

TRIAL PROCEDURES *(Rev. 2/08)

for cases before

THE HONORABLE SANDRA S. BECKWITH
Chief United States District Judge
Southern District of Ohio - Western Division

A lawsuit in which you represent a party has been assigned to this Court for trial. These procedures are designed to handle your case promptly and efficiently without impeding your ability to present your client's case fully and fairly. The following is an index of the subjects contained herein:

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I. COURTROOM PROCEDURES FOR A CIVIL TRIAL TO THE COURT

A. Counsel Tables

The parties will occupy the counsel tables before the opening of the first session of the trial.

B. Appearances

Counsel will enter their appearances with the Court Reporter and the Courtroom Deputy before the start of the opening session of the trial. Any attorney not present at the final pretrial conference may not participate at trial.

C. Court Sessions

Under ordinary circumstances, trials will be held on Monday, Tuesday, Wednesday, and Thursday of each week, except that the Monday morning session may be preempted by the Court's criminal calendar. Friday will usually be reserved for final pretrial conferences, motions, and preliminary injunctions.

Trials will begin at 9:00 a.m. and will recess at approximately 10:30 a.m. for fifteen minutes. The lunch recess will begin at approximately noon. The afternoon session will begin at 1:30 p.m. and will recess at approximately 3:00 p.m. for fifteen minutes. Court will adjourn each day at approximately 4:30 p.m.

The parties and all counsel will be present at counsel tables at all sessions before the Court enters, and will remain at counsel tables until after the Court has left the bench.

D. Addresses of Counsel

Counsel will address the Court from the lectern.

E. Examination of Witnesses

Counsel should expect to proceed only with direct examination, cross-examination, and re-direct examination. Only in rare instances will the Court permit re-cross examination, and only where, in the Court's view, the scope of the re-direct exceeds the scope of cross-examination.

Counsel shall conduct their examination from the lectern and are not to approach the witness to tender an exhibit. Each exhibit will be placed before the witness by the Courtroom Deputy. In formulating a question to a witness dealing with an exhibit, counsel shall specify the exhibit number or designation. Counsel will indicate to the Court when he/she has completed the examination of a witness, after which the Court will advise opposing counsel to proceed. During the examination of a witness, counsel will first obtain permission of the Court to confer with co-counsel. Counsel will stand when making an objection, and will address the objection directly and only to the Court.

Any exhibits produced for the first time during trial, shall be properly marked and shown to opposing counsel **BEFORE** posing a question to a witness.

F. Exhibits

Counsel will assemble, mark, and place in binders all exhibits. Four sets of exhibits are required: one to be used during trial, one for the Court, one for opposing counsel, and one for the law clerk assigned to this case. Counsel are to deliver three copies of the exhibits to the Courtroom Deputy **THREE DAYS** prior to the commencement of trial. Joint exhibits will bear Roman numerals, plaintiff's exhibits will bear Arabic numbers, and defendant's exhibits will be identified with letters. Third party exhibits may be numbered with Arabic numbers preceded with the party's initial.

When defendant's exhibits exceed Fifty-Two (52) in number, defendant shall promptly advise opposing counsel. In such event, both sides will identify exhibits with Arabic numbers and the letter prefix, "P" for plaintiff's, and "D" for defendant's. Counsel are to supply the Court Reporter, Courtroom Deputy, and opposing counsel with a list of exhibits. The parties shall confer so that any given exhibit shall be designated and numbered only one (e.g., "Smith-1" and Jones-1001" should not be the same document). Joint exhibits are encouraged.

It is not necessary to bring exhibits to the final pretrial conference or to file them with the Court one week before trial. Counsel are required, however, to list all exhibits in the Joint Proposed Final Pretrial Statement.

The following procedure will be followed: All exhibits will be assembled in 3-ring binders, marked as listed in the Joint Proposed Final Pretrial Statement, with each exhibit bearing a numbered exhibit sticker and with the same number on a tab extended beyond the binder on the right side thereof. Each page of a multi-page exhibit shall be numbered with a distinctive number (e.g., as applied by a BATES numbering machine). All exhibits will be sequentially numbered with Arabic Numerals as follows: Joint exhibits will be designated JX ___ on white exhibit labels; plaintiff exhibits will be designated PX ___ on yellow exhibit labels; and defendant exhibits will be designated DX ___ on blue exhibit labels. Third-party exhibits may be numbered with a distinctive identifying letter prefix.

Each counsel will deposit three complete sets of his exhibits with the Courtroom Deputy, not later than THREE DAYS prior to trial.¹

If any sketches, models, diagrams, etc., of any kind will be used during trial or in argument, they must be exhibited to opposing counsel not later than 5 days before the final pretrial conference.

Exhibits deposited with the Courtroom Deputy and appropriately marked may be used by any party at trial.

