

STANDING ORDER REGARDING PROCEDURES IN CRIMINAL CASES

**MATTHEW W. McFARLAND
UNITED STATES DISTRICT JUDGE
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION - CINCINNATI**

This Standing Order is adopted under Fed. R. Crim. P. 57(b) and governs practice before District Judge Matthew W. McFarland, supplementing the Federal Rules of Criminal Procedure, the Federal Rules of Evidence, and the Local Rules of this Court. All attorneys who enter appearances in cases before Judge McFarland are charged with knowledge of this Order and are obliged to follow it.

I. PRETRIAL PROCEDURE

A. Trial Date

Criminal cases are set for trial between fifty-nine (59) and seventy (70) days into the speedy trial calculation. The Final Pretrial Conference is generally scheduled one (1) week before trial. All trial counsel must appear in person at the Final Pretrial Conference.

B. Discovery and Inspection

Defense counsel must promptly contact the Assistant United States Attorney responsible for prosecution of the case, if prior contact has not been made, and arrange a meeting to resolve all discovery requests under the Federal Rules of Criminal Procedure, including Rule 16. When defense counsel requests discovery under Rule 16, the government must provide the information subject to disclosure under Rule 16(a). The government's response must be filed within one (1) week of the filing of defendant's request for discovery.

The discovery meeting must be held as soon as possible and no later than one (1) week after arraignment. If at any time any party fails to comply with Fed. R. Crim. P. 16 in response to a discovery request, such failure must be brought to the Court's attention by a motion to compel the specific discovery sought. Motions to compel must be filed within one (1) week from the date of a party's denial of the initial request.

C. Motions

All motions of any kind, by the defendant or by the government, must be filed on or before the date set forth in the Criminal Preliminary Pretrial

Order. All briefs opposing a motion must be filed no later than one (1) week after the motion is filed. No reply briefs are permitted without leave of Court. The moving party must state whether an evidentiary hearing is requested and the reasons supporting the discovery request. If the Court determines that a hearing is required, it will contact the parties with a proposed date and time for the hearing.

Before filing any motion relating to bail or detention or any motion for a continuance of any conference, hearing, deadline or other date scheduled by the Court, the movant's counsel must consult with the attorney for the opposing side and inquire if the party consents to or intends to oppose the motion. The movant must state in its motion that such consultation occurred or was attempted in good faith and must state whether the motion is unopposed.

Any motion to continue the trial date must be in writing and filed at least one week before the scheduled trial date. The motion must address the factors set forth in 18 U.S.C. § 3161 (h) that support continuance of the trial date.

D. Plea Negotiations and Plea Agreement

The Court expects the Assistant United States Attorney and defense counsel, or the defendant if proceeding pro se, to begin plea negotiations under Fed. R. Crim. P. 11(c) as early as practicable. If the parties reach a plea agreement, they must notify the Court promptly and the Court will schedule a change-of-plea hearing. In most cases, the Court will convert the Final Pretrial Conference into the change-of-plea hearing.

II. TRIAL PROCEDURE

The following procedures are intended to provide "for the just determination of every criminal proceeding, to secure simplicity in procedure and fairness in administration, and to eliminate unjustifiable expense and delay." Fed. R. Crim. P. 2.

A. Counsel Tables

The Courtroom Deputy will identify the tables where the parties and their counsel are to be seated throughout trial.

B. Court Sessions

Under ordinary circumstances, trials expected to take two weeks or less will be held Monday through Friday.

Trial hours are generally 9:00 AM to 12:00 PM and 1:00 PM to 4:30 PM with one 15- minute break in the morning and the afternoon.

The parties and all counsel must be present at counsel tables during all sessions before the jury enters the courtroom and 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.

Counsel and the parties must be present in the courtroom one half (1/2) hour before the Court convenes trial every morning – for example, 8:30 AM if the Court convenes trial at 9:00 AM. The Court will use this time to resolve any issues that the parties expect to arise during trial.

