GUIDELINES FOR EXPERT WITNESSES DEPOSITIONS - TRIAL

1. All expert reports and expert files developed by the expert(s) designated must be produced no later than five (5) days prior to the date set for the expert's deposition. All of Plaintiff's experts will be deposed first. Staggered depositions of experts, who have the same discipline, will not be permitted. No deposition subpoena requiring the expert to bring documents additional to what is outlined below is permitted.

2. All experts (including treating physicians) will be prepared to give a complete and comprehensive deposition. If the Plaintiff designates treating physicians as an expert, the defense is not required to subpoena the treating doctor to secure his/her deposition; Plaintiff's lawyer secures dates and times. NO supplemental work, diagrams, exhibits, pictures, PowerPoint presentations, schedules, etc. that are not presented at the deposition will be permitted at trial. Of course, I recognize that a party, whose expert witness deposition is taken first, may want to contradict what a subsequent expert has testified to. Such rebuttal testimony will be permitted at trial provided the testimony and/or exhibit is identified within 10 business days after the deposition has been taken and the new testimony and/or exhibit is made available to the opposition at least 10 calendar days before the first trial call.

3. Both sides are alerted that if your expert witness has a conflict, is ill, is on a paid-for vacation and otherwise unavailable at the time his testimony is needed at trial, his/her deposition will be read into the record. Do not ask for the Court to make trial time adjustments to accommodate expert's scheduling.

4. Both sides are alerted that the Court can monitor the expert witness trial testimony only as follows: when there is a trial objection that the witness is providing an opinion that was not in the deposition, I then ask the attorney eliciting the testimony if the testimony being elicited was in the deposition. That is a yes or no question. I expect the answer will be yes. At a break I then ask the attorney to show me where the testimony appears in the deposition and if the representation was incorrect, I will strike the testimony. The point is you need to be certain that the expert testimony that you want to elicit is clearly in the deposition.

5. Do not state at trial that the other side did not "ask the question." At every expert's deposition the party taking the deposition WILL ASK the question AT the outset: (a) "state what opinions you will give at the trial" and then (b) "state your reasons (or backup) for each opinion." At the end of the deposition the question will be (c) "have you stated all of your opinions and given all of your reasons." The answer will be

"yes." Thus if you expect your witness to state an opinion or provide the backup reasoning, YOU should seriously consider having YOUR witness state every opinion and backup reason he/she will give.

6. If any party expects to cross examine the other side's expert using Evidence Code §721 (publication is a reliable authority) you "must" have that "reliable authority" announced before the cross-examination of the witness.

JURY TRIAL RULES

7. To be prepared for your jury trial the Court requests that you do the following:

A. Consider putting your witnesses on an "on-call subpoena" to be certain we do not run into an availability problem at trial.

B. Seven (7) calendar days in advance of the trial call please submit:

(1) Your witness list (in alphabetical order); and

(2) Your in limine motions (numbered consecutively) with proof of service by fax or electronically; and

(3) Your preferred statement of the case; and

(4) Your proposed verdict forms; and

(5) Your proposed jury instructions (CACI numbers only) provided that you must submit the language for your proposed customized and special instructions (this includes jury instructions for all "affirmative defenses"); and

(6) Your trial brief, and

(7) Your exhibits list.

D. Five (5) calendar days in advance of trial call please submit:

(1) Opposition to in limine motions with proof of service by fax or electronically; and

(2) Any supplemental jury instructions suggested by the opposition's proposals.

E. Four (4) calendar days in advance of trial call please submit:

(1) Any replies to in limine motions with proof of service by fax or electronically.

8. You will be notified of the true actual date and time set for the pretrial conference and the trial date well before the actual trial commences.

9. Sometime before the pretrial conference, I will email to you my pretrial conference "Tentative Order" with rulings on all in limine motions and other issues that I see in the documents submitted. Typically I reserve ½ day for the pretrial conference in jury cases. In preparation of the pretrial conference, you should be prepared to address these questions:

a. What is the true actual time it will take to try "your" case so that we can make a promise to the potential jurors when they will be done?

b. As for the Plaintiff, review your complaint to address when the equitable issues, if any, should be tried to the Court. Can you eliminate any counts? Streamline your opening statement.

c. As for the Defendant, review your answer and in particular look at each "affirmative defense" as I will ask you to at the pretrial which affirmative defenses you are actually going to try and to report to me what CACI instructions correlate to those defenses. If you cannot correlate a CACI instruction to the affirmative defense, you may not be trying the "affirmative defense." If you have any equitable affirmative defenses, be prepared to tell the Court how and when you want the Court to address those issues. Eliminate all inapplicable affirmative defenses. Streamline your opening statement.

d. Exhibits will be exchanged between lawyers at the pretrial conference if not already done. If any exhibits have to be redacted, we will address that at the pretrial conference. Try to agree on those exhibits that can go into evidence without laying a foundation. Exhibits must be admitted into evidence before they are published to the jury.

COURT TRIAL RULES

10. To be prepared for your court trial the Court requests that:

A. You review all the items requested for a jury trial. Follow the same guidelines except those that are inapplicable to a bench trial. Obviously the pretrial conference will be significantly reduced in time. There will likely be no pretrial conference order in most cases; I will have my secretary let you know if and when I post one.

B. You be particularly aware of the guidelines for the exhibits list and the exhibits exchange.

C. You be aware that your trial brief is very important to me. Make sure it is thorough and complete. Be sure it addresses all legal and factual issues you expect to be decided. Do not expect to submit a closing brief. The Court will typically rule from the bench.

IF YOU HAVE OBJECTIONS OR EXCEPTIONS TO ANY OF THESE RULES YOU MUST RAISE THEM WITHIN THIRTY DAYS OF THE DATE THESE GUIDELINES ARE HANDED OUT OR EMAILED TO YOU. OBJECTIONS OR EXCEPTIONS ARE NOT DISCOURAGED, BUT I CANNOT ADEQUATELY ADDRESS THEM UNLESS THEY ARE PROMPTLY PRESENTED.

Judge, Department 3

Santa Barbara Superior Court