

JUDGE CLARKSON'S PROCEDURES FOR TRIAL BY DECLARATION

Note: These "Trial By Declaration Procedures" will only apply if specifically ordered by the Court, otherwise, the Court's regular procedures for trial, posted on the Judge's website, will apply.

If these instructions are not followed explicitly, monetary or non-monetary sanctions may be imposed, including striking an answer or dismissing a complaint.

Trial Briefs: Unless otherwise ordered by the Court, trial briefs are required. Trial briefs must be filed seven (7) calendar days prior to trial. Judge copies of the trial briefs should be delivered to Chambers 5130 on the same date and should comply with the local rules and the Court Manual, including, specifically, LBR 5005-2(d), as well as Court Manual Appendix F. The parties are encouraged to include a brief statement of the pertinent facts in their briefs, with citation to exhibits.

Testimony: All direct testimony shall be by declaration unless:

- 1) the witness is adverse or refuses to give testimony by declaration; or
- 2) the testimony is offered to impeach or rebut.

The parties may request permission to offer oral testimony supplementing matters covered in the declarations or present portions of the testimony in the declaration orally, and the Court may grant such a request in the interest of justice.

Witnesses whose declarations are offered shall be present for cross-examination when the declarations are offered into evidence (unless the parties agree otherwise).

Plaintiff(s) shall file and serve its/their declarations on counsel for the defendant(s) thirty (30) days before the trial date. Defendant(s) shall serve its/their declarations on counsel for the plaintiff(s) twenty-one (21) days before the trial date.

Evidentiary objections to any declaration must be served and filed at least seven (7) calendar days before the trial date.

Unless the parties stipulate in the pre-trial order to the admission of an exhibit, foundation for admission of exhibits (other than for impeachment or rebuttal purposes) shall be established in the declarations, although the Court may allow oral testimony for this purpose. Exhibits referenced in any declaration shall be offered into evidence when the declaration is offered into evidence.

Exhibits: The Court requires four copies and one original of exhibit binders to be delivered to Chambers suite 5130 seven (7) days prior to the trial. The failure to submit exhibits will preclude that party from introducing exhibits at trial. All exhibits, even if they

are attached to declarations, must be included in the exhibit binders with consecutively numbered pagination and marked with consecutive numbers/letters. For example, if a party has ten exhibits and wishes to introduce two exhibits through the declaration of Witness 1, three through the declaration of Witness 2, and the remainder of the exhibits in rebuttal as trial proceeds, all ten exhibits should be included in the exhibit binders, with Witness 1's exhibits marked A-B, Witness 2's exhibits marked C-E, and the remaining exhibits marked F-J. The form of trial exhibits must comply with the Court Manual and Local Rules, including marking each exhibit with the appropriate tags (available on the Court website) and separating each exhibit with tabs. See LBR 9070-1(a). Each exhibit binder may not exceed 1.5 inches in width. In addition, all parties presenting exhibits must prepare an exhibit register in the form of Form B 3024 "EXHIBIT REGISTER AND NOTICE RE DISPOSITION OF EXHIBITS" available on the court's website, www.cacb.uscourts.gov, under "Court Forms." **Parties are warned that failure to retrieve exhibits will result in their destruction without further notice thirty days after trial.**

Continuance/Postponement of Trial: As a general rule, scheduled trials will not be continued prior to or at trial, except for compelling reasons and in the interest of justice. Motions/stipulations for continuance of the trial must be submitted in writing at in accordance with the local rules concerning continuances. Convenience of the parties or counsel alone ordinarily is not a sufficient reason for continuance. The parties will be contacted by the Judge's Law Clerk as to whether the continuance has been granted or denied.

Settlement: In the event that the adversary matter is settled prior to trial, the parties shall immediately contact and advise the Judge's law clerk at (714) 338-5460.

Witnesses: Unless otherwise ordered, all witnesses must be physically present at the beginning of trial, or else their declarations may be stricken and they may not be allowed to provide testimony.