

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America

Plaintiff,

v.

,

Defendant(s).

No. CR

**ORDER SETTING FINAL
PRETRIAL CONFERENCE**

Pursuant to Federal Rule of Criminal Procedure 17.1, a Final Pretrial Conference has been set for _____ in Courtroom 503, Sandra Day O'Connor U.S. Federal Courthouse, 401 W. Washington St., Phoenix, Arizona 85003. In preparation for the Final Pretrial Conference, it is hereby ordered:

1. Attendance Required. The attorneys (or *pro se* parties) who will be responsible for the trial of the case, as well as the defendant, must attend the Final Pretrial Conference. The attendees must bring their calendars so trial scheduling can be discussed.

2. Joint Pretrial Memorandum.

The parties must jointly develop and file with the Clerk of Court, at least **seven days** before the Final Pretrial Conference, a Joint Pretrial Memorandum. The Joint Pretrial Memorandum must include the information prescribed in the "Joint Pretrial Memorandum" form that is available at www.azd.uscourts.gov under: Judges' Information → Orders, Forms and Procedures → Lanham, Krissa M. The information may not be set forth in the form of a question and must be presented in concise narrative statements.

1 3. Notices Of Intent. All Notices of the Government’s Intent to Use Evidence
2 must be filed and served at least **seven days** before the Final Pretrial Conference. Untimely
3 notices are subject to being summarily denied or stricken by the Court.

4 4. Expert Disclosures. For expert witness testimony a party intends to use
5 during its case-in-chief at trial, the party must disclose the information required by Rule
6 16(a)(1)(G) or Rule 16(b)(1)(C) no later than **45 days** before the final pretrial conference.
7 For expert witness testimony a party intends to use to rebut expert witness testimony
8 disclosed by the opposing party, the party must disclose the information required by Rule
9 16(a)(1)(G) or Rule 16(b)(1)(C) no later than **14 days** before the final pretrial conference.

10 5. Marking of Exhibits. The parties must meet in person to exchange marked
11 copies of all exhibits to be used at trial no later than **seven days** before the submission
12 deadline for the Final Pretrial Conference. During this meeting, the parties also must
13 eliminate any duplicate exhibits.¹ Further information about the Court’s exhibit marking
14 procedures can be found in the document entitled “Exhibit Marking Instructions,” which
15 is available at www.azd.uscourts.gov under: Judges’ Info → Orders, Forms and Procedures
16 → Standard Forms Used by All Phoenix Judges.

17 During trial, the parties must advise the Courtroom Deputy in advance which
18 exhibits will be needed for each witness. All exhibits must be shown to opposing counsel
19 before being offered.

20 6. Motions in Limine. The parties must file all motions in limine no later than
21 **fourteen days** before the Final Pretrial Conference. Each party may file no more than ten
22 motions in limine. Responses must be filed no later than **seven days** before the Final
23

24 ¹ During the in-person meeting, the exhibits must be in the exact physical form that will be
25 used at trial. In other words, if a party intends to offer a paper exhibit at trial, that party
26 must have a marked paper copy at the in-person meeting, not an electronic copy. Also, the
27 parties should mark their exhibits exactly as they intend to offer them at trial. During trial,
28 exhibits will be admitted or rejected in their entirety. Thus, if any part of an exhibit is
objectionable, it will be excluded in its entirety. The parties will not be permitted to break
offered exhibits into admissible sub-parts if an objection is sustained.

1 Pretrial Conference. No replies are permitted. Each motion in limine must include proposed
2 language for the order being sought from the Court, and the proposed language must state
3 with precision the evidence that is subject to the proposed order and the limitation or
4 exclusion placed on the evidence. Each motion and response must not exceed three pages
5 in length. Counsel shall be prepared to argue the merits of such motions at the Final Pretrial
6 Conference.

7 The Court wishes to emphasize that, in its experience, motions in limine are often
8 used improperly. The point of a motion in limine is “to exclude anticipated prejudicial
9 evidence before the evidence is actually offered.” *Luce v. United States*, 469 U.S. 38, 40
10 n.2 (1984). Thus, it might be permissible for a party to seek a pretrial ruling as to the
11 admissibility of a particular piece of evidence out of concern that the evidence is not only
12 inadmissible but also inherently prejudicial, such that the bell could not be unrung even if
13 an evidentiary objection were made and sustained at trial. In contrast, motions in limine
14 “should rarely seek to exclude broad categories of evidence, as the court is almost always
15 better situated to rule on evidentiary issues in their factual context during trial.” *Lankford*
16 *v. Taylor*, 2020 WL 6395294, *3 (D. Ariz. 2020) (citation omitted).

17 For these reasons, trial memoranda often serve as a better vehicle than motions in
18 limine for parties to address anticipated evidentiary issues. Trial memoranda of no more
19 than seventeen pages may be filed on the same date the parties file the Joint Pretrial
20 Memorandum. Trial memoranda may be used for parties to brief, in advance of trial, their
21 position as to the admissibility of particular pieces of evidence (or categories of evidence).
22 Additionally, trial memoranda may be used to brief other types of issues that are anticipated
23 to arise at trial, such as claims related to the sufficiency of the evidence. The Court thus
24 encourages the parties to give careful thought to whether issues that might be raised in a
25 motion in limine would be better raised in a trial memorandum. The Court further
26 encourages the parties to raise in a trial memorandum *any* issues the Court should be aware
27 of before trial.

