

TRIAL PROCEDURE - CRIMINAL JURY TRIAL

ALGENON L. MARBLEY
UNITED STATES DISTRICT JUDGE,
SOUTHERN DISTRICT OF OHIO, EASTERN DIVISION

INTRODUCTION

A criminal case in which you represent 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 client's case fully and fairly.

COUNSEL TABLES

The parties will occupy the counsel table chosen or agreed to before the opening of the first session of the trial.

APPEARANCES

Upon arrival, counsel will enter their appearance with the Court Reporter and the Courtroom Deputy Clerk before the start of the opening session of the trial or any other proceeding before the Court

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 pretrials, motions, preliminary injunctions, arraignments and sentencings.

The 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.

The afternoon session begins at 1:00 p.m. and will recess at approximately 3:30 p.m. for 15 minutes.

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

The parties and all counsel will be present at counsel tables at all sessions before the jury is brought into 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.

ADDRESSES BY COUNSEL

Counsel will address the Court and 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.
- (c) Counsel shall stand when addressing the Court for any reason.

EXAMINATION OF WITNESSES

Counsel shall conduct their examination from the lectern. During direct examination and re-direct, counsel may move about in the well of the Court as necessary. On cross-examination, however, counsel shall examine 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 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.

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

Counsel are responsible for witnesses speaking so that their testimony will be easily heard by all members of the jury.

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

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

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 state the grounds therefor. 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 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 re-reading of questions or answers shall be addressed to the Court.

MOBILE DEVICES

Parties are reminded that the use of mobile devices, including but not limited to text messaging and emailing, during status conferences before the Court is strictly prohibited.

EXHIBITS

Counsel will assemble and mark all exhibits and deliver them to the courtroom deputy prior to the commencement of trial. Prosecution exhibits will bear the letter prefix P followed by Arabic numerals and Defendant's exhibits will bear the prefix D followed by Arabic numerals.

Counsel should keep a list of all exhibits and should supply the Court, courtroom deputy and opposing counsel with a copy of the same.

Counsel will not approach the witness to tender an exhibit. Each exhibit will be placed before the witness by the courtroom deputy.

Each counsel is responsible for any exhibits secured from the courtroom deputy. At the end of each trial session, all exhibits shall be returned to the courtroom deputy.

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

Counsel shall provide an exhibit list to the Court and opposing counsel one week prior to the date for the final pretrial conference.

The parties shall use three-ring tabbed notebooks for their exhibits which will be submitted two (2) days before the trial. At trial, the parties shall provide the witness through the Courtroom Deputy the relevant volume(s) when the witness takes the stand. The parties shall provide one (1) copy of their tabbed exhibit notebook(s) to opposing counsel, and three (3) copies to the Court - one each for the Judge, the law clerk, and the courtroom deputy (for use at the witness stand).

Exhibits which are produced for the first time during trial, as in the case of exhibits used for impeachment, shall be tendered to the courtroom deputy for marking and then displayed to opposing counsel.

STIPULATIONS

Three (3) copies of stipulations shall be submitted to the Court one week before the scheduled final pretrial conference.

VOIR DIRE EXAMINATION

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 and accepted or challenged for cause and peremptorily challenged in one continuous 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. When challenging a juror, counsel should refer to the juror by name and number.

The prospective jurors will be seated in numerical order in accordance with the diagram attached hereto as Exhibit A.

The Court will conduct a preliminary voir dire examination tailored to the issues in the case being tried. 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.

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 shall, at the final pretrial conference, submit in writing general areas of questions they would like to ask during voir dire.

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.

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

jurors' answer to the juror questionnaire or, after obtaining the Court's permission, regarding any relevant information contained in the jurors' questionnaire, which justifies such inquiry.

CHALLENGES

The entire panel (i.e., jurors seated in the jury box and in the rear of the courtroom) shall be challenged for cause and peremptorily challenged in a continuous sequence without reseating prospective jurors. It is counsel's responsibility to determine the current make up of the jury by reference to the seating plan.

PEREMPTORY CHALLENGES

Peremptory challenges will be exercised as follows:

- (a) United States exercises its first challenge
- (b) Defendant exercises his first and second challenges
- (c) United States exercises its second challenge
- (d) Defendant exercises his third and fourth challenges
- (e) United States exercise its third challenge
- (f) Defendant exercises his fifth and sixth challenges
- (g) United States exercises its fourth challenge
- (h) Defendant exercises his seventh and eighth challenges
- (I) United States exercises its fifth challenge
- (j) Defendant exercises his ninth challenge
- (k) United States exercises its sixth challenge
- (l) Defendant exercises his tenth challenge

If either party "passes," (i.e., foregoes a challenge in the order prescribed), that party has thereby "used" the challenge.

After the regular 12 jurors have been fully qualified, and counsel state that they are satisfied with the jury, the peremptory challenges as to the alternate juror(s) will then be exercised in the same manner.

JURY INSTRUCTIONS

Requests for jury instructions should be filed one week before the final pretrial date. Requests should be delivered directly to the Court or its law clerk. Copies shall be served on opposing counsel.

MOTIONS IN LIMINE

All Motions In Limine must be filed one week in advance of the final pretrial.

SUMMARY OF DEADLINES

Unless otherwise ordered by the Court, one week before the final pretrial conference date, counsel for the government and Defendant are responsible for submitting to the Court copies of the following:

- (a) Motions In Limine
- (b) Exhibit lists
- (c) Stipulations
- (d) Proposed jury instructions

IT IS SO ORDERED.

ALGENON L. MARBLEY
United States District Judge