

NONBINDING EXAMPLE

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF TEXAS

ORDER REGULATING PRACTICE

for criminal cases assigned to

THE HONORABLE J. CAMPBELL BARKER

Pursuant to Federal Rule of Criminal Procedure 57(b), this order regulating practice applies while this case is assigned to the undersigned judge. Pro se litigants are exempt from this order. This order is not effective until signed and entered on the docket of a given case. *See* Fed. R. Crim. P. 55.

TABLE OF CONTENTS

JCB-CR-32. Sentencing procedure	1
JCB-CR-49. Format and length of filings	3
JCB-CR-50. Place of trial	4
JCB-CR-59. Referral to magistrate judge	5

REGULATIONS

JCB-CR-32. SENTENCING PROCEDURE

A form for a defendant's waiver before a sentencing hearing (Form JCB-CR-32) is available on the undersigned's court webpage, in the Forms tab. Before the sentencing hearing and by any other deadline set by the court, defense counsel must file a memorandum stating (1) the defendant's position on the appropriate sentence and (2) whether the defendant and defense counsel have reviewed and signed a waiver using Form JCB-CR-32. If such a waiver is signed, it should accompany the sentencing memorandum. If one is not signed, the sentencing memorandum may explain why not.

NONBINDING EXAMPLE

The prosecution must also file a sentencing memorandum stating its position on the appropriate sentence.

Any unresolved objection to the Presentence Investigation Report, *see* Fed. R. Crim. P. 32(g), is deemed waived and forfeited if not briefed in a timely sentencing memorandum. A sentencing memorandum may also state that a previously unresolved objection is withdrawn.

Explanatory note:

The waiver form is intended to help avoid a “word-for-word recitation” of supervision or probation conditions that may result in a “robotic delivery” during the sentencing hearing, and the form may also facilitate “more opportunity to review and consider objections to [supervision or probation] conditions than [for] defendants who hear about them for the first time when the judge announces them.” *United States v. Diggles*, 957 F.3d 551, 560–62 (5th Cir. 2020) (en banc) (cleaned up). It is also intended to achieve similar benefits with respect to oral pronouncement of a forfeiture order and oral advisement of appellate rights.

NONBINDING EXAMPLE

JCB-CR-49. FORMAT AND LENGTH OF FILINGS

- (a) Any document that is submitted for filing in the case—except for exhibits, attachments, and forms prepared independently of the case—must bear a page number on each page, starting with 1 on the first page (even if a cover page). Roman numerals are not allowed. The page number must be in the bottom margin of each page.
- (b) Every page in a document counts toward any page limitation except for any page bearing only a case caption, table of contents, table of authorities, signature block, certificate of conference or compliance, or some combination of those items. Incorporating by reference a previously filed document requires counting its pages.
- (c) Sentencing memoranda may not exceed 30 pages.
- (d) Any table of contents in a document should be embedded in the filed PDF. Any document that would have tabs in hardcopy should also have bookmarks in the filed PDF.
- (e) Citation of authority must comply with *The Bluebook: A Uniform System of Citation* (Colum. L. Rev. Ass’n et al. eds.) except that (1) italics should be used instead of underscoring or small caps, and (2) in citing an unreported case, any Westlaw database citation available should be provided in addition to a full docket number (not omitting any initial digit), a full date, and other required details.
- (f) Violation of this regulation will result in striking a filing or terminating a motion without prejudice.

Explanatory note:

Subsection (a) ensures that the page numbering assigned by the court’s Electronic Case Filing system matches the numbering assigned by a party, avoiding confusion in pinpoint citations. Subsection (a)’s exception applies to documents like preexisting exhibits and to forms like those created by the Administrative Office of the U.S. Courts.

NONBINDING EXAMPLE

JCB-CR-50. PLACE OF TRIAL

If this case was filed in or transferred to the Sherman Division, it is assumed that the court will convene for trial in the Tyler Division. *See* Fed. R. Crim. P. 18 (requiring the place of trial within the district to be set with due regard to “the prompt administration of justice”); 18 U.S.C. § 3161(a) (authorizing the court to “set the case for trial . . . at a place within the judicial district, so as to assure a speedy trial”); *United States v. Pepe*, 747 F.2d 632, 647–48 (11th Cir. 1984) (giving history of Rule 18).

Any party’s objection to holding trial in Tyler shall be filed, using ECF event code *Objection to Trial Setting*, within 28 days from the initial entry of this order or from the party’s appearance in the case in this court, whichever is later. Failure to object by that deadline is deemed consent to trial in Tyler. Any objection will be taken up in finalizing the date and place of trial, as scheduling in the Sherman Division is constrained.

NONBINDING EXAMPLE

JCB-CR-59. REFERRAL TO MAGISTRATE JUDGE

The court designates a magistrate judge to handle pretrial matters in this case pursuant to 28 U.S.C. § 636(b)(1)(A) with the exception of motions to suppress evidence, to dismiss or quash a charging instrument, to continue trial, to sever defendants for trial, or to transfer venue.

So ordered by the court.

J. CAMPBELL BARKER
United States District Judge