C. Addressing the Court

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

1. During *voir dire* examination, opening statements, and closing arguments, counsel will stand at the lectern facing the jury.
2. Counsel may address the Court either from the lectern facing the Court or by standing at counsel table.
3. Counsel must stand when addressing the Court for any reason.

D. Decorum

Counsel must address the Court as “Judge” or “Your Honor.”

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

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

Appearances, mannerisms or habits that are designed to arouse the sympathy or prejudice of the jury are not permitted.

During trial, counsel should not exhibit familiarity with witnesses, jurors or opposing counsel and should not address anyone by first name.

During opening statements and final arguments, all persons at counsel tables must remain seated and be respectful.

Do not ask the court reporter to mark testimony. All requests for re-

reading of questions or answers must be addressed to the Court.

E. Voir Dire Examination

The entire panel of prospective jurors (i.e., those in the jury box and seated in the back of the courtroom) will be examined in one continuous examination.

Counsel will be provided with a list of the prospective jurors prior to the commencement of trial. Counsel may contact the Jury Commissioner three days before trial at 513-564-7511 to obtain the juror questionnaire forms.

Each prospective juror will be assigned a number by the Clerk's office. Counsel will receive a listing of the jurors' names and numbers prior to jury selection.

Additionally, each prospective juror will be assigned a seat number and given a corresponding index card. During jury selection, counsel must refer to prospective jurors by their seat numbers and not by name.

The Court will conduct a preliminary *voir dire* examination tailored to the issues in the case. An outline of the Court's typical *voir dire* questioning is attached as "Appendix A."

Counsel may supplement the Court's examination. However, counsel may not repeat in some other form the same question the Court has already put to the panel.

Counsel must address their questions to the whole panel. Counsel may not question an individual juror, unless the answer of a specific juror justifies further inquiry.

F. Challenges for Cause

Challenges for cause and peremptory challenges will be exercised outside the presence of the jury (either in a conference room or at sidebar). The Court first considers challenges for cause. When the parties have exhausted their challenges for cause, the Court will consider peremptory challenges.

G. Peremptory Challenges

In a non-capital felony case, the government has six (6) peremptory challenges and the defendant or defendants jointly have ten (10) peremptory challenges when the defendant is charged with a crime punishable by imprisonment of more than one year. Fed R. Crim. P. 24. The parties' peremptory challenges will be exercised as follows:

1. The government exercises its first challenge.
2. Defendant exercises his first and second challenges.
3. The government exercises its second challenge.
4. Defendant exercises his/her third and fourth challenges.
5. The government exercises its third challenge.
6. Defendant exercises his/her fifth and sixth challenges.
7. The government exercises its fourth challenge.
8. Defendant exercises his/her seventh and eighth challenges.
9. The government exercises its fifth challenge.
10. Defendant exercises his/her ninth challenge.
11. The government exercises its sixth challenge.
12. Defendant exercises his/her tenth challenge.

If a party "passes" (i.e., forgoes to exercise a challenge when it is the party's turn to do so), that party thereby "uses" one challenge.

After the twelve (12) regular jurors have been selected, the parties may exercise peremptory challenges as to the alternate juror(s) in the same manner.

H. Jury Instructions

The Court will use the Pattern Jury Instructions published by the United States Court of Appeals for the Sixth Circuit (available at <https://www.ca6.uscourts.gov/pattern-jury-instructions>), unless the Pattern Jury Instructions do not supply a relevant instruction on the subject matter or a party objects to a pattern jury instruction. In the case of an objection, the Court will consider the argument and authorities submitted by the objecting party and provide the other parties an opportunity to join or respond to the objection. A party's arguments and authority for or against a pattern jury instruction may be submitted in writing or presented orally on the record in open court.

Counsel must file their proposed jury instructions and email a courtesy copy in Microsoft Word to McFarland_Chambers@ohsd.uscourts.gov at least five (5) business days before trial. Counsel may refer to requested Sixth Circuit pattern jury instructions by number; inclusion of the complete jury instruction is not required.

