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| IN THE UNITED STATES DISTRICT COURT  FOR THE DISTRICT OF UTAH | |
| ,  Plaintiff,  v.  ,  Defendant. | **TRIAL ORDER**  Case No.  District Judge David Nuffer |

The final pretrial conference in this matter is scheduled for**[five days before trial] [day of week] [month] [day], [year] at** **[time]. in Room** **[room] [Include for Southern Region St. George cases: , 206 West Tabernacle Street, St. George, Utah].** Counsel who will try the case must attend.

This case is set for a [days] day jury trial to begin on **[day of week] [month] [day], [year] at** **[time] in Room** **[room] [Include for Southern Region St. George cases: , 206 West Tabernacle Street, St. George, Utah].** The attorneys are expected to **appear in court at 8:00 a.m.** on the first day of trial for a brief pre-trial meeting. [Include for Southern Region St. George cases: The start and end times for each day of trial may vary, so the parties should coordinate to have witnesses available throughout the scheduled trial dates. If counsel have not yet stipulated to a Southern Region jury, confer with counsel and submit the [Stipulation to Selection of Jury From Southern Region Jury Pool](https://www.utd.uscourts.gov/sites/utd/files/Stipulation%20to%20Southern%20Region%20Jury.docx), if agreeable within 14 days of this Order.]

Counsel are instructed as follows:

**1. Court-Imposed Deadlines**

The deadlines described in this order cannot be modified or waived in any way by a stipulation of the parties. Any party that believes an extension of time is necessary **must** make an appropriate motion to the court and that motion may be joined by any other party.

**2. Jury Instructions and Proposed Voir Dire**

The court has adopted its own standard general jury instructions and standard voir dire questions in the form of a questionnaire, copies of which are [posted on the court’s website](http://www.utd.uscourts.gov/chief-judge-david-nuffer#trial).

[Standard Criminal Jury Instructions](http://www.utd.uscourts.gov/sites/utd/files/Nuffer_Standard_cr_Jury_Instructions.doc)

[Criminal Juror Questionnaire](http://www.utd.uscourts.gov/sites/utd/files/Nuffer_crJuror_Questionnaire.doc) [Optional Supplemental Criminal Jury Questionnaire](http://www.utd.uscourts.gov/sites/utd/files/CriminalOptionalSupplementalQuestionnaire.docx)

Note also the [Jury Selection Procedures](http://www.utd.uscourts.gov/sites/utd/files/Nuffer_Jury_Selection.docx) and [Jury Courtroom Seating Chart](http://www.utd.uscourts.gov/sites/utd/files/JurySeatingChart.pdf).

The procedure for submitting proposed jury instructions and additional voir dire questions is as follows:

(a) The parties must serve their proposed jury instructions, any verdict and voir dire questions on each other by **[15 days before trial**. These shall not be filed with the court. The parties must then confer in order to agree on a single set of instructions to the extent possible.

(b) If the parties cannot agree upon one complete set of final instructions, verdict and voir dire questions, they must file separately those instructions, verdict and voir dire questions that are not agreed upon. However, it is not enough for the parties to merely agree upon the general instructions and then each submit their own set of substantive instructions. The court expects the parties to meet, confer, and agree upon the wording of the substantive instructions, verdict and voir dire questions for the case.

(c) The joint proposed instructions, verdict and voir dire questions (along with the proposals upon which the parties have been unable to agree) must be filed with the court **[12 days before trial.** Each instruction must be labeled and numbered at the top center of the page to identify the party submitting the instruction (e.g., “Joint Instruction No. 1” or “Prosecution Instruction No. 1”). Include citation to the authority that forms the basis for the instruction.

(d) A copy of the proposed instructions, verdict and voir dire questions must be emailed to [dj.nuffer@utd.uscourts.gov](mailto:dj.nuffer@utd.uscourts.gov) as a Word document **[12 days before trial**. Include the case number and case name in the email subject line. Any party unable to comply with this requirement must contact the court to make alternative arrangements.

(e) Each party must file its objections, if any, to jury instructions, the verdict and voir dire questions proposed by any other party by **4:00 p.m.** **[12 days before trial]**. Any objections must recite the proposal in its entirety and specifically highlight the objectionable language contained therein. Objections to instructions must contain both a concise argument why the proposed language is improper and citation to relevant legal authority. Where applicable, the objecting party **must** submit an alternative instruction covering the pertinent subject matter or principle of law. A copy of the proposed alternative instruction must be emailed to [dj.nuffer@utd.uscourts.gov](mailto:dj.nuffer@utd.uscourts.gov) as a Word document. Include the case number and case name in the email subject line. Any party may, if it chooses, submit a brief written response in support of its proposed instructions by **4:00 p.m.** **[10 days before trial]**.

