

TRIAL PROCEDURE FOR CIVIL JURY TRIAL
JUDGE GREGORY L. FROST
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

INTRODUCTION

A lawsuit in which you represent a party, or in which you are a party, has been assigned to me for trial. You will want to know what is expected of you and your opponent. The following procedures are designed to deal with your case promptly and efficiently without impeding your ability to present your case fully and fairly. Throughout these instructions, whenever the term “counsel” is used, it refers both to attorneys and to those parties representing themselves.

COUNSEL TABLES

The parties will occupy the counsel table chosen or agreed to before the opening of the first session of the trial. The parties and all counsel will be present at counsel tables at all sessions before the Judge enters the courtroom. The parties and all counsel will remain at counsel tables until after the jury leaves the courtroom at the end of all sessions. The parties and counsel will stand upon the entrance and exit of the jury.

APPEARANCES

Counsel will enter their appearance with the court reporter and the courtroom deputy before the start of the opening session of the trial.

COURT SESSIONS

Trials will be held on Monday through Friday of each week. Thursday morning sessions may be shortened or canceled because the Court regularly schedules final pretrial conferences and criminal matters on that day. Counsel should inquire regarding Thursday’s schedule.

Morning session begins at 9:00 a.m. and will recess at approximately 10:30 a.m. for 15 minutes.

Noon recess will be at approximately 12:00.

Afternoon session begins at 1:00 p.m. and will recess at approximately 3:15 p.m. for 15 minutes.

Court will adjourn at approximately 5:00 p.m.

ADDRESSES BY COUNSEL

Counsel will address the Court and the jury in the following manner:

- (a) Voir dire examination, opening statements and closing arguments will be conducted from the lectern facing the jury;
- (b) All addresses to the Court will be made from the lectern facing the Court; and
- (c) Counsel shall stand when addressing the Court for any other reason.

EXAMINATION OF WITNESSES

Counsel shall conduct their examination from the lectern.

In advance of trial, counsel will instruct his or her witnesses to answer questions with courtesy. Evasive answers, answering a question with a question or disrespect to opposing counsel will not be permitted.

Counsel are expected to extend equal courtesy to all witnesses. Counsel will wait until the witness has finished an answer before asking the next question. Multiple part questions and repetitious questions will not be permitted. Counsel may not by any action, inflection or expression indicate disbelief of any witness's answer. Counsel shall admonish their clients and witnesses to desist from such conduct.

Witnesses shall be treated with fairness and consideration. They shall not be shouted at, ridiculed or otherwise abused. The untruthful or hostile witness can be examined firmly and extensively without abuse.

When a party has more than one attorney, only one may conduct the direct or cross-examination of a given witness, and only that attorney may raise objections.

Counsel need not ask permission of the Court before approaching a witness.

During examination of a witness, counsel will first obtain permission of the Court if he or she wishes to confer with co-counsel.

Upon completing his or her examination of the witness, counsel shall advise the Court, after which the Court will advise opposing counsel to proceed.

OBJECTIONS

Counsel will stand when making an objection and will make the objection directly and only to the Court.

When objecting, state only that you are objecting and if requested by the Court state the grounds. Objections shall not be used for the purpose of making speeches, repeating testimony, or to attempt to guide a witness or influence the jury.

Argument upon an objection will not be heard unless permission is given or argument is requested by the Court. Either counsel may request a bench conference.

DECORUM

Colloquy, or argument between counsel shall not be permitted. All remarks shall be addressed to the Court.

Counsel shall maintain a professional and dignified atmosphere throughout the trial.

Appearance, mannerisms, or habits that are designed to arouse the sympathy or prejudice of the jury are an impediment to an impartial trial and will not be permitted.

During a trial, counsel shall not exhibit familiarity with witnesses, jurors or opposing counsel and shall avoid the use of first names. No juror shall be addressed individually or by name.

During opening statements and final arguments, all persons at counsel table shall remain seated and be respectful so as not to divert the attention of the Court or the jury.

Do not ask the court reporter to mark testimony. All requests for re-reading of questions or answers shall be addressed to the Court.

EXHIBITS

Counsel will mark all exhibits prior to the commencement of trial. Plaintiff's exhibits will bear the letter prefix P followed by Arabic numerals ("P-1") and Defendant's exhibits will bear the prefix D followed by Arabic numerals ("D-1"). Joint exhibits will bear the prefix JE followed by Arabic numerals ("JE-1"). Third party exhibits will bear the prefix TP followed by Arabic numerals ("TP-1"). In cases involving multiple parties (*e.g.*, two or more plaintiffs or defendants), the parties shall confer with the Court at the final pretrial conference regarding the designation of prefixes.

Counsel shall provide a list of all exhibits and copies of all the exhibits to the Court, the courtroom deputy, the law clerk, and opposing counsel one week prior to trial.

Counsel will approach the witness to tender an exhibit.

In formulating a question to a witness dealing with an exhibit, counsel shall specify the exhibit number/letter designation so that the record will be clear.

Counsel shall tender exhibits produced for the first time during trial, as in the case of exhibits used for impeachment, to the courtroom deputy for marking and shall then display the exhibits to opposing counsel.