Each party should offer its exhibits into evidence at one time, immediately prior to resting its case, except that an exhibit to be examined by the jury must be offered and admitted prior to examination. The admissibility of all exhibits referred to during trial and offered by the parties, other than those examined by the jury, will be ruled upon by the Court, at the latest, prior to that party's resting. Either side may offer any marked exhibit, regardless of which party marked it.

There is no requirement that counsel object to any exhibit at the final pretrial conference.

¹The non-original sets of exhibits may contain Xeroxed or equivalent sets of photographs.

Any exhibits produced for the first time during trial, shall be properly marked and shown to opposing counsel **BEFORE** posing a question to a witness. Any deviation from this procedure, in a situation wherein exhibits are unusually voluminous, in which event counsel may wish merely to make his exhibits available for inspection and/or copying by opposing counsel, will be permitted only upon leave of Court being first obtained.

G. Court Reporter

Should counsel desire daily transcripts of all or part of the trial testimony, arrangements must be made with the official court reporter, Mary Ann Ranz at 564-7626, at least TWO WEEKS prior to trial. Any emergency requests for transcripts of testimony during trial must be approved by the Court. A glossary of any unusual words, names, or terms that may be used during trial will be provided to the official court reporter at least ONE WEEK before trial.

Counsel are reminded of the E-Government Act that requires the redaction of personal identifiers should the transcript require filing, as follows:

- 1) Social Security Numbers (last four digits only);
- 2) Financial Account Numbers (last four digits only);
- 3) Dates of Birth (year of birth only);
- 4) Names of Minor Children (initials only) and;
- 5) Home Addresses (city and state only).

II. COURTROOM PROCEDURES FOR A CIVIL TRIAL TO A JURY

A. Counsel Tables

The parties will occupy the counsel tables before the opening of the first session of the trial.

B. Appearances

Counsel will enter their appearances with the Court Reporter and the Courtroom Deputy before the start of the opening session of the trial. Any attorney not present at the final pretrial conference may not participate at trial.

C. Court Sessions

Under ordinary circumstances, trials will be held on Monday, Tuesday, Wednesday, and Thursday of each week, except that the Monday morning session may be preempted by the Court's criminal calendar. Friday will usually be reserved for final pretrial conferences, motions, and preliminary injunctions.

Trials will begin at 9:00 a.m. and will recess at approximately 10:30 a.m. for fifteen minutes. The lunch recess will begin at approximately noon. The afternoon session will begin at 1:30 p.m. and will recess at approximately 3:00 p.m. for fifteen minutes. Court will adjourn each day at approximately 4:30 p.m.

The parties and all counsel will be present at counsel tables at all sessions before the jury enters, and remain at counsel tables until after the jury has left the courtroom.

D. Addresses of Counsel

Counsel will address the Court from the lectern. Counsel shall conduct voir dire examination, opening statements, and closing arguments from the lectern, facing the jury. Counsel will indicate to the Court that he/she has completed the examination, direct, cross, etc., of a witness, after which the Court will advise

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

Counsel must request specific permission from the Court to approach a witness. Since all evidence will have been previously deposited with the Courtroom Deputy, counsel will request the Clerk to hand specific documents to the witness. Documents intended for impeachment purposes which are not admitted into evidence, will be handed to the Courtroom Deputy for suitable marking and then handed by her to the witness.

E. Voir Dire Examination

The entire panel of prospective jurors (i.e., those seated inside and outside of the jury box), will be examined in one continuous examination. Each prospective juror is assigned a number by the Jury Clerk. Jurors will be seated in order of their assigned numbers. Counsel will be provided with a list of the jurors' names and numbers prior to the commencement of trial. Counsel are encouraged to obtain the jurors' questionnaires on the Thursday preceding trial.

Eight prospective jurors will be seated in the jury box. The Court suggests that the parties agree to accept the unanimous verdict of Six or Eight jurors so that the Seventh and Eighth jurors are "voting alternates." The Court will assign four peremptory challenges to each side.

The Court will conduct a comprehensive voir dire examination tailored to the issues in the case being tried (*See Item O, pp. 14 & 15 for the Court's questions*). Counsel are encouraged to submit, prior to trial, questions they would like the Court to include in its voir dire examination. Copies of such questions should be served on opposing counsel ONE WEEK prior to trial. Counsel may supplement the Court's examination with questions not previously asked. Counsel must address their questions to the entire panel in general and may not question an individual juror, unless justified. Counsel will not be permitted to question jurors individually regarding background information, as this information is contained in the questionnaires. Counsel should examine the questionnaires prior to the commencement of trial. Counsel may inquire regarding any omission in a juror's answer to the questionnaire or, after obtaining the Court's permission, regarding any inquiry justifiably elicited by information contained in the questionnaire.

