TRIAL PROCEDURES

FOR MAGISTRATE JUDGE DAVID E. JONES

1. A trial day will ordinarily run from 9:00 a.m. to 4:30 p.m., with an hour lunch at noon and one short break in the morning and in the afternoon.
2. The Court will conduct voir dire, but will ask counsel to introduce themselves and their Fed. R. Evid. 615 party representatives.
3. Jurors may take notes during deliberations and will be provided a full copy of the trial transcript (excluding sidebars), if available, and the jury instructions for their deliberations.
4. Jurors will be permitted to ask questions of witnesses. After the lawyers' examination of a witness is complete, the jurors will be asked to submit to the Court in writing any questions they may have. The Court will consult with counsel and will then either pose the jury's questions to the witness or will advise the jury that the question is not permissible under the Rules of Evidence and the reasons therefor.
5. Jurors will be permitted to discuss the case among themselves during the course of trial, but will be admonished not to draw any final conclusions until final deliberations.
6. One lawyer per witness per side unless otherwise permitted by the Court. Separate lawyers may give the closing and rebuttal arguments. In multi-party

cases, the Court will address with counsel at the Final Pretrial Conference the manner in which examination will occur.

7. The Court encourages the practice of multiple lawyers taking an active part at trial, including the examination of witnesses and the arguing of motions. All lawyers appearing in the case need not be in attendance throughout the course of trial.

8. Depositions of party opponents (including senior officers of corporate parties) may be used in a party's case even if the party opponent is available. *See* Fed. R. Civ. P. 32(a)(1)(3).

9. Sidebars are discouraged. Evidentiary issues should be addressed during breaks or recesses before a witness testifies.

10. The exhibit list required under Fed. R. Civ. P. 26(a)(3) need not, but may, include materials that a party does not intend to offer into evidence, such as (i) demonstrative exhibits, (ii) materials that may be used to refresh recollection (such as an expert report) or (iii) deposition transcripts that may be used for impeachment. If such materials are included on an exhibit list, there will be a notation in the list indicating that the materials are not intended for admission. Additionally, the exhibit list need not, but may, include materials that a party will seek to use or have admitted through cross examination. Finally, a party must obtain leave of the Court to list more than 100 exhibits for admission. This limit applies to the combined expect to offer and may offer if the need arises list. This limit does not, however, apply to subparts of a voluminous exhibit, such as

specific office actions contained in a prosecution history or a particular document within an administrative record.

11. All objections to exhibits on the exhibit list must be made as part of the Final Pretrial Conference process or they will be waived, excepting only objections under Fed. R. Evid. 402 and 403. Otherwise, exhibits are deemed admitted when introduced through a witness in court, by deposition designation, or by stipulation.

12. Parties shall meet and confer regarding the disclosure of demonstrative exhibits and materials (such as PowerPoint slides) to be used in opening statements and witness direct examinations. Excerpts or blow-ups from a substantive exhibit need not be disclosed, assuming there is no remaining objection to the exhibit. Typically, disclosure of opening statement demonstratives and materials should take place no later than the day before trial begins, and disclosure of demonstratives and materials to be used on direct examination should take place no later than two days before a witness is expected to testify. All objections that cannot be resolved by counsel will be heard no later than 8:30 a.m. on the morning when the demonstrative is expected to be used.

13. Counsel shall meet and confer regarding the disclosure of witnesses expected to be called and the order in which they will appear. Typically, such disclosure should occur no later than two days before counsel expects a witness to testify.

14. Impeachment with videotaped deposition testimony should be rare. In most cases, the use of the written transcript is more than sufficient.

15. Pursuant to Fed. R. Evid. 611, the Court will allow latitude in the questioning of expert witnesses, including a relaxation of the rule against leading questions. Relaxation does not equal abolition, but the parties are encouraged to use PowerPoint presentations or other demonstrative devices that, while perhaps technically leading, will assist an expert witness in making a cogent presentation.

16. A trial is a formal process, and the formalities of address will be observed at all times. This includes the use of "Mr.," "Ms.," or "Dr." (where appropriate) and the practice of counsel addressing the Court and not each other.

17. Lawyers and their assistants may use mobile devises to communicate by email or text during trial. Discreetly. And with the sound off.

18. The parties in a jury trial need not submit before trial any trial briefs, pretrial statements, or proposed findings of fact unless otherwise ordered.

19. Trial will ordinarily not be bifurcated between liability and damages phases, but the Court may bifurcate upon the request of the parties.

20. The parties in a bench trial need not submit before trial any trial briefs, pretrial statements, or proposed findings of fact. At the conclusion of the evidence, the parties shall submit proposed findings of fact with citations to the trial record. In addition, the parties shall submit briefs setting forth their legal arguments, with citations to the parties' respective proposed findings of fact. The

Court will address the process and deadlines for these submissions at the conclusion of the evidence.

***Parties are free to seek leave to depart from, add to, or otherwise modify these procedures.