may be filed and none will be considered.

II. PRETRIAL STIPULATION AND ORDER

Unless otherwise ordered by the Court, the parties must prepare a written joint pretrial stipulation and order pursuant to LBR 7016-1(b) through (f). The proposed stipulation and order should be lodged, and a Notice of Lodgment filed and served (with the stipulation and order attached thereto), not later than fourteen days before the pretrial conference (or if no such conference is ordered, fourteen days before the trial date). The Judge's copy of the pretrial stipulation and order should be delivered to chambers on the same date they are lodged. The pretrial stipulation must contain the statements and information required by LBR 7016-1(b)(2).

In conjunction with the pretrial stipulation and order, the parties must meet and confer not later than twenty-eight days before the pretrial conference (if one is ordered) or thirty-five days before the trial date (if no pretrial conference is ordered) to attempt to stipulate to the authenticity and admissibility of the documents exchanged (without the necessity for live testimony). **The Court expects the parties to make good faith efforts to resolve all evidentiary issues.**

III. PRESENTATION OF LIVE TESTIMONY

Unless otherwise ordered by the Court (on its own initiative or at the request of a party), all evidence at trial shall be presented by way of live testimony.

IV. ALTERNATIVE PROCEDURE: DIRECT TESTIMONY BY DECLARATION

If the Court orders the presentation of direct evidence at trial by declaration, the following procedures will apply, unless otherwise modified by the Court:

A. Each party must present the direct testimony of its witnesses, including the testimony of expert witnesses, through written declarations given

under penalty of perjury. As with all testimony, declarations are subject to the Federal Rules of Evidence, including the rules on admissibility. See Fed. R. Evid. 611(a); *Adair v. Sunwest Bank (In re Adair)*, 965 F.2d 777, 779–80 (9th Cir. 1992) (per curiam). 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.

B. 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.

C. All cross-examination, rebuttal, sur-rebuttal, 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.

D. If a witness refers in a declaration to an exhibit to be admitted into evidence, the exhibit must be identified in the declaration by exhibit number or letter. As a foundational matter, the declarant must review each exhibit to which s/he testifies, but the exhibit itself need not be attached to the witness's declaration. The exhibit should be included in the exhibit binder and properly marked for identification. Unless the parties stipulate to the admission of an exhibit, the foundation for admission of an exhibit (other than for impeachment or rebuttal purposes) must be established in the declaration. Exhibits referenced in any declaration must be offered into evidence when the declaration is offered into evidence at trial.

E. If a party is unable to obtain a declaration of a witness (e.g., in the case of a hostile witness), counsel for that party must file (by the applicable deadline for the filing of the witness's 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's 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. Any party that seeks the testimony of a hostile (i.e., uncooperative) witness at trial is responsible for properly and timely issuing a subpoena to such witness to appear at trial.

F. If the presentation of direct evidence in the form of a deposition transcript is authorized under Fed. R. Civ. P. 32 and Fed. R. Evid. 804, the party offering such transcript must file a declaration authenticating the transcript and demonstrating that the requirements of these Rules have been satisfied. The party also must comply with the requirements of LBR 7030-1(b). However, notwithstanding LBR 7030-1(b), the notice of lodgment of the original transcript and the marked copy required by LBR 7030-1(b) must be filed on the docket not later than the deadline for filing that witness's direct testimony by declaration pursuant to Section V below.

V. EXHIBITS, DECLARATIONS, EVIDENTIARY OBJECTIONS, TRIAL BINDERS, AND EXHIBIT REGISTERS

Unless otherwise ordered by the Court:

A. Plaintiff must file and deliver to opposing counsel all exhibits and declarations (if applicable) comprising Plaintiff’s case in chief not later than twenty-eight days before the trial date.

B. Defendant must file and deliver to opposing counsel all exhibits and declarations (if applicable) comprising Defendant’s case, together with any written objections to the admission of any of Plaintiff’s exhibits or declaration testimony, not later than twenty-one days before the trial date.

C. Plaintiff must file and deliver to opposing counsel any written objections to the admission of any of Defendant’s exhibits or declaration testimony not later than fourteen days before the trial date.

