

**TRIAL PRACTICE AND COURTROOM PROCEDURES
BEFORE
THE HONORABLE SARAH EVANS BARKER**

GENERAL MATTERS

1. Counsel are expected to be fully familiar with the Local Rules of the United States District Court for the Southern District of Indiana and with the Final Report of the Committee on Civility of the Seventh Federal Judicial Circuit. The former is available from the Clerk of the Court; a copy of the latter is attached.
2. Stand when speaking for the record and when addressing the Court. Use the lectern except for brief objections interposed during testimony.
3. Colloquy or argument between attorneys is not permitted. Address all remarks to the Court.
4. Do not exhibit familiarity with witnesses, jurors or opposing counsel. The use of first names is to be avoided. During argument to the jury, no juror shall be addressed individually or by name.
5. Do not ask the reporter to mark testimony. All requests for re-reading of questions or answers shall be addressed to the Court.
6. After trial has begun, documents should be tendered to the courtroom deputy for filing, rather than to the Clerk's Office.

FACILITIES

1. Counsel should expect to bring with them any sophisticated equipment which they expect to use. A VCR, an overhead projector, a screen, an easel for the display of oversized exhibits and a small chalkboard are available in the courtroom.
2. There is a witness room, Room 221, down the hallway from the courtroom. It is open and available during trial. Witnesses should generally be asked to report to that room rather than to the courtroom, which is numbered 216.
3. The facilities of the chambers, including the telephones and the copier, are not available to counsel during trial. Counsel should enter chambers during trial only by invitation of the Court's staff. Public telephones are available on the ground floor of the courthouse. A copier is available in the Court's library, at a per-page fee.
4. Counsel should advise their clients and witnesses to avoid the third floor of the courthouse during trial. The entrance to the jury room is on the third floor, and jurors are instructed to enter and leave via the elevators to the third floor.

COURT HOURS AND PROMPTNESS

1. The Court makes every effort to commence proceedings at the time set. Promptness is expected from counsel and witnesses. The clerk should be informed of any anticipated scheduling problems, and will attempt to work with counsel to resolve them.
2. If a witness was on the stand at a recess or adjournment, have the witness on the stand ready to proceed when Court is resumed.
3. Have your next witness in the courtroom and ready to take the stand after a recess or adjournment. If a witness' testimony is expected to be brief, have the next witness immediately available, perhaps in the hallway outside the courtroom.
4. Don't run out of witnesses. If there is a substantial delay between witnesses, the Court may deem that you have rested.
5. The Court attempts to cooperate with the busy schedules of doctors and other professional witnesses and will, except in extraordinary circumstances, accommodate them by permitting them to testify out of sequence. Anticipate any such possibility and discuss it with opposing counsel. If there is an objection, confer with the Court in advance.

THE VENIRE AND VOIR DIRE

1. A list of the venire, a seating chart and copies of questionnaires which the venire have completed will be given to counsel on the morning of trial. Blank copies of the forms are attached.
2. The Court will conduct the voir dire. Ordinarily, all potential jurors will be placed before you and questioned in a single session. Counsel are encouraged to submit in writing on the eve of trial any questions which the Court will not routinely ask. At a sidebar at the conclusion of the Court's voir dire, counsel may request follow-up questions.
3. Jury selection takes place at a sidebar conference while the entire venire remains seated in and around the jury box. In criminal cases, the government goes first with one strike, the defendant(s) next with two, repeating in turn with the government last with one. In civil cases, the sides exercise individual strikes in turn. Those not chosen for the jury are then excused from the courtroom.
4. Counsel may request additional challenges if additional jurors are chosen. In civil cases, when the original jury is larger than six persons, all remaining jurors will deliberate at the conclusion of the trial and reach a verdict.

OPENING STATEMENT AND CLOSING ARGUMENT

1. Counsel should stand at the lectern during opening statement and argument. Confine opening statements to what you expect the evidence to show. It is not proper to use the opening statement to argue the case or instruct as to the law.
2. The Court will honor counsel's reasonable and balanced requests concerning the amount of time for opening statements and closing arguments, and expects counsel to confer to resolve any discrepancies.
3. During the argument of opposing counsel, remain seated at the counsel table and be respectful. Never divert the attention of the Court or the jury. Counsel should so instruct their clients and witnesses.

EXAMINATION OF WITNESSES

1. Witnesses shall be treated with fairness and consideration. They shall not be shouted at, ridiculed, or otherwise abused.
2. Counsel should conduct examination of witnesses from the lectern.
3. Rise when addressing the Court and when making objections. This calls the Court's attention to you and allows you to be heard more readily.
4. Request the permission of the Court to approach a witness ONLY when you wish to consult privately with the witness.
5. When the purpose of approaching the witness is to work with an exhibit, prior permission of the Court need not be sought. During a jury trial, you, the witness and the exhibit (if enlarged) should be facing the jury so that you can be seen and heard. Counsel should resume the examination of the witness from the lectern when finished with the exhibit, which should be as soon as possible.
6. When the trial begins, please provide the Court and the court reporter with a list of the witnesses you expect to call. Please attempt to have the correct spellings for the court reporter.