Proposed jury instructions should address the substantive law applicable to the case. Counsel need not submit jury instructions regarding procedural matters, which the Court will provide. Proposed instructions must indicate their supporting authority, if they are not taken from the Sixth Circuit's Pattern Jury Instructions, and must be numbered for reference purposes.

Requests for additional jury instructions during trial or at the conclusion of the evidence will be granted only as to those matters that could not be reasonably anticipated before trial. Copies of any such instructions must be served on opposing counsel before providing them to the Court.

I. Examination of Witnesses

Counsel will conduct their examination of witnesses from the lectern.

In advance of trial, counsel must instruct their witnesses to answer questions with courtesy. Evasive answers, answering a question with a question, or disrespect to opposing counsel is not permitted.

Counsel are expected to extend equal courtesy to all witnesses. Counsel must wait until a witness has finished answering before asking the next question. Repetitious questions are not permitted. Counsel may not, by any action, inflection or expression, indicate disbelief of any answer. Counsel should admonish their clients and witnesses to refrain from such conduct.

Counsel must not shout at, ridicule or otherwise abuse any witness.

When a party has more than one attorney, only one attorney may conduct the direct or cross-examination of a given witness. In addition, during the examination of a witness, counsel must request the Court's permission to confer with co-counsel.

Counsel may not approach a witness without first asking and obtaining the Court's permission. In most instances, the Courtroom Deputy will hand exhibits to the witness.

Counsel should inform the Court when their examination of a witness is

complete so that the Court can advise opposing counsel to proceed.

J. Objections

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

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

Argument upon an objection will not be heard unless the Court requests it or grants a request for a bench conference.

K. Exhibits

All parties who intend to offer exhibits must mark them before trial. The Clerk of Courts can provide exhibit labels upon request.

The government must label its exhibits with Arabic numbers preceded by "GOV", and the defendant shall identify the defendant's exhibits with Arabic numbers preceded by "D" (or "D2", etc.)

Counsel must provide the original and two copies of exhibits to chambers, and one copy to opposing counsel, three (3) business days before the commencement of trial. The two copies of exhibits to the Court should be three-hole punched and placed in notebooks along with a copy of the exhibit lists. Exhibit lists should be on the form attached to the Criminal Preliminary Pretrial Order. Exhibit lists are not pleadings and should not be filed with the Clerk of Courts or served on opposing counsel.

Counsel may not approach a witness to tender an exhibit. Rather, the Courtroom Deputy will place exhibits before the witness.

In formulating a question to a witness, counsel should specify the exhibit number or designation involved so the record will be clear.

If a party introduces a previously undisclosed exhibit for the first time at trial, as in the case of exhibits used for impeachment, the exhibit first must be given to the Courtroom Deputy for marking and then shown to opposing counsel. Copies must be provided to opposing counsel, the Court and the Court's Law Clerk.

L. Witness Lists

The government must submit a copy of its witness list to the Court's chambers three (3) business days before trial. Defendants may submit a copy of their witness list three (3) business days before trial. Witness lists are not pleadings and should not be filed or served on opposing counsel.

M. Trial Briefs

The parties may file trial briefs at any time before trial. Counsel also must serve their trial briefs on opposing counsel. Each trial brief should include a statement of facts. Counsel also should identify and argue evidentiary issues with citation to relevant legal authorities.

N. Stipulations

Stipulations must be signed by both the parties' counsel and the defendant and may be submitted to the Court at any time.

O. Deadlines

All deadlines in this Standing Order and any other Order issued by the Court are firm deadlines. The Court will impose sanctions, including monetary sanctions, for failure to meet these deadlines.

P. Summary of Deadlines

In summary, the government and defendant must submit copies of the following documents according the following schedule:

Proposed Jury Instructions	5 business days before trial
Witness lists	3 business days before trial
Exhibits & Exhibit lists	3 business days before trial
Stipulations	Any time before or during trial

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

By: /s/ Matthew W. McFarland
JUDGE MATTHEW W. McFARLAND

APPENDIX A

VOIR DIRE QUESTIONS BY THE COURT Criminal Jury Trial Procedures

The Court will conduct a preliminary examination of the panel, typically using questions such as the following. After the Court completes its examination, counsel may supplement the Court's examination with questions that do not repeat, in substance, any question the Court already asked the panel.

