

TRIAL PROCEDURE ORDER - CRIMINAL TRIAL

**MICHAEL R. BARRETT
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION
AT CINCINNATI**

I. PRETRIAL PROCEDURE

A. Trial Date

The case will be set for trial between 59 and 70 days into speedy trial. Generally, the final pretrial conference will be scheduled for 1 week before the commencement of trial. All trial counsel must appear in person at the Final Pretrial Conference.

B. Discovery and Inspection

The attorney for the defendant is directed to contact promptly the Assistant U.S. Attorney in charge of the prosecution of his/her case, if prior contact has not been made, and arrange a meeting for the purpose of resolving all requests for discovery provided for under the Federal Rules of Criminal Procedure, including Rule 16. Upon request for discovery by the attorney for the defendant, pursuant to Fed. R. Crim. P. Rule 16, the government shall make the required disclosure of evidence discoverable under the terms and conditions of Rule 16(a). The government shall file a response within one week of the filing of the defendant's request.

The discovery meeting shall be held as promptly as possible and prior to one week after arraignment. If at any time during the course of these proceedings after the initial request, any party fails to comply with Fed. R. Crim. P. 16, such failure shall be brought to the attention of the Court by a specific motion to compel discovery. Motions to compel shall be filed one 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, shall be filed on or before the date set forth in the Criminal Preliminary Pretrial Order. All briefs opposing said motions shall be filed no later than one week after motions are filed. Reply briefs will not be filed. The moving party shall state in the motion whether an evidentiary hearing is required and shall provide the reasons supporting this request. If the Court agrees, a hearing will be set forthwith.

D. Plea Negotiations and Plea Agreement

Plea agreement discussions between the Assistant U.S. Attorney and the attorney for the defendant, pursuant to Fed. R. Crim. P. Rule 11(e), shall be commenced as soon as practicable. The parties shall notify the Court promptly if a plea agreement is reached and a change of plea will be scheduled. Generally, the Final Pretrial Conference will be converted to a change of plea.

E. Motions for Continuance

Any motions for a change of the trial date shall be in writing, shall be made at least one week prior to the scheduled trial date, and shall set forth those factors listed in Title 18, U.S.C. § 3161(h)(8)(B) which the movant contends support the motion.

II. CRIMINAL ORDER OF PROCEDURE

The following procedures are designed to deal with your case promptly and efficiently, without impeding your ability to present your case fully and fairly.

IT IS ORDERED:

A. Counsel Tables

The parties will occupy the counsel table designated by the Court's Courtroom Deputy before the opening of the first session of trial.

B. Court Sessions

Under ordinary circumstances, trials of no more than two weeks duration will be held Monday through Friday.

Trial hours are generally 9:30 a.m. to 12:30 and 2:00 p.m. to 5:00 p.m. with a 15-minute break in the morning and the afternoon.

The parties and all counsel shall 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.

Counsel and the parties shall be present in the courtroom one half (½) hour before Court convenes every day (generally 9:30 a.m.). The purpose of this requirement is to resolve any problems that may arise during the course of this trial. If counsel need to bring anything to the Court's attention, they should contact the

Court's Courtroom Deputy or Law Clerk before 8:30 a.m. so that the Court can resolve the matter before the jury is brought into the courtroom. Counsel should also be readily available for conferences during recesses. Please keep the Courtroom Deputy informed as to where you may be located in case the Court needs to find you quickly.

C. Addresses by Counsel

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

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

D. Decorum

Counsel shall address the Court as "Judge" or "Your Honor".

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

Counsel should 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 an impediment to an impartial trial and will not be permitted.

During a 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 should remain seated and be respectful so as to not 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.

E. Voir Dire Examination

The whole 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 can contact the Jury Commissioner, Kendra Jordan, 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 shall refer to prospective jurors by that seat number and not by name.

The Court will conduct a preliminary *voir dire* examination tailored to the issues in the case and counsel may supplement the Court's examination.

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). First the Court will consider challenges for cause and when that is completed, the Court will consider peremptory challenges.