D. All exhibits and declarations, together with any previously filed written objections to the admission thereof (or any portion thereof) must be lodged with the Courtroom Deputy not later than seven days before the trial date.

1. Each party must lodge no fewer than four sets of these documents (i.e., one for each party, the witness stand, the Courtroom Deputy and the Judge.)

2. All exhibits must be assembled in a three-ring exhibit binder. All exhibits must be marked for identification at the bottom-right corner of the first page of the exhibit, be separately tabbed, and contain page numbers.

3. At trial, each party also must provide sufficient copies of any exhibits used for impeachment or rebuttal, for each party, the witness stand, the Court Deputy, and the Judge.

4. Unless the parties agree upon a unified, joint set of exhibits (which is encouraged), Plaintiff’s exhibits must be marked in numerical order and Defendant’s exhibits must be marked in alphabetical order (e.g., Plaintiff’s Exhibit 1, 2, 3, etc.; Defendant’s Exhibit A, B, C, etc.). If the parties agree on a unified, joint set of exhibits, the exhibits must be marked in numerical order.

5. Each exhibit binder must include as its first page an exhibit register. The exhibit register must including the following information for each exhibit:

Exhibit No.	Brief Description	Date Admitted	How Admitted (Stipulation, Witness Name, etc.)	How/When Used During Trial
-------------	-------------------	---------------	--	----------------------------

E. At the commencement of trial, the parties must be prepared to stipulate to admission of all undisputed exhibits. Bona fide objections may be reserved, with the issue of admissibility deferred until the exhibit is offered into evidence at trial.

F. Immediately after the trial's conclusion, the parties must complete the exhibit register to indicate the date each exhibit was admitted, how it was admitted, and how the exhibit was actually used during trial. **Each completed exhibit register must be filed within one Court day after the conclusion of the trial.** Please note that the Court will only consider exhibits that were admitted and that were used during trial. For example, if the parties stipulated to the admissibility of an exhibit, but the exhibit was not referred to by a witness or otherwise used during trial, the exhibit will not be considered by the Court.

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

H. No declarations other than those authorized under Section IV above, and timely filed pursuant to this Section V will be allowed. If the alternative procedures set forth in Section IV are applicable, the only additional evidence that a party may offer at trial is true rebuttal evidence. If the procedures in Section IV are applicable, and a party offers live testimony that the Court determines is more accurately characterized as direct testimony rather than rebuttal testimony, the testimony will be excluded or stricken.

VI. EXCERPTS FROM DISCOVERY DOCUMENTS

A. **Deposition Transcripts.** A party intending to offer direct evidence by way of deposition testimony pursuant to Fed. R. Civ. P. 32 and Fed. R. Evid. 804 must comply with Paragraph IV.F above.

B. **Other Discovery Documents.** Excerpts from interrogatories, requests for admissions, or other discovery documents to be offered at trial, other than those 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 evidentiary objections set forth in Section V.

VII. CONTINUANCE OF TRIAL DATE

Trials will be commenced promptly at the scheduled date and time. Trial dates will **not** be continued or vacated absent good cause, on a properly noticed motion, supported by competent and persuasive evidence. The parties will be contacted and informed whether the continuance has been granted or denied.

VIII. SETTLEMENT

Not later than five days before the trial date, counsel for Plaintiff must telephone the Courtroom Deputy at (818) 587-2853 to report (1) whether the parties intend to go forward with trial as scheduled; (2) if settlement is imminent; (3) whether the time

reserved for trial is realistic; and (4) any other relevant information.

Stipulations for settlement must be in writing, executed by each party or its counsel, and delivered to chambers before the date of trial. If time constraints prevent reducing a settlement to writing prior to trial, all of the parties or their counsel must (1) advise chambers of the settlement and (2) appear at the time set for trial to recite the stipulation on the record.

IX. COMPLIANCE

Failure to comply with these procedures may result in the imposition of sanctions, including, but not limited to, monetary sanctions, removal from the trial calendar, dismissal for failure to prosecute, or the exclusion of evidence (e.g., witnesses who were not timely identified or exhibits that were not timely submitted).