

**Trial Procedures – CIVIL**  
for  
United States District Judge  
Jamal N. Whitehead of the Western  
District of Washington



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Effective April 24, 2024

These trial procedures apply to all civil matters before United States District Judge Jamal N. Whitehead unless ordered otherwise. They differ or add to the Local Rules in some important respects, so please read them carefully.

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### **1.1 Pretrial Order.**

When filing the pretrial order, the parties must also send a Microsoft Word version of the proposed order, including witness and exhibit lists, to [whiteheadorders@wawd.uscourts.gov](mailto:whiteheadorders@wawd.uscourts.gov).

### **1.2 Pretrial conference.**

A sample pretrial conference agenda is available on Judge Whitehead’s court web page.

### **1.3 Daily trial schedule.**

Trial typically runs five days a week, Monday through Friday. Judge Whitehead usually holds in-custody hearings in criminal matters on Thursdays, so there is a chance that trial may be shortened on those days.

The courtroom is open to the parties starting at around 8:15 a.m. each day. Counsel should be ready and available to address pretrial matters, if any, by 8:30 a.m. Trial will begin promptly at 9:00 a.m. and end each day at 4:15 p.m.

15-minute recesses will be taken at 10:30 a.m. and 2:45 p.m. And a lunch recess will be taken from 12:00 to 1:30 p.m., although counsel should be ready and available to address any trial matters that need to be discussed outside the presence of the jury, if any, by 1:15 p.m.

### **1.4 Jury selection.**

The jury will consist of no fewer than seven (7) and no more than 12 members, and there will be no alternates. The Court will advise the parties at the pretrial conference how many jurors will be empaneled.

The Court will conduct jury selection over Zoom unless the parties object and good cause is shown why jury selection should not take place through remote video means. Prospective jurors will participate on their personal computers or handheld devices. Limited technical support and court-provided computers are available to prospective jurors who identify their needs in advance.

Voir dire will unfold on Zoom in successive panels since not all prospective jurors will fit on a display screen at once. Panels will typically consist of 12-15 jurors per panel.

The Court will examine the prospective jurors using “screening” questions to identify hardships and conflicts. (Judge Whitehead’s standard screening questions can be found on his court web page). These questions can generally be answered with a “yes” or “no” response. The parties may also submit general screening

questions, which the Court may ask of panel members. Open-ended questions or multi-part questions are not appropriate for this portion of voir dire.

Following the Courts screening, counsel may examine the panel members directly. The Court will establish time limits for attorney-led voir dire at the pretrial conference, but regardless of time, the Court will instruct counsel to move on with the examination if questioning becomes too repetitive or irrelevant, or if counsel tries to argue the merits of the case. Typically, the parties will be given an initial 20 minutes for questioning, followed by another 10 minutes of follow-up questions.

Following each panel, the parties may challenge for cause. Once all challenges for cause have been heard, the Court will hear peremptory challenges. Each side ordinarily has three peremptory challenges, which will be made using a “strike sheet” in alternating fashion, beginning with the plaintiff. *See* Fed. R. Civ. P. 47; 28 U.S.C. § 1870. Peremptory challenges must not be used to exclude potential jurors for discriminatory reasons. *See Batson v. Kentucky*, 476 U.S. 79 (1986).

No one is allowed to record the proceedings by any means. **Recording Zoom proceedings without permission from the Court is illegal.**

## **1.5 Jury Instructions.**

As much as possible, the parties should agree on one stipulated set of proposed jury instructions. Only true uncertainty about the binding substantive law should prevent such agreement. The Court will usually follow the current version of the Manual of Model Jury Instructions for the Ninth Circuit or the Washington Pattern Jury Instructions—Civil, where appropriate. The parties should identify whether a proposed instruction is Preliminary (i.e., to be given at the start of trial), In-Trial (i.e., to be given, as necessary, during trial), or Final (i.e., to be given at the conclusion of evidence).

Judge Whitehead’s standard preliminary jury instructions include Ninth Circuit Model Civil Jury Instruction Nos. 1.3, 1.5, 1.6 or 1.7 (when applicable), 1.9, 1.10, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17, 1.18, 1.20, and 1.21.

Judge Whitehead's standard instructions at the conclusion of evidence include Ninth Circuit Model Civil Jury Instruction Nos. 3.1, 3.2, 3.3, and 3.5.

The parties need not include the Court's standard instructions with their proposed instructions, but they are free to object to the Court's standard instructions or propose modifications as they see fit.

The parties must follow LCR 51 in all other respects.