F. Challenges to the Jury Panel

The general voir dire examination will be conducted by the Court, with the entirety of the prospective panel being questioned, following which counsel for the respective parties may question the prospective jurors on matters peculiarly applicable to the nature of and the issues presented in the case at trial. In addition, counsel may, in non-repetitious fashion, further explore any matters on which the Court has questioned which they feel have not been adequately discussed, or may explore any information in the individual jury questionnaires. The Court retains discretion to limit counsels' inquiry. Counsel must address questions to the entire panel of prospective jurors. An individual juror may be questioned only if such juror responds affirmatively to questions put to the entire panel, if counsel is following up on or further exploring a question asked or an area discussed by the Court, or if necessary to inquire into a matter disclosed by a prospective juror in the individual's jury questionnaire. Generally, counsel will be limited to fifteen (15) minutes per side.

The entire panel shall be challenged for cause. This will be conducted outside the presence of the jury at the conclusion of the voir dire examination.

G. Peremptory Challenges

Peremptory challenges will be exercised simultaneously, in writing, by all counsel (including peremptory challenges to alternate jurors) during a recess of the proceedings. The Courtroom Deputy will receive and combine the written peremptory challenges, and seat the jury as ultimately selected. Counsel will ordinarily be permitted fifteen minutes for this process.

H. Jury Instructions

Seven (7) days prior to the final pretrial conference, a joint submission shall be made indicating 1) agreed instructions; 2) instructions proposed by plaintiff, but opposed by defendant; and 3) instructions proposed by defendant, but opposed by plaintiff. All proposed instructions shall be supported by citations to authority at the time submitted to the Court. Grounds for objections need not be articulated at this time, but will be addressed at the charge conference. Boiler plate instructions need not be submitted. If counsel wish to utilize special verdict forms or submit interrogatories to the jury, these should also be filed along with the jury instructions.

Each instruction should be submitted in WordPerfect 10 format, on a separate 8.5" x 11" sheet of paper identified as "Plaintiff(s) (Defendant(s)) Requested Instruction No. ___." All instructions must contain a citation of authority upon which counsel relies. The original of the request for special instructions must be filed with the Clerk of Court, prior to presentation to the Court.

The Court uses as sources for its instructions Devitt, Blackmar, Wolff, & O'Malley's Federal Jury Practice and Instructions, 4th Edition; Ohio Jury Instructions; the Sixth Circuit Pattern Jury Instructions; and instructions given in prior cases.

During trial or at the close of all evidence, the parties may submit supplemental requests for instructions on matters not anticipated prior to trial.

Courtesy copies of all filings set forth in this Notice shall be hand-delivered to chambers at the time of the filing with the Clerk.

I. Examination of Witnesses

Counsel should expect to proceed only with direct examination, cross-examination, and re-direct examination.

In advance of trial, counsel will instruct their witnesses to answer questions with courtesy. Evasive answers, answering a question with a question, or any disrespect to opposing counsel will not be permitted. When a party has more than one attorney, only one may conduct the direct or cross-examination of any given witness.

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 or 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.

Counsel shall not approach a witness without requesting permission of the Court. When permission is granted for the purpose of working with an exhibit, counsel shall resume the examination from the lectern when finished. In most cases,

the Courtroom Deputy will place exhibits before the witness.

Counsel will indicate to the Court when he/she has completed the examination of a witness, after which the Court will advise opposing counsel to proceed.

Qualifying Expert Witnesses. The Court will allow each counsel to qualify his or her own expert witnesses.

J. Objections/Sidebar Conferences

Counsel **must** stand when making an objection and may state no more than the word “objection.” If counsel making an objection wishes to argue his objection, he must ask to come to sidebar.

Sidebar conferences regarding objections will be conducted in the following manner. First, the objector will explain the basis for the objection. Second, the questioner will explain why the question should be permitted. The objector will have a final opportunity to support his objection. Only the objector and the questioner will be permitted to come to the bench and argue the objection.

Sidebar conferences should be kept to a minimum and should always be brief.

K. 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. 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 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.

During opening statements and final arguments, all persons at counsel tables 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 having either a question or an answer read back shall be addressed to the Court.

The Court expects counsel to behave civilly and in a professional manner both toward the Court and each other, and in all aspects of this litigation. Any violation of this expectation, whether occurring in open court, in chambers, in the taking of depositions or otherwise, may be cause for sanctions. This Court adopts and expects counsel to adhere to the Code of Professional Responsibility.

L. Exhibits

Counsel will assemble, mark, and place in binders all exhibits. Four sets of bound and tabbed exhibits are required: one to be used during trial, one for the Court, one for opposing counsel, and one for the law clerk assigned to this case. Counsel are to deliver three copies of the exhibits to the Courtroom Deputy **THREE DAYS** prior to the commencement of trial. Joint exhibits will bear Roman numerals, plaintiff's exhibits will bear Arabic numbers, and defendant's exhibits will be identified with letters. Third party exhibits may be numbered with Arabic numbers preceded with the party's initial.

When defendant's exhibits exceed Fifty-Two (52) in number, defendant shall promptly advise opposing counsel. In such event, both sides will identify exhibits with Arabic numbers and the letter prefix, "P" for plaintiff's, and "D" for defendant's. Counsel are to supply the Court Reporter, Courtroom Deputy, and opposing counsel with a list of exhibits. The parties shall confer so that any given exhibits shall be designated and numbered only once (e.g., "Smith-1" and "Jones-1001" should not be the same document). Joint exhibits are encouraged.