When exhibits are admitted, they shall be given to the courtroom deputy and he shall retain them. Until admitted, the exhibits are the responsibility of the party offering them.

DEPOSITIONS

Counsel will confer in advance of trial and attempt to resolve objections by agreement. If any objections remain for ruling, counsel shall jointly prepare a list of objections identifying the page number and line(s) of the deposition where the objection will be found and stating in one sentence the grounds for the objection. This procedure applies to both written and video tape depositions. Thus video tape depositions which contain objections must be accompanied by a full or partial transcript. The jointly prepared list of objections and grounds for the same shall be delivered to the Court prior to the commencement of trial.

Video tape presentation must include a method for editing the sound to delete testimony as to which the Court has sustained an objection.

DEMONSTRATIVE EVIDENCE

Counsel shall exhibit to opposing counsel any sketches, models, diagrams, or other demonstrative evidence of any kind that will be used during the trial, or that are prepared solely for the purposes of opening or closing argument, prior to their use.

Counsel must supply his/her own easel, flip charts, etc. for trial.

JURY

The Court usually will seat a jury of ten members. In accordance with Fed. R. Civ. P. 48, all jurors shall participate in the verdict unless excused pursuant to Rule 47(c). Unless the parties otherwise stipulate, the verdict shall be unanimous and no verdict shall be taken from a jury reduced in size to fewer than six members.

VOIR DIRE EXAMINATION

Each prospective juror is assigned a number by the Clerk's Office. Counsel will be provided with a list of the jurors' names and numbers prior to the commencement of trial.

The prospective jurors will be seated in numerical order, with ten prospective jurors seated in the jury box and the remaining prospective jurors seated in the gallery.

The Court will conduct a comprehensive voir dire examination tailored to the issues in the case being tried. Counsel may supplement the Court's examination, but they may not repeat in the same or in some other form any question already put to the panel by the Court. Counsel must address their questions to the whole panel in general and may not question an individual juror unless it develops from a question put to the whole panel that the answer of a specific juror justifies further inquiry. In questioning an individual juror, counsel shall refer to that juror by number only.

Counsel will not be permitted to question jurors individually regarding background information. This information is contained in juror questionnaire forms which are on file in the Clerk's Office. Counsel should examine these questionnaires prior to the commencement of trial. Counsel may inquire regarding any omission in a juror's answer to the juror questionnaire or, after obtaining the Court's permission, regarding any inquiry justifiably elicited by information contained in the juror questionnaire.

The whole panel of prospective jurors (*i.e.*, those in the jury box and those seated in the rear of the courtroom) will be examined before the Court will entertain challenges for cause or peremptory challenges.

CHALLENGES FOR CAUSE

Counsel will present challenges for cause for the entire panel (*i.e.*, jurors seated in the jury box and in the rear of the courtroom) to the Court at sidebar and on the record. Counsel shall refer to a prospective juror by name and number.

When any of the ten prospective jurors seated in the jury box are excused for cause, he or she will be replaced by the next juror, based on numerical order, seated in the gallery. The unexcused prospective juror will proceed from the gallery and take the seat of the excused juror in the jury box.

PEREMPTORY CHALLENGES

Once the Court has ruled on all challenges for cause, the Court will entertain peremptory challenges. Counsel will present peremptory challenges to the Court at sidebar and on the record. Counsel shall refer to a prospective juror by name and number.

The parties will exercise their peremptory challenges alternately with the plaintiff exercising the first challenge. Counsel should note that each party shall be entitled to three peremptory challenges. 28 U.S.C. § 1870. "Passing" on a peremptory challenge constitutes using that challenge.

Peremptory challenges will be directed only to the prospective jurors seated in the jury box. When any of the ten prospective jurors seated in the jury box are excused by peremptory challenge, he or she will be replaced by the next juror, based on numerical order, seated in

the gallery. The unexcused prospective juror will proceed from the gallery and take the seat of the excused juror in the jury box. This process will continue until all peremptory challenges are exercised.

MOTIONS IN LIMINE

Motions in limine, including those that address the admissibility of expert testimony under *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993), and *Kumho Tire v. Carmichael*, 526 U.S. 137 (1999), shall be filed three weeks prior to the final pretrial conference. Responses to motions in limine shall be filed two weeks prior to the final pretrial conference.

JURY INSTRUCTIONS

Requests for jury instructions should be filed one week before the scheduled trial date. Requests should be delivered directly to the Court or its law clerk. All proposed jury instructions shall be submitted in hard copy and on either a CD-ROM or a 3.5" diskette in **WordPerfect** for Windows (v. 10 or greater). Copies shall be served on opposing counsel.

SUMMARY OF DEADLINES

Three weeks before the final pretrial conference, counsel for Plaintiff and Defendant are responsible for submitting to the Court copies of motions in limine. Responses to motions in limine are due two weeks before the final pretrial conference.

One week before the trial date, counsel for the government and Defendant are responsible for submitting to the Court copies of the following:

- (a) Exhibits;
- (b) List of exhibits; and
- (c) Proposed jury instructions.

IT IS SO ORDERED.

**GREGORY L. FROST
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