

# TRIAL PROCEDURES SUPPLEMENT TO LOCAL RULES FOR HON. MARK S. WALLACE

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*ALL MATTERS STATED HEREIN ARE SUBJECT AND SUBORDINATE TO  
ANY COURT ORDER PROVIDING A DIFFERENT RULE OR REQUIREMENT  
WITH RESPECT TO SUCH MATTER.*

## **A. PRETRIAL CONFERENCE**

The Court expects the parties to fully comply with LBR 7016-1(b), (c), (d) and (e).

The joint pretrial order must be lodged and served not less than 14 days before the date set for the pretrial conference. All parties must meet and confer at least 28 days before the date set for the pretrial conference for the purpose of preparing the joint pretrial order. If one party refuses to join in the preparation of a joint pretrial order, the other party may file a unilateral pretrial order as set forth in LBR 7016-1(e). (Such non-cooperation is highly discouraged and may lead to the Court dismissing the case for want of prosecution or striking the answer and entering a default). The contents of the pretrial order shall be as set forth in LBR 7016-1(b)(2).

At the pretrial conference the Court will set the trial date(s) and establish a schedule for the filing of trial briefs and the date for delivering a courtesy copy of exhibits to chambers.

## **B. TRIAL BRIEFS**

Unless otherwise ordered by the Court, trial briefs are required and must be filed and served at least fourteen (14) calendar days before the first day of trial. A courtesy copy of the trial brief must be delivered to Judge Wallace' chambers on the same day the briefs are filed.

The trial briefs **must** contain:

- (1) a concise statement of the facts of the case;
- (2) a short statement of any relevant procedural history, including the resolution of all motions;
- (3) a summary of the relevant 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 or other issues that the party believes are likely to arise at trial.

Unless specifically requested by the Court, no additional trial briefs will be considered.

## **C. EXHIBITS**

It is critically important for trial exhibits to be precisely identified. Inevitably, this will require separate tagging of documents, and numbering of pages. In the absence of tagging and numbering, it may be difficult or impossible to determine where one exhibit ends and another begins. Additionally, it will often be necessary to address a witness's attention to a particular page of a particular exhibit (and hence the need for the consecutive numbering of pages).

For these reasons, parties are required to strictly comply with LBR 9070-1. Any failure to do so may result in an exhibit being excluded from evidence.

All parties presenting exhibits have the responsibility to tag their own exhibits well in advance of trial. Evidence tags may be obtained from the clerk's office or the courtroom deputy. The plaintiff's exhibits must be marked with numbers in increasing order. The defendant's exhibits must be marked with letters in alphabetical order.

At trial, each party must bring one original set of exhibits and at least four sets of copies: one for each counsel, one for the judge and one for the witness. All parties presenting exhibits must prepare an exhibit register on Form B 3024 "EXHIBIT REGISTER AND NOTICE RE DISPOSITION OF EXHIBITS" available at the Court's website, [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov) under "Court Forms." Exhibits to be used for impeachment only need not be included.

A tabbed set of all exhibits must be delivered to Judge Wallace's chambers and to opposing counsel no later than fourteen (14) days prior to the first day of trial.

## **D. AUTHENTICATION OF TRIAL EXHIBITS**

Each trial exhibit shall be authenticated by declaration, under penalty of perjury. Each such declaration shall be filed and served on opposing counsel (with a courtesy copy delivered to chambers) no later than fourteen (14) days prior to the first day of trial. Objections to the authentication of any exhibit shall be by a timely-filed motion in limine, as described below.

## **E. MOTIONS IN LIMINE**

Any motion in limine shall be filed and served no later than seven (7) days prior to the first day of trial. Any party desiring to object on any ground to any trial exhibit must do so through motion in limine. Any objection to any trial exhibit not made by motion in limine shall be deemed waived (absent extraordinary circumstances). If an objection is made by motion in limine to a trial exhibit, the opposing party must make available for cross-examination at trial the declarant who authenticated such exhibit. A failure to do so is likely to result in the exhibit being excluded from evidence.

## **F. DIRECT TESTIMONY, CROSS-EXAMINATION, RE-DIRECT, ETC.**

Direct testimony, cross-examination, re-direct, etc. shall be by live testimony. Any objection to a question or other matter must state the precise ground or grounds for the objection.

## **G. EVIDENTIARY OBJECTIONS**

Evidentiary objections to any declaration must be filed and served at least seven (7) calendar days before the trial date or hearing, as the case may be. Any evidentiary objections to testimony contained in a written declaration that is not raised in a written objection filed within the applicable time limit shall be deemed waived.

Any evidentiary objections contained in a written declaration must be accompanied by a short statement explaining the ground or grounds for the objection. For example, if a declaration by the debtor's president and CEO states, "the debtor's monthly profit prior to the filing of the bankruptcy petition was approximately \$6,000.00," an objection on the ground of lack of foundation must explain why a lack of foundation exists. An objection on the ground of lack of foundation without an explanation will be subject to being overruled. Similarly, if the objection is on the ground of "best evidence rule," the objecting party must explain why the best evidence rule applies and requires exclusion of the matter from evidence.

Evidentiary objections will be adjudicated at the time a witness declaration or exhibit is offered into evidence.