G. Peremptory Challenges

Peremptory challenges will be exercised as follows:

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

If either party "passes," (*i.e.*, forgoes to exercise a challenge in the order prescribed), that party has thereby "used" one challenge. Subject to consultation with counsel, the waiver of all challenges on a particular round may conclude the challenges.

After the regular 12 jurors have been selected, the peremptory challenges as to the alternate juror(s) will then be exercised in the same manner.

H. Jury Instructions

Counsel should submit proposed, substantive jury instructions, which indicate the filing party, the supporting authority and shall be numbered. The proposed instructions shall be filed with the Clerk's office at least five (5) business days before the scheduled trial date. Counsel are also required to submit a copy of their instructions by email to barrett_chambers@ohsd.uscourts.gov formatted in WordPerfect.

Supplemental requests for instructions during the course of the trial or at the conclusion of the evidence will be granted solely as to those matters that cannot be reasonably anticipated at the time of presentation of the initial set of instructions. Copies also should be served upon opposing counsel.

I. Examination of Witnesses

Counsel will generally conduct their examination of witnesses from the lectern.

In advance of trial, counsel will instruct their 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 answering 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 answer. Counsel should admonish their clients and witnesses to refrain from such conduct.

Counsel should 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.

Counsel may not approach a witness without first asking the Court's permission. When permission is granted for the purpose of working with an exhibit, counsel should return to the lectern when finished with the exhibit. In most cases, the courtroom deputy will place exhibits before the witness.

Counsel should inform the Court when he or she has completed the examination of a witness, so the Court can advise opposing counsel to proceed.

During examination of a witness, counsel first must ask the Court for permission to confer with co-counsel.

J. Objections

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

When objecting, state only that you are objecting and if requested by the Court, state the grounds. 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 permission is given or argument is requested by the Court. Either counsel may request a bench conference.

K. Exhibits

Each party intending to offer exhibits will mark the exhibits prior to the commencement of the trial. Exhibit labels may be obtained from the Clerk of Courts, in advance of trial.

The United States shall identify their exhibits as "PX#," and the defendant shall identify their exhibits as "DX#." Counsel must use Arabic numbers.

Counsel should provide the original and two copies of exhibits to Chambers, and one copy to opposing counsel, three (3) business days prior to 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.

Counsel may not approach a witness to tender an exhibit. Rather, the courtroom deputy will place each exhibit before each witness.

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

Exhibits which are introduced for the first time during trial, as in the case of exhibits used for impeachment, should be tendered to the courtroom deputy for marking and then displayed to opposing counsel. Copies must be provided to opposing counsel, the Court and the Court's Law lerk.

L. Witness Lists

The United States will submit to the Court's Chambers a copy of their witness list three (3) business days before the commencement of trial. Defendant may submit a copy of their witness list three (3) business days before the commencement of trial. Witness lists are not pleadings and should not be filed with the Clerk of Courts or served on opposing counsel.

M. Trial Briefs

The parties may file trial briefs at any time before trial. Counsel also shall serve their trial briefs on opposing counsel. Each trial brief should include a statement of facts. Counsel also should identify difficult evidentiary matters that might arise and argue the subject, complete with case law.

N. Stipulations

Stipulations must be signed by both counsel and the defendant. Stipulations shall be submitted to the Court at any time before or during the trial.

O. Deadlines

Parties are reminded that all deadlines set forth in this Order and in any other Order issued by this Court are firm deadlines. The parties **SHALL** file or submit to the Court's chambers (as required) all required documents by the dates set forth in these orders unless prior approval of the Court for filing on a later date has been obtained from the Court. The Court can and will impose sanctions, including monetary sanctions, for failure to meet these deadlines.

P. Summary of Deadlines¹

Jury Instructions	Five business days before commencement of trial
Witness lists	Three business days before commencement of trial
Exhibits and Exhibit lists	Three business days before commencement of trial
Stipulations	any time before or during trial

¹Counsel should refer to this Order to determine whether the above items must be filed with the Clerk's office and served on opposing counsel or should be submitted to the Court's Chambers only.