OBJECTIONS TO QUESTIONS

1. When rising to make an objection, state only that you are objecting and specify the ground or grounds for that objection.
2. Do not use objections for the purpose of making a speech, recapitulating testimony or attempting to guide the witness.
3. Argument upon the objection will not be heard until permission is given or argument is requested by the Court.
4. Where more than one attorney appears for a given party, the attorney who handles the direct examination of a witness shall also interpose objections when the witness is being examined by other counsel. The attorney who will cross-examine a witness shall interpose any objections during direct testimony.

5. No person shall ever by facial expression or other conduct exhibit any opinion concerning any testimony which is being given by a witness or any particular ruling by the Court. Counsel should admonish their clients and witnesses to avoid such behavior. Visitors who cannot abide by this requirement will be asked to leave the courtroom.
6. The usual trial schedule begins at 9:00 a.m. and continues after a convenient midmorning break until at or near noontime. After the lunch hour, the afternoon session normally continues until 5:00 with one midafternoon recess intervening. Times for recess and adjournment will vary slightly, to permit the conclusion of a witness's testimony, to allow counsel to finish with direct or cross-examination, or if the Court has been required to attend to other court-related business.

EXHIBITS

1. Exhibits should be marked for identification before trial and a list provided to the Court and the court reporter. Plaintiff's exhibits should be designated by numbers; defendant's by letters (i.e., A-Z, AA, AB, AC-AZ, BA-BZ, etc.) Where several exhibits are contained within an envelope, package or box, mark the container as exhibit AB, for example, and the contents as exhibit AB-1, AB-2, etc.
2. In cases involving large numbers of documentary exhibits which counsel hope to display to the jury, preparation of individual notebooks for the jurors and the Court is most helpful.
3. Exhibits which have been introduced into evidence are kept on the table in front of the clerk's bench during the trial. Each counsel is responsible for exhibits taken from the table. At each recess or adjournment, return all exhibits to the table. Exhibits which have been offered but not admitted are also part of the record of the case and are kept by the clerk.
4. Each counsel shall keep a list of admitted exhibits. Counsel and the clerk shall confer at the close of the evidence to insure that only admitted exhibits are sent to the jury. Controlled substances, counterfeit currency and firearms or other dangerous material are generally not sent to the jury; counsel are asked to substitute photographs.
5. If an exhibit must be marked for identification in open court, counsel should state for the record what they are doing and describe briefly the nature of the exhibit. Counsel should not expect the Court to provide exhibit labels.
6. Counsel should confer before trial to reach as many stipulations as possible concerning authenticity and admissibility of exhibits. Counsel may move the admission of stipulated exhibits at the onset of trial.
7. Whenever possible, have photocopies of exhibits for the Court, opposing counsel and the witness. A descriptive list of the exhibits counsel intend to introduce is a helpful tool for counsel, the Court, the court reporter and the clerk.
8. Ordinarily, exhibits should be offered in evidence when they become admissible, rather than at the end of a witness's testimony or counsel's case.

9. Ordinarily, exhibits admitted into evidence may be displayed to the jury at the time of admission or in conjunction with other exhibits at the conclusion of the witness' examination by the "offering" counsel, but permission of the Court should be sought in advance of executing either procedure.
10. When counsel or witnesses refer to an exhibit, make mention of the exhibit number so that the record will be clear.
11. Where maps, diagrams, pictures or similar materials are being used as exhibits, and locations or features on such documents are being pointed out by witnesses or counsel, such locations should be indicated by appropriate markings on the documents if they are not readily apparent from the exhibits themselves. Unnecessary markings should be avoided. Marking on exhibits should only be made after considering the views of opposing counsel and receiving the Court's permission. Counsel should then describe the markings for the record.
12. Where there has been extensive discovery and counsel expect to offer answers to interrogatories or requests for admissions extracted from several separate documents, prepare copies of the individual materials rather than thumbing through extensive files while the Court and the jury sit waiting for counsel to locate the particular items.

DEPOSITIONS

1. Depositions to be used at trial, either as evidence or for impeachment, are to be filed on the morning of trial.
2. Depositions to be used as evidence at trial shall be marked as exhibits. The parties should stipulate, if possible, that the reading of depositions not be taken by the reporter.
3. When only a portion of a deposition is to be read, the relevant excerpts must be identified verbally for the record by line, question and page reference. After the identification has been made for the record and before portions of depositions are used for impeachment, allow the witness to review them silently.
4. Confer with opposing counsel to edit both written and videotaped depositions which are to be used at trial and remove unnecessary material.
5. Counsel are urged to confer to develop summaries of depositions which are to be used at trial and to read those summaries, rather than the text of the deposition, to the jury.

JURY INSTRUCTIONS

1. File and serve your proposed jury instructions three working days prior to trial, unless a different schedule has been ordered by the Court.
2. When possible, tender your proposed instructions on a computer disk. The Court uses WordPerfect Version 8, and 3 1/2 " disks are preferred.

3. Each tendered instruction must include a pinpoint citation to the authority on which counsel relied.
4. The Court will convene an instructions conference at an appropriate time, generally after or very shortly before the conclusion of all the evidence.

DIFFICULT QUESTIONS--ADVANCE NOTICE

If counsel have reason to anticipate that any question of law or evidence is difficult or will provoke an extensive argument or require a proffer outside the presence of the jury, and counsel have conferred and been unable to resolve the matter, give advance notice to the Court to allow for appropriate scheduling arrangements to be made.

06/26/95