

1 A party intending to introduce the testimony of incarcerated witnesses who have agreed
2 voluntarily to attend the trial must serve and file a written motion for a court order requiring that
3 such witnesses be brought to court at the time of trial. The motion must: (1) State the name,
4 address, and prison identification number of each such witness; and (2) Be accompanied by
5 declarations showing that each witness is willing to testify and that each witness has actual
6 knowledge of relevant facts. The motion should be entitled “Motion for Attendance of
7 Incarcerated Witnesses.”

8 The willingness of the prospective witness to testify can be shown in one of two ways: (1)
9 An attorney can swear by declaration under penalty of perjury that the prospective witness has
10 informed the attorney that he is willing to testify voluntarily without being subpoenaed.
11 Included in which a declaration, the attorney must state when and where the prospective witness
12 informed the attorney of this willingness; or (2) The attorney can serve and file a declaration,
13 signed under penalty of perjury by the prospective witness, in which the witness states that he is
14 willing to testify without being subpoenaed.

15 The prospective witness’s actual knowledge of relevant facts can be shown in one of two
16 ways: (1) If the attorney has actual firsthand knowledge that the prospective witness was an
17 eyewitness or an ear-witness to the relevant facts, the attorney can swear by declaration under
18 penalty of perjury that the prospective witness has actual knowledge; or (2) The attorney can
19 serve and file a declaration signed under penalty of perjury by the prospective witness in which
20 the witness describes the relevant facts to which the prospective witness was an eye- or
21 ear-witness. Whether the declaration is made by an attorney or by the prospective witness, it
22 must be specific about the incident, when and where it occurred, who was present, and how the
23 prospective witness happened to be in a position to see or to hear what occurred at the time it
24 occurred.

25 The court will review and rule on the motion for attendance of incarcerated witnesses,
26 specifying which prospective witnesses must be brought to court. Subsequently, the court will
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1 issue the orders necessary to cause the witnesses' custodians to bring the witnesses to court.

2 **B. Procedures for Obtaining Attendance of Incarcerated Witnesses Who Refuse**
3 **to Testify Voluntarily** - If a party seeks to obtain the attendance of incarcerated witnesses who
4 refuse to testify voluntarily, the party must submit a motion for the attendance of such witnesses.
5 Such a motion should be in the form described above. In addition, the party must indicate in the
6 motion that the incarcerated witness is not willing to testify voluntarily.

7 **C. Order**

8 **Motions for the attendance of incarcerated witnesses, if any, SHALL be filed on or**
9 **before September 22, 2010. Oppositions, if any, must be filed on or before September 29,**
10 **2010.**

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12 IT IS SO ORDERED.

13 Dated: August 26, 2010

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16 CHIEF UNITED STATES DISTRICT JUDGE
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