## **1.6 Exhibits.**

The parties must deliver the original trial exhibits and one copy to Judge Whitehead's Courtroom Deputy, Grant Cogswell, five (5) days before the trial date. Each exhibit must be clearly marked. The Court alters the LCR 16 procedure for numbering exhibits as follows: Plaintiff's exhibits should be numbered consecutively beginning with 1; Defendant's exhibits should include the prefix "A" and should be numbered consecutively beginning with A-1. Duplicate exhibits should not be listed. Once a party has identified an exhibit in the pretrial order, any party may use it. Each set of exhibits must be submitted in a three-ring binder with appropriately numbered tabs.

In addition, no later than seven (7) days before the trial date, the parties must send an electronic copy of all exhibits in PDF format with Optical Character Recognition (OCR) searchable text to Mr. Cogswell. The parties should notify the Court of any physical objects or files that cannot be transmitted electronically. Exhibits must be marked as described above, and the protocols below also apply: (1) electronic exhibits must be transmitted individually (i.e., one exhibit per file), but exhibits may have multiple pages; (2) Exhibit file names should match the descriptions listed on the joint exhibit list as closely as possible except that file names should not exceed 80 characters (e.g., Ex. 1 – Accident Scene Photo; Ex. A-1 – Email dated 4-03-23).

Even stipulated exhibits and other exhibits the Court finds admissible must be offered into evidence before they are formally admitted at trial.

### **1.7 Streamlining evidentiary disputes.**

As best they can, counsel should anticipate any evidentiary issues that might require argument, and they should raise those issues outside the presence of the jury. To this end, at the close of each trial day, counsel must exchange a list of witnesses and exhibits (other than those used for impeachment of an adverse witness) that may be offered into evidence the next day. The first list should be exchanged two days before the first trial day.

If the opposing party objects to any witnesses or exhibits, the parties must meet and confer to resolve any objections and to reach stipulations. If objections remain after conferring, the party offering the disputed exhibit(s) must email Mr. Cogswell by 8:00 p.m. with a list of the disputed exhibit(s) to be offered the next day. If possible, the Court will rule on the admissibility of any disputed exhibits or witnesses before the start of each trial day.

### **1.8 Courtroom technology.**

Jurors have high expectations about the lawyers' ability to use the courtroom technology. Training on the built-in courtroom equipment is strongly encouraged, and it is the parties' responsibility to participate in training sufficiently before the start of trial, if needed. *See* <https://www.wawd.uscourts.gov/attorneys/trial-support> for more information. At the pretrial conference, the parties must schedule with Mr. Cogswell a time to test any equipment that they wish to use at trial. Absent extraordinary circumstances, trial will not be delayed because of technical difficulties.

### **1.9 Deposition designations.**

The parties must follow LCR 32(e), except that for each deponent the parties intend to offer deposition testimony instead of, or in addition to, live testimony, they must file (1) a single copy of the highlighted deposition transcript, with designations and counter designations highlighted in different colors, including typed objections

in the margins; and (2) a proposed order in Word format, including a chart setting forth any objections and responses in substantially the following format:

<b>Page/Ln. No.</b>	<b>Objection</b>	<b>Response</b>	<b>Ruling</b>

The parties must meet and confer about any disputed deposition designations before submitting them to the Court for a ruling.

The party offering the deposition transcript must take lead on filing the transcript and objections as a “Joint Submission of Deposition Designations,” in which the transcript and accompanying deposition designation chart are attached as separate exhibits.

For jury trials, unless a video deposition is presented, the party offering deposition testimony must provide a person to read the answers from the witness stand.

### **1.10 Settlement.**

If your case settles, counsel must notify Mr. Cogswell as soon as possible at [grant\\_cogswell@wawd.uscourts.gov](mailto:grant_cogswell@wawd.uscourts.gov). Attorneys who fail to give the Court prompt notice of settlement may be subject to sanctions or discipline under LCR 11(b).

### **1.11 Other pretrial guidance.**

All argument and witness questioning should occur from the courtroom lectern. Do not approach the jury or a witness without permission.

If you need an accommodation for a court appearance or have accessibility-related questions, please contact Mr. Cogswell.

The Court invites parties and counsel to share their honorifics or pronouns—such as Ms., Mx., or Mr.—so that the Court may address them respectfully. People

appearing before the Court may do so in an email to, or speaking with Mr. Cogswell or when appearing for court.

Cellphones are allowed inside Judge Whitehead's courtroom, but they must be turned *off* when court is in session. If your laptop or tablet features a digital assistant (e.g., *Siri*), be sure to disable the voice-prompt or always-listening feature to avoid accidental courtroom interruptions.

Finally, be on time; if you're able, stand when speaking; address all remarks to the Court, not opposing counsel; be professional and ethical; be courteous and respectful to courtroom staff at all times.