1. I am now going to read the names of the parties and the witnesses that you may be hearing from in this case. Please listen to the list carefully as I will be asking you whether you know any of these people.

First, as I just told you, the government is represented by _____. Seated at the counsel table with _____ is _____.

At the next table is the Defendant in this case _____. He [or she] is represented by _____ of _____.

The government may call the following persons as witnesses:

The Defendant in this case may call the following persons as witnesses:

Are any of you related by blood or marriage to any of the individuals that I have just named?

Are you personally acquainted with these persons, or do you have any knowledge of them, directly or indirectly, through your social, business, or professional lives?

2. Have any of you ever heard of or been involved with any of the following entities or persons: [List any businesses or non-witness entities that will be important in this case.] Are any of these names familiar to any panel member?
3. **OUTLINE THE OFFENSE PER THE INDICTMENT OR INFORMATION**

Does any panel member have prior knowledge or information about the offense(s) the defendant(s) is/are charged with, which I have just explained to you? This includes knowledge gained from personal contacts or from the media.

Follow-up Questions for Any Affirmative Responses:

- a) From what source did you hear about this case (newspaper, TV, radio, conversation with others)?
 - b) How many times did you hear or read about it?
 - c) Do you remember specifically what you heard or read?
 - d) Did what you heard or read cause you to have any feeling concerning the merits of the parties' claims?
 - e) Did what you heard or read cause you to have a favorable or an unfavorable impression concerning the parties?
 - f) Do you today have any impression or even tentative opinion as to the probable outcome of this case?
4. Does any panel member have any personal interest of any kind in this case, or in the defendant(s)?
 5. If any panel member has served as a juror in the federal or state court – either in a civil or criminal case – and regardless of the outcome of such case(s), would your prior experience have any effect or influence on your ability to serve as a fair and impartial juror in this case?
 6. Does any panel member have any feeling – thought – inclination – premonition – prejudice – religious belief or persuasion – or bias – which might influence or interfere with your full and impartial consideration and which might influence you either in favor of or against either the defendant(s) or the government?
 7. Is there any reason in your mind why you cannot hear and consider the evidence and render a fair and impartial verdict?
 8. Can you take the law as the Court instructs you, without any reservation whatsoever, and apply the facts to the Court's instructions on the law? If you cannot do this, please hold up your hand.
 9. Do you recognize and accept the proposition that jurors are the sole judge of the facts and the Court is the sole judge of the law? If you cannot do this, please hold up your hand.
 10. If you are selected as a juror in this case can you extend the presumption of

innocence to this defendant(s); that is, can you presume the defendant(s) is/are innocent of the charge(s) unless and until guilt is established by proof which convinces you beyond a reasonable doubt? If you cannot do this, please hold up your hand.

11. Are you – or is any member of your immediate family – a member of a law enforcement agency, i.e., municipal police, county sheriff, state highway patrol, or any federal law enforcement agency, either at the present time or in the past?
12. Does any panel member feel bias – or prejudice – because the defendant(s) has (have) been charged by indictment (information) with an offense(s) against the United States?
13. Has any panel member formed or expressed any opinion as to the guilt or innocence of the defendant(s)?
14. Does any panel member have:
 - a) Any transportation problem? For example, does anyone have difficulty getting to or from the courthouse?
 - b) Any medical or disability problems, such as difficulty hearing, walking or seeing? Does any other medical problem exist which could affect your service on the jury?
15. The Court and counsel estimate this trial will last ____ days. Does any panel member have any immediate family or personal reason or situation which persuades you that you cannot serve as a juror during this period and give your undivided attention to this case?
16. Finally, can any of you think of any matter that you should call to the Court's attention that may have some bearing on your qualifications as a juror, or that – even to the slightest degree – may prevent your rendering a fair and impartial verdict based solely upon the evidence and my instructions as to the law?