

## **TRIAL PROCEDURE FOR NON-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.

#### **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 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 sessions will begin 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 for 15 minutes.

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

#### **ADDRESSES BY COUNSEL**

Counsel will address the Court in the following manner:

- (a) All addresses to the Court will be made from the lectern facing the Court; and
- (b) 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 the 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 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's testimony.

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

## **DECORUM**

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

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

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.

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 the trial.

Video tape presentation must include all equipment 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.

### **SUMMARY OF DEADLINES**

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

- (a) Exhibits; and
- (b) List of exhibits.

**IT IS SO ORDERED.**

**GREGORY L. FROST  
UNITED STATES DISTRICT JUDGE**