It is not necessary to bring exhibits to the final pretrial conference or to file them with the Court one week before trial. Counsel are required, however, to list all exhibits in the Joint Proposed Final Pretrial Statement.

The following procedure will be followed: a) All exhibits will be assembled in 3-ring binders, marked as listed in the Joint Proposed Final Pretrial Statement, with each exhibit bearing a numbered exhibit sticker and with the same number on a tab extended beyond the binder on the right side thereof. Each page of a multi-page exhibit shall be numbered with a distinctive number (e.g., as applied by a BATES numbering machine). All exhibits will be sequentially numbered with Arabic

Numerals as follows: Joint exhibits will be designated JX ___ on white exhibit labels; plaintiff exhibits will be designated PX ___ on yellow exhibit labels; and defendant exhibits will be designated DX ___ on blue exhibit labels. Third-party exhibits may be numbered with a distinctive identifying letter prefix.

Each counsel will deposit three complete sets of his exhibits with the Courtroom Deputy, not later than THREE DAYS prior to trial.²

Any exhibits produced for the first time during trial, shall be properly marked and shown to opposing counsel **BEFORE** posing a question to a witness. Any deviation from this procedure, in a situation wherein exhibits are unusually voluminous, in which event counsel may wish merely to make his exhibits available for inspection and/or copying by opposing counsel, will be permitted only upon leave of Court being first obtained.

M. Depositions

Counsel will confer in advance of the final pretrial conference and attempt to resolve objections by agreement. If any objections remain for ruling, counsel shall include in the Joint Final Pretrial Statement of objections identifying the page number and line where the objection will be found, and stating in one sentence the grounds for the objection. This procedure applies to both written and videotape depositions. Videotape depositions which contain objections must be accompanied by a full or partial transcript. Failure to comply with this requirement will be deemed a waiver of any objection not properly brought to the Court's attention.

Videotape presentations must include a method for cutting off either sound or the entire picture from the jury, in situations where the Court must rule on objections to testimony. In addition to the videotape itself, a typewritten transcript must be provided to the Court and opposing counsel, prior to the first day of trial as an aid in following the videotape presentation and in ruling upon any objections contained in the deposition.

Any videotape depositions to which the Court has sustained an objection, must include a method for editing that portion not allowed.

²The non-original sets of exhibits may contain Xeroxed or equivalent sets of photographs.

Counsel are encouraged to excerpt (by agreement), the pertinent parts of depositions to minimize presentation of unnecessary or extraneous matters.

N. Demonstrative Evidence

If any sketches, models, diagrams or other demonstrative evidence of any kind will be used during trial, they must be exhibited to opposing counsel FIVE DAYS PRIOR to the commencement of trial. Objections to such evidence must be submitted to the Court prior to trial. Demonstrative evidence prepared solely for the purpose of final argument shall be displayed to opposing counsel at the earliest possible time, but no later than TWENTY FOUR (24) hours prior to the commencement of arguments.

Doctors and Other Professional Witnesses - Out of Order

The Court shall attempt to cooperate with doctors and other professional witnesses and will, to the extent practicable, accommodate their schedules by permitting them to testify out of order. Counsel will anticipate such eventuality and reach agreement wherever possible to achieve a minimum of disruption to both the trial and the witness' schedules. Irreconcilable conflicts shall be brought to the attention of the Court as soon as counsel become aware of the problem.

O. Voir Dire Questions by the Court

The following general questions will be posed to the jury by the Court.

Does any prospective juror:

- 1) have any medical or physical disability that you feel would make it difficult to serve as a juror? Have a transportation problem?
- 2) have any prior knowledge or information about this case?
- 3) have any personal interest of any kind whatsoever in this case?
- 4) have any immediate family or personal situation which would render you unable to give this case your undivided attention?
- 5) have any relationship, either personal or professional with any of the

parties, counsel, or any witness?

6) have any feeling, thought, inclination, prejudice, or bias which might interfere with your full and impartial consideration of the evidence in favor of or against either party?

7) have any reason of any nature whatsoever why you cannot hear, consider, and deliberate on the evidence that will be presented and render a verdict based solely on the evidence?

8) have any reservation about accepting the proposition that jurors are the sole judges of the facts, and the Court is the sole judge of the law?

9) can you accept the law as the Court instructs you without any reservation whatsoever, and apply it to the facts in this case?

10) has any member of the panel previously been selected to serve on a jury in either a State or Federal Court? If so, would your prior experience have any effect or influence on your ability to serve as a fair and impartial juror in this case?

Cause Question: Would the fact that _____ influence or interfere with your full and impartial consideration of the evidence either in favor of or against either party?

P. Court Reporter

Should counsel desire daily transcripts of all or part of the trial testimony, arrangements must be made with the official court reporter, Mary Ann Ranz at 564-7626, at least TWO WEEKS prior to trial. Any emergency requests for transcripts of testimony during trial must be approved by the Court. A glossary of any unusual words, names, or terms that may be used during trial will be provided to the official court reporter at least ONE WEEK before trial.

Counsel are reminded of the E-Government Act that requires the redaction of personal identifiers should the transcript require filing, as follows:

- 1) Social Security Numbers (last four digits only);

- 2) Financial Account Numbers (last four digits only);
- 3) Dates of Birth (year of birth only);
- 4) Names of Minor Children (initials only) and;
- 5) Home Addresses (city and state only).

Q. Pre-summation (Final Argument) Conference

The Court will hold a conference with counsel in chambers and on the record, prior to final arguments in jury cases for the following purposes:

1) Counsel may be heard on proposed jury charges presented by either side and/or on the tentative charges submitted by the Court. Counsels' attention is directed to Fed.R.Civ.P. 51;

2) Counsel and the Court will determine the length of the final arguments to the jury.

III. COURTROOM PROCEDURES FOR A CRIMINAL TRIAL TO A JURY

A. Counsel Tables

The parties will occupy the counsel tables before the opening of the first session of the trial.

B. Appearances

Counsel will enter their appearances with the Court Reporter and the Courtroom Deputy before the start of the opening session of the trial.

C. Court Sessions

Under ordinary circumstances, trials will be held on Monday, Tuesday, Wednesday, and Thursday of each week. Friday will usually be reserved for final pretrial conferences, motions, and preliminary injunctions.

Trials will begin at 9:00 a.m. and will recess at approximately 10:30 a.m. for fifteen minutes. The lunch recess will begin at approximately noon. The afternoon session will begin at 1:30 p.m. and will recess at approximately 3:00 p.m. for fifteen minutes. Court will adjourn each day at approximately 4:30 p.m.

The parties and all counsel will be present at counsel tables at all sessions before the jury enters, and will remain at counsel tables until after the jury has left the courtroom.

D. Addresses of Counsel

Counsel will address the Court from the lectern. Counsel shall conduct voir dire examination, opening statements, and closing arguments from the lectern, facing the jury. Counsel will indicate to the Court that he/she has completed the examination, direct, cross, etc., of a witness after which the Court will advise opposing counsel to proceed. During the examination of a witness, counsel will first obtain permission of the Court if he/she wishes to confer with co-counsel.

Counsel must request specific permission from the Court to approach a witness. Since all evidence will have been previously deposited with the Courtroom Deputy, counsel will request the Clerk to hand specific documents to the witness. Documents intended for impeachment purposes which are not admitted into evidence, will be handed to the Courtroom Deputy for suitable marking and then handed by her to the witness.

E. Examination of Witnesses

Counsel should expect to proceed only with direct examination, cross-examination, re-direct examination, and re-cross examination.

In advance of trial, counsel will instruct their witnesses to answer questions with courtesy. Evasive answers, answering a question with a question, or any disrespect to opposing counsel will not be permitted. When a party has more than one attorney, only one may conduct the direct or cross-examination of any given witness.

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 or 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.

Counsel shall not approach a witness without requesting permission of the Court. When permission is granted for the purpose of working with an exhibit, counsel shall resume the examination from the lectern when finished. In most cases, the Courtroom Deputy will place exhibits before the witness.

Counsel will indicate to the Court when he/she has completed the examination of a witness, after which the Court will advise opposing counsel to proceed. During the examination of a witness, counsel will first obtain permission of the Court to confer with co-counsel.

F. Objections/Sidebar Conferences

Counsel **must** stand when making an objection and may state no more than the word “objection.” If counsel making an objection wishes to argue his objection, he must ask to come to sidebar.

Sidebar conferences regarding objections will be conducted in the following manner. First, the objector will explain the basis for the objection. Second, the questioner will explain why the question should be permitted. The objector will have a final opportunity to support his objection. Only the objector and the questioner will be permitted to come to the bench and argue the objection.

Sidebar conferences should be kept to a minimum and should always be brief.

G. 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. 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 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.

During opening statements and final arguments, all persons at counsel tables 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 having either a question or an answer read back shall be addressed to the Court.

The Court expects counsel to behave civilly and in a professional manner both toward the Court and each other, and in all aspects of this litigation. Any violation of this expectation, whether occurring in open court, in chambers, in the taking of depositions or otherwise, may be cause for sanctions. This Court adopts and expects counsel to adhere to the attached Code of Professional Responsibility.

H. Exhibits

Counsel will assemble, mark, and place in binders all exhibits. Four sets of bound and tabbed exhibits are required: one to be used during trial, one for the Court, one for opposing counsel, and one for the law clerk assigned to this case. Counsel are to deliver three copies of the exhibits to the Courtroom Deputy **THREE DAYS** prior to the commencement of trial. Joint exhibits will bear Roman numerals, plaintiff's exhibits will bear Arabic numbers, and defendant's exhibits will be identified with letters. Third party exhibits may be numbered with Arabic numbers preceded with the party's initial.

When defendant's exhibits exceed Fifty-Two (52) in number, defendant shall promptly advise opposing counsel. In such event, both sides will identify exhibits with Arabic numbers and the letter prefix, "P" for plaintiff's, and "D" for defendant's. Counsel are to supply the Court Reporter, Courtroom Deputy, and opposing counsel with a list of exhibits. The parties shall confer so that any given exhibit shall be designated and numbered only once (e.g., "Smith-1" and "Jones-1001" should not be the same document). Joint exhibits are encouraged.

If any sketches, models, diagrams, etc., of any kind will be used during trial or in argument, they must be exhibited to opposing counsel not later than 5 days before the final pretrial conference.

Exhibits deposited with the Courtroom Deputy and appropriately marked may be used by any party at trial.

Each party should offer its exhibits into evidence at one time, immediately prior to resting its case, except that an exhibit to be examined by the jury must be offered by the parties, other than those examined by the jury, will be ruled upon by the Court, at the latest, prior to that party's resting. Either side may offer any marked exhibit, regardless of which party marked it.

There is no requirement that counsel object to any exhibit at the final pretrial conference.

Any exhibits produced for the first time during trial, shall be properly marked and shown to opposing counsel **BEFORE** posing a question to a witness. Any deviation from this procedure, in a situation wherein exhibits are unusually

voluminous, in which event counsel may wish merely to make his exhibits available for inspection and/or copying by opposing counsel, will be permitted only upon leave of Court being first obtained.

I. Voir Dire Examination

The entire panel of prospective jurors (i.e., those seated inside and outside of the jury box), will be examined in one continuous examination. Each prospective juror is assigned a number by the Jury Clerk. Jurors will be seated in order of their assigned numbers. Counsel will be provided with a list of the jurors' names and numbers prior to the commencement of trial. Counsel are encouraged to obtain the jurors' questionnaires on the Thursday preceding trial.

Fourteen prospective jurors will be seated in the jury box. The thirteenth and fourteenth jurors are alternates. The Court will assign seven peremptory challenges to the government and eleven peremptory challenges to the defendant. (Counsel are directed to the provisions of Fed. R. Crim. P. 24(b) and (c) for further information regarding peremptory challenges.

The Court will conduct a comprehensive voir dire examination tailored to the issues in the case being tried (*See Item M, pp. 22 & 23 for the Court's questions*). Counsel are encouraged to submit, prior to trial, questions they would like the Court to include in its voir dire examination. Copies of such questions should be served on opposing counsel ONE WEEK prior to trial. Counsel may supplement the Court's examination with questions not previously asked. Counsel must address their questions to the entire panel in general and may not question an individual juror, unless justified. Counsel will not be permitted to question jurors individually regarding background information, as this information is contained in the questionnaires. Counsel should examine the questionnaires prior to the commencement of trial. Counsel may inquire regarding any omission in a juror's answer to the questionnaire or, after obtaining the Court's permission, regarding any inquiry justifiably elicited by information contained in the questionnaire.

J. Challenges to the Jury Panel

The general voir dire examination will be conducted by the Court, with the entirety of the prospective panel being questioned, following which counsel for the respective parties may question the prospective jurors on matters peculiarly applicable

to the nature of and the issues presented in the case at trial. In addition, counsel may, in non-repetitious fashion, further explore any matters on which the Court has questioned which they feel have not been adequately discussed, or may explore any information in the individual jury questionnaires. The Court retains discretion to limit counsels' inquiry. Counsel must address questions to the entire panel of prospective jurors. An individual juror may be questioned only if such juror responds affirmatively to questions put to the entire panel, if counsel is following up on or further exploring a question asked to an area discussed by the Court, or if necessary to inquire into a matter disclosed by a prospective juror in the individual's jury questionnaire. Generally, counsel will be limited to fifteen (15) minutes per side.

The entire panel shall be challenged for cause. This will be conducted outside the presence of the jury at the conclusion of the voir dire examination.

K. Peremptory Challenges

Peremptory challenges will be exercised simultaneously, in writing, by all counsel (including peremptory challenges to alternate jurors) during a recess of the proceedings. The Courtroom Deputy will receive and combine the written peremptory challenges and seat the jury as ultimately selected. Counsel will ordinarily be permitted fifteen (15) minutes for this process.

L. Jury Instructions

Counsel are to draft proposed substantive jury instructions which state the governing rules of law with appropriate case citations. Proposed instructions shall be filed with the Clerk's Office at least **ONE WEEK** prior to the commencement of trial. A copy of any such proposals are to be delivered to the Judge's Chambers, Room 810, and served on opposing counsel. Counsel are requested to submit their proposed instructions in WordPerfect 10 format and on a plain copy suitable for submission to the jury, along with the balance of the other instructions.

M. Voir Dire Questions by the Court

The following general questions will be posed to the jury by the Court.

Does any prospective juror:

- 1) have any medical or physical disability that you feel would make it difficult to serve as a juror? Have any transportation problem?
- 2) have any prior knowledge or information about the offense the defendant is charged with that was gained from personal contacts or media accounts?
- 3) have any personal interest of any kind whatsoever in this case?
- 4) have any immediate family or personal situation which would render you unable to give this case your undivided attention?
- 5) have any feeling, bias, or prejudice, because the defendant has been charged with an offense against the United States of America?
- 6) formed or expressed any opinion as to the guilt or innocence of the defendant?
- 7) have any relationship, either personal or professional with any of the parties, counsel, or any witness?
- 8) have any feeling, thought, inclination, prejudice, or bias which might interfere with your full and impartial consideration of the evidence in favor of or against either the defendant or the government?
- 9) have any reason of any nature whatsoever why you cannot hear, consider, and deliberate on the evidence that will be presented and render a verdict based solely on the evidence?
- 10) Has any member of the panel previously been selected to serve on a jury in either State or Federal Court? If so, would your prior experience have any effect or influence on your ability to serve as a fair and impartial juror in this case?
- 11) Can you accept the law as the Court instructs you without any reservation whatsoever, and apply it to the facts in this case?
- 12) have any reservation with accepting the proposition that jurors are the sole judges of the facts and the Court is the sole judge of the law?
- 13) If you are selected as a juror in this case, can you extend the presumption of

innocence to this defendant; that is, can you presume this defendant to be innocent of the charge unless and until his guilt is established by proof beyond a reasonable doubt of his being guilty?

14) Are you, or any member of your immediate family a member of a law enforcement agency, either at present or any time in the past?

Cause Question: Would the fact that _____ influence or interfere with your full and impartial consideration of the evidence either in favor of or against either the defendant or the government?

N. Court Reporter

Should counsel desire daily transcripts of all or part of the trial testimony, arrangements must be made with the official court reporter, Mary Ann Ranz at 564-7626, at least TWO WEEKS prior to trial. Any emergency requests for transcripts of testimony during trial must be approved by the Court. A glossary of any unusual words, names, or terms that may be used during trial will be provided to the official court reporter at least ONE WEEK before trial.

Counsel are reminded of the E-Government Act that requires the redaction of personal identifiers should the transcript require filing, as follows:

- 1) Social Security Numbers (last four digits only);
- 2) Financial Account Numbers (last four digits only);
- 3) Dates of Birth (year of birth only);
- 4) Names of Minor Children (initials only) and;
- 5) Home Addresses (city and state only).

O. Pre-summation (Final Argument) Conference

The Court will hold a conference with counsel in chambers and on the record prior to final arguments in jury cases for the following purposes:

1) Counsel may be heard on proposed jury charges presented by either side and/or on the tentative charges submitted by the Court. Counsels' attention is directed to Fed.R.Civ.P. 51;

2) Counsel and the Court will determine the length of the final arguments to the jury.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

XX,

Plaintiff(s)

vs.

Case No.

XX,

Defendant(s)

FINAL PRETRIAL STATEMENT (Required Form)³

This action came before the Court at a final pretrial conference held on _____ at _____ m., pursuant to Rule 16, Federal Rules of Civil Procedure.

I. APPEARANCES:

For Plaintiff(s):

For Defendant(s):

II. NATURE OF ACTION AND JURISDICTION:

A. This is an action for _____

B. The jurisdiction of the Court is invoked under Title _____, United States Code, Section _____.

³A Final Pretrial Statement following this format must be jointly prepared and submitted by counsel to the Clerk of Courts not later than one week prior to the final pretrial conference.

C. The jurisdiction of the Court (is) (is not) disputed.

III. TRIAL INFORMATION:

A. The estimated length of trial is _____ days

B. Trial to (indicate jury or bench) has been set for _____ pursuant to the General Notice on Trial Assignment.

IV. AGREED STATEMENTS AND LISTS:

A. General Nature of the Claims of the Parties

1) PLAINTIFF CLAIMS: (suggested type of simple language)

“Plaintiff asserts in Count 1 a right of recovery for defendants’ negligence as follows;”

“Plaintiff asserts in Count 2 a right of recovery for defendants’ wanton and willful misconduct as follows;”

“Plaintiff asserts in Count 3 a right to punitive damages and attorney fees for the following reasons:

2) DEFENDANT CLAIMS: (suggested type of simple language)

Defendant denies liability as asserted in Counts ___ for the following reasons:

Defendant as an affirmative defense asserts:

3) ALL OTHER PARTIES’ CLAIMS: (same type of simple language)

B. Uncontroverted Facts

Suggested Language: “The following facts are established by admissions in the pleadings or by stipulations of counsel.” (Set forth uncontroverted or uncontested facts).

C. Issues of Fact and Law

Suggested Language:

1) “Contested Issues of Fact: The contested issues of fact remaining for decision are: (list)”

2) “Contested Issues of Law: The contested issues of law in addition to those implicit in the foregoing issues of fact, are: (list), **OR:** There are no special issues of law reserved other than those implicit in the foregoing issues of fact.”

If the parties are unable to agree on what the contested issues of fact or law are, their respective contentions as to what the issues are shall be set forth separately and clearly labeled.

D. Witnesses

Suggested Language:

1) “Plaintiff will call or will have available at trial: (list, **OR:** Plaintiff may call: (list)”

2) “Defendant will call or will have available at trial: (list), **OR:** Defendant may call: (list)”

3) _____ will call or will have available at trial (list). Use for third parties, if any)

4) “The parties reserve the right to call rebuttal witnesses whose testimony could not reasonably be anticipated without prior notice to opposing counsel.”

NOTE:

a) Only witnesses listed in the Final Pretrial Statement will be permitted to testify at trial, except witnesses called solely for impeachment purposes, or for good cause shown.

b) A brief one or two sentence synopsis of the witnesses' testimony must be given – i.e., “Will testify to pain and suffering,” “Will testify to lost profits, etc.”

c) Leave to call additional witnesses may be granted by the Court in unusual situations. Counsel seeking such leave must file a Motion to Add Witnesses and serve a copy upon opposing counsel with names, addresses, and an offer of proof of such witness' testimony within twenty-four (24) hours after the need to call such witness becomes known.

d) The witnesses need not be called in the order listed.

E. Expert Witnesses

Suggested Language:

The parties are limited to the following number of expert witnesses, including treating physicians, whose names have been disclosed and reports furnished to opposing counsel:

Plaintiff _____
Defendant _____

Counsel have attached a resume of each expert's qualifications as a part of Appendix A, herein.

F. Exhibits

The exhibit list should be prepared prior to trial as set forth in the Final Pretrial Statement. Exhibits that are to be admitted without objection should be listed first, followed by a listing of exhibits to which there may be an objection, noting by whom the objection is made (only if there are multiple parties), the nature of the objection, and the authority supporting the objection. Exhibit markers should be affixed to all exhibits at the time they are shown to opposing counsel during the preparation of the Final Pretrial Statement. The exhibit stickers should be affixed to the upper right corner, whenever possible.

All exhibits are to be delivered to the Courtroom Deputy THREE DAYS prior to the commencement of trial. Any demonstrative exhibits are to

be presented to opposing counsel five days prior to trial.

Except for good cause shown, the Court will not permit the introduction of any exhibits unless they have been listed in the Final Pretrial Statement, with the exception of exhibits to be used solely for impeachment purposes.

The Final Pretrial Statement should list the exhibits as follows:

- Appendix B Joint Exhibits
- Appendix C Plaintiff Exhibits
- Appendix D Defendant Exhibits
- Appendix E Third-Party Exhibits

G. Depositions

The Final Pretrial Statement shall list depositions to be read into evidence and any objections thereto identifying the objecting party, portions objected to, and grounds therefor. All irrelevant and redundant matters and all colloquy between counsel contained in the deposition must be eliminated when the deposition is read.

Suggested Language:

“Testimony of the following witnesses will be offered by deposition (indicate by written form or video tape).” If none will be presented, indicate so.

H. Discovery

Suggested Language:

“Discovery has been completed,” **OR** “The following provisions have been made for discovery.”

1) Pending Motions

Suggested Language:

“The following motions are pending at this time,” **OR** “There are no pending motions at this time.”

II Miscellaneous Orders

- 1) Set forth any orders not properly includable elsewhere; **OR**
- 2) The foregoing stipulations and statements were amended at the final pretrial conference as follows: _____.

V. Modification

This Final Pretrial Statement may be modified at the trial of this action, or prior thereto, to prevent manifest injustice. Such modification may be made by application of counsel of on motion of the Court.

VI. Jury Instructions and Trial Briefs

Criminal Cases. Requests for jury instructions, including interrogatories or special verdict forms and trial briefs shall be submitted to the Court FIVE DAYS prior to commencement of trial. There is reserved to counsel the right to submit supplemental requests for instructions during trial, or at the conclusion of the evidence, but only as to matters that cannot be reasonably anticipated.

Civil Cases. Trial briefs shall be filed with the Clerk of Courts FIVE DAYS prior to the commencement of trial. See Item H, pp. 8 & 9 for deadline regarding Jury Instructions.

VII. Settlement Efforts

The parties have made a good faith effort to negotiate a settlement, **OR:**
(describe the status of settlement negotiations) _____.

VIII. Additional Action Taken

Date: _____

Counsel for Plaintiff

Counsel for Defendant

Counsel for _____

APPENDIX A

Qualifications of Expert Witness

The following is intended to qualify your witness as an expert. It will be read to the jury in the form given. The Court will reserve the right to remove extraneous or repetitious material.

Name: _____

Address: _____

Present Title: _____

Duties: _____

Education & Degrees: _____

Teaching Experience: _____

Job Experience: _____

Associations & Societies: _____

Publications: _____

Honors: _____

Other Pertinent Information: _____