(f) All instructions must be short, concise, understandable, and *neutral* statements of law. Argumentative instructions and voir dire questions are improper and will not be given.

(g) Modified versions of statutory or other form jury instructions (*e.g.*, Federal Jury Practice and Instructions) may be acceptable. A modified jury instruction must, however, identify the exact nature of the modification made to the form instruction and cite the court to authority, if any, supporting such a modification.

**3. Motions in Limine**

All motions in limine are to be filed with the court by **[12 days before trial** unless otherwise ordered by the court. A separate motion must be filed for each preliminary ruling sought. Each motion must specifically identify the relief sought, and must contain the memorandum of law in the same document. (*See* [DUCrimR 12-1(b)(1)](http://www.utd.uscourts.gov/local-criminal-rules#bForm)). A proposed order should be emailed to [dj.nuffer@utd.uscourts.gov](mailto:dj.nuffer@utd.uscourts.gov) as a Word document. Opposition memoranda must be filed **[10 days before trial]**. No memorandum in support of, or in opposition to, a motion may be longer than three (3) pages in length.

**4. Courtroom Equipment and Recorded Testimony**

If counsel wish to use any courtroom equipment, such as easels, projection screens, etc., they must so state in the final pretrial order and at the final pretrial. Trial counsel and support staff are expected to familiarize themselves with any equipment they intend to use in advance of trial. For practice time and training, contact the Clerk of Court at 801-656-7580.

**5. Daily Transcript Requests**

If counsel desire realtime or daily transcription of the trial, they must contact and make such request with the court reporters (Kelly Hicken – 801-521-7238) at least two weeks before the trial.

**6. Trial Briefs**

Any Trial Brief must be filed **no later than [12 days before trial**.

**7. Exhibit Lists/Marking Exhibits**

1. In cases in which the United States Attorney has proceeded under an “open file” policy, counsel for all parties must exchange with all parties copies of each exhibit to be used at trial no later than two (2) business days before the final pretrial conference. Counsel should use reasonable effort to avoid duplication of any exhibit pre-marked by the opposing party. Exhibits to be exchanged shall include all evidence to be offered except the following: oral testimony to be offered at trial, documents to be used solely for impeachment, demonstrative exhibits created in connection with oral testimony at trial, and objects or other physical evidence. Photos of objects and other physical evidence, however, must be exchanged. Copies must be exchanged in electronic media, but may also include a hard copy. Counsel will be required to report to the court at the Final Pretrial Conference whether this requirement has been completed.
2. An exhibit list in Word format is required for the court's use at trial. Standard [forms of exhibit lists](http://www.utd.uscourts.gov/usdc-forms) are available from the court's website, and questions regarding the preparation of these lists may be directed to the case manager, Anndrea Bowers, at 801‑524‑6150.
3. All parties are required to pre-mark their exhibits to avoid taking up court time during trial for such purposes.
4. Plaintiff must mark exhibits by number starting at “1.” Defendant must mark exhibits by letter unless defendant anticipates using more than twenty (20) exhibits, in which case counsel must agree on number ranges to accommodate numbering all exhibits. Examples of alternative methods would be assigning numbers 1 – 99 to plaintiff and 100 – 199 to defendant. In a case with multiple parties who require separate exhibit numbers counsel must agree on number ranges for each party to accommodate numbering all exhibits.
5. Pages of documentary exhibits must retain bates stamps used when the documents were produced in discovery.
6. Original exhibits must be stapled.
7. Exhibit lists, marked exhibits, and courtesy copies must be submitted to the court three (3) business days before trial. The exhibit list must be emailed as a Word document to [dj.nuffer@utd.uscourts.gov](mailto:dj.nuffer@utd.uscourts.gov).
8. Courtesy copies of exhibits on a CD/DVD Rom in PDF format are preferred. Optical Character Recognition (OCR) must be run on the PDF files to enable text searching of the exhibits. If a party marks more than ten (10) exhibits, courtesy copies of exhibits **must** be provided in PDF format on a CD/DVD Rom.
9. If a CD/DVD Rom with courtesy copies of exhibits in PDF format is not provided (because the party is marking less than ten exhibits and has elected not to provide courtesy copies of exhibits on a CD/DVD Rom in PDF format) two (2) paper courtesy copies of exhibits in a tabbed binder must be delivered to the court.
10. A tabbed binder containing paper copies of exhibits must be made available for witnesses to use while testifying.