28 7. Other Case-Related Documents. The parties must, at least **seven days** before

1 the Final Pretrial Conference, file the following documents and deliver a copy of the
2 documents to chambers, three-hole punched on the left side of the page:

- 3 a. A stipulated joint statement of the case, which will be read to the jury.
- 4 b. A joint master witness list naming every witness who may be called
5 at trial, to be used during voir dire.
- 6 c. Joint proposed forms of verdict, including any proposed special
7 verdict forms or juror interrogatories.
- 8 d. A joint set of proposed jury instructions. The joint set must contain
9 the following four sections with each instruction clearly identified
10 when it should be given (*e.g.*, preliminary, midtrial, final):

- 11 (1) A list of all applicable Ninth Circuit Model Criminal Jury
12 Instructions, which are available at
13 [http://www3.ce9.uscourts.gov/jury-instructions/model-](http://www3.ce9.uscourts.gov/jury-instructions/model-criminal)
14 [criminal](http://www3.ce9.uscourts.gov/jury-instructions/model-criminal). If a model instruction is requested by both parties, the
15 instruction shall be preceded by “ST” (stipulated-to). If the
16 instruction is requested by only one party, the instruction shall
17 be preceded by either “PL” (the government) or “DF”
18 (defendant).

- 19 (2) Any non-model instructions to which the parties have
20 stipulated, with only one instruction per page.

- 21 (3) Any non-model instructions requested by the government
22 (numbered consecutively), with only one instruction per page.
23 The government shall include citation to authority to support
24 the requested instruction. Defendant shall state all objections
25 to such instruction immediately following the instruction and
26 the government’s authority. Defendant shall support any
27 objection with citation to authority. If defendant offers an
28

1 alternative instruction, such alternative instruction shall
2 immediately follow defendant's objection.

3 (4) Any non-model instructions requested by defendant
4 (numbered consecutively), with only one instruction per page.
5 Defendant shall include citation to authority to support the
6 requested instruction. The government shall state all objections
7 to such instruction immediately following the instruction and
8 defendant's authority. The government shall support any
9 objection with citation to authority. If the government offers an
10 alternative instruction, such alternative instruction shall
11 immediately follow the government's objection.

12 8. Word Copies of Case-Related Documents. **Seven days** before the Final
13 Pretrial Conference, the parties must submit copies of the following documents in Word
14 format by email to Lanham_chambers@azd.uscourts.gov:

- 15 a. Joint statement of the case.
- 16 b. Joint proposed forms of verdict.
- 17 c. A full-text version of all proposed jury instructions, including the full
18 text of all applicable Ninth Circuit Model Criminal Jury Instructions,
19 organized in the same four sections described above with each
20 instruction clearly identified when it should be given (*e.g.*,
21 preliminary, midtrial, final).

22 9. Juror Questionnaires: The Court uses the juror questionnaire available at
23 www.azd.uscourts.gov under: Judges' Information → Orders, Forms and Procedures →
24 Lanham, Krissa M. The parties must file a joint statement of the case to be included in that
25 questionnaire no later than **six weeks** before the Final Pretrial Conference. In addition, each
26 side may propose no more than three questions, with no subparts, to be added to that
27 questionnaire. The Court may not approve all questions proposed by the parties. The parties
28 must file the proposed questions no later than **six weeks** before the Final Pretrial

1 Conference. The parties must email a Word version of both the joint statement of the case
2 and any questions they propose to Lanham_chambers@azd.uscourts.gov.

3 10. Information for Court Reporter. To facilitate the creation of an accurate
4 record, please prepare a “Notice to Court Reporter” **seven days** before the Final Pretrial
5 Conference containing the following information:

- 6 a. Proper names, including those of witnesses.
- 7 b. Acronyms.
- 8 c. Geographic locations.
- 9 d. Technical (including medical) terms, names, or jargon.
- 10 e. Case names and citations.
- 11 f. Phonetic spelling of unusual or difficult words or names.

12 This notice need not be filed but must be provided via e-mail to Teri Veres at
13 Teri_veres@azd.uscourts.gov and to Lanham_chambers@azd.uscourts.gov. Counsel also
14 must advise the court reporter as soon as possible if they would like to receive a real-time
15 feed or daily turnaround transcript of the proceedings.

16 11. Delivery of Final Exhibits. Counsel shall contact the Courtroom Deputy,
17 Norma_hunt@azd.uscourts.gov, **seven days before trial** to make arrangements for
18 counsel or their representative to deliver finalized and marked copies of all exhibits. The
19 finalized exhibits must be delivered to the Courtroom Deputy at least **48 hours** before trial.

20 12. Plea Agreement Deadline. The parties are advised that absent unusual
21 circumstances, the Court will not accept a plea agreement entered after noon on the Friday
22 before trial. It is therefore ordered that the parties shall notify the Court and have scheduled
23 a change of plea hearing **before noon on the Friday before trial** should they wish to
24 present a plea agreement to the Court. In all other circumstances, counsel shall notify the
25 Court immediately if settlement is reached.