**8. Witness Lists**

Each party must exchange with all opposing parties a list of witnesses the party will call or may call at trial. The parties must exchange witness lists no later than two (2) business days before the final pretrial conference. Each party is required to submit a separate witness list for the court's use at trial. Standard [forms of witness lists](http://www.utd.uscourts.gov/usdc-forms) are available from the court's website, and questions regarding the preparation of these lists may be directed to the case manager, Anndrea Bowers, at 801-524-6150. Witness lists must be emailed to [dj.nuffer@utd.uscourts.gov](mailto:dj.nuffer@utd.uscourts.gov) three (3) business days before trial.

Each afternoon of trial, by no later than 6:00 p.m. counsel anticipating examination of witnesses the next day shall provide the names of witnesses anticipated to be examined to all counsel and to [dj.nuffer@utd.uscourts.gov](mailto:dj.nuffer@utd.uscourts.gov), and by no later than 8:00 p.m. shall by the same means provide the list of exhibits anticipated to be used with each witness.

**9. Impeachment By Conviction**

If the prosecution intends to impeach the defendant by evidence of a criminal conviction under [Fed. R. Evid. 609](http://www.law.cornell.edu/rules/fre/rule_609), the prosecution must provide notice to the defendant seven (7) business days before trial.

**10. Courtroom Conduct**

In addition to the rules outlined in [DUCivR 43-1](http://www.utd.uscourts.gov/local-civil-rules#DUCivR43-1), the court has established the following ground rules for the conduct of counsel at trial:

(a) Please be on time for each court session. In most cases, trial will be conducted from 8:00 a.m. until 1:30 p.m. or 2:30 p.m., with two (2) short (fifteen minute) breaks. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have an associate handle them for you. Any motions or matters that need to be addressed outside the jury will be heard at 8:00 a.m. or after the trial day has recessed. Usually, the court has other hearings set after 2:30 p.m.

(b) Stand as court is opened, recessed or adjourned.

(c) Stand when the jury enters or retires from the courtroom.

(d) Stand when addressing, or being addressed by, the court.

(e) In making objections and responding to objections to evidence, counsel must state the legal grounds for their objections with reference to the specific rule of evidence upon which they rely. For example, “Objection . . . irrelevant and inadmissible under Rule 402” or “Objection . . . hearsay and inadmissible under Rule 802.”

(f) Sidebar conferences are discouraged. Most matters requiring argument must be raised during recess. Please plan accordingly.

(g) Counsel need not ask permission to approach a witness in order to **briefly** hand the witness a document or exhibit.

(h) Address all remarks to the court, not to opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses. Counsel must instruct all persons at counsel table that gestures, facial expressions, audible comments, or any other manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

(i) Refer to all persons, including witnesses, other counsel, and parties, by their standard salutation (Mr., Ms., Mrs., Dr., Officer, Detective, etc.) and their surnames, NOT by their first or given names.

(j) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections during direct examination shall be the attorney recognized for cross examination.

(k) Counsel should not refer to other witnesses’ testimony in their questioning. For example, counsel should not ask “Witness A testified . . . would you agree?”

(l) Offers of, or requests for, a stipulation must be made outside the hearing of the jury.

(m) When not taking testimony, counsel will remain seated at counsel table throughout the trial unless it is necessary to move to see a witness. Absent an emergency, do not leave the courtroom while court is in session. If you must leave the courtroom, you do not need to ask the court's permission. Do not confer with or visit with anyone in the spectator section while court is in session. Messages may be delivered to counsel table provided they are delivered with no distraction or disruption in the proceedings.

(n) The same attorney must do initial and rebuttal closing arguments, and rebuttal closing argument may not take more time than the initial closing argument.

(o) Please review the guidelines for [Creating the Best Transcript Possible](http://www.utd.uscourts.gov/sites/utd/files/Creating_the_Best_Transcript_Possible.pdf) with your entire trial team and witnesses before trial.

SIGNED this \_\_\_\_\_ day of May, 2019.

BY THE COURT:

David Nuffer